

(2005) 05 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

COL NIRMAL SINGH

APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Citation : 2006 1 CPJ 286

Hon'ble Judges : K.K.Srivastava , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal filed by the complainant Col. Nirmal Singh (Retd.) against judgment and order dated 3.12.2004 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter to be referred as District Forum) vide which Complaint Case No. 312 of 2004 was dismissed by leaving the parties to bear their own costs.

2. THE appellant got his Indica car bearing registration No. CH03-H-6720 insured with New India Assurance Company (for short hereinafter to be referred as Assurance Company) respondent No. 1 for the period from 27.2.2003 to 26.2.2004 vide policy No. 31/02/7883. THE said car met with an accident which took place on 27.8.2003. THE car was sent for repairs to respondent No. 2-M/s. Surendra Autos Pvt. Ltd., 114, Industrial Area, Phase I, Panchkula which was the authorised garage of the Assurance Company. After the repairs of the car as per damage assessed by respondent No. 2- M/s. Surendera Autos Pvt. Ltd., which was approved by the Surveyor of the Assurance Company, the repaired car was inspected by the authorised representative of the Assurance Company. THE total costs of repair was of a sum of Rs. 76,385, which was paid by the complainant to respondent No. 2 - M/s. Surendra Autos Pvt. Ltd. on 3.10.2003 for taking the delivery of the car. It is not disputed that the Assurance Company settled the claim vide cheque dated 11.12.2003 issued for an amount of Rs. 64,595, which included supplementary claim and toeing charges. The appellant/complainant has alleged that at the time of taking delivery of the repaired car on 3.10.2003, he detected some oil leakage and brought this fact to the notice of respondent No. 2

- M/s. Surendera Autos Pvt. Ltd. The respondent No. 2 found the source of leakage from power steering assembly. Consequently, the power steering assembly was dismantled to rectify the defect when it was noticed that there was a hair crack on the body of the power steering assembly and also the pressure of the pipeline had cracked at the intake place of the mounting and the pressure pipeline resulting in leakage. The said defect was attempted to be repaired by respondent No. 2 - M/s. Surendera Autos Pvt. Ltd. but it could not do so because the broken pipeline could not be removed from the body of mounting. It was further alleged that in the process of removal of the broken pipeline, the internal threading of the body of the assembly got damaged. Thereafter, the respondent No. 2 - M/s. Surendera Autos Pvt. Ltd. told the complainant that power steering assembly would have to be changed and a supplementary claim should be made to the Assurance Company as the said leakage was due to the direct result of the accident. In the meantime, the car was fitted with a manual steering assembly to make it motorable. The complainant brought this fact to the notice of Assurance Company on 7.10.2003 and prayed for releasing supplementary claim, which was rejected by Shri Kuldeep Singh, Surveyor after inspecting damaged part stating that the damage to the power steering assembly was not attributable to the accident and that it was clear case of mishandling of job by respondent No. 2-M/s. Surendera Autos Pvt. Ltd. the complainant again approached the Assurance Company for reviewing the decision of the Surveyor and it was pointed out that as per the technical experts appointed by the manufacturers, the contention of the Surveyor was not correct because a crack in the body of the power steering assembly and damage to the pressure pipeline could not take place due to normal usage of the assembly and that this damage was only possible due to a heavy impact of the kind that the car undertook as a result of the accident.

The complainant got the defective parts replaced, pending the finalization of the matter regarding supplementary claim by the Assurance Company by paying a sum of Rs. 16,615 as full cost of the power steering assembly to respondent No. 2- M/s. Surendera Autos Pvt. Ltd. The Assurance Company while admitting the claim deducted Rs. 11,790 as depreciation charges even though the car was comprehensively insured. It was also contended that the complainant was denied the benefit of 65% of no claim bonus enjoyed by him at the time of renewal of the policy on 27.2.2004 and thereby causing him to pay Rs. 4,994 more. In all, the complainant has lost a total of Rs. 11,790 + Rs. 4,994 = Rs. 16,784. The case of the complainant was closed by following the earlier opinion of the Surveyor vide letter dated 14.10.2004 (copy Annexure C). The complainant thereafter informed respondent No. 2- M/s. Surendera Autos Pvt. Ltd. about the closing of the case by the Assurance Company by letter dated 8.2.2004 (Annexure D) and told them that it was a result of their faulty work mentioned. The respondent No. 2-M/s Surendera Autos Pvt. Ltd., did not give any reply to this letter. However, on 25.2.2004, respondent No. 2-M/s. Surendera Autos Pvt. Ltd. told the complainant that this issue between the parties needed to be resolved legally. On these averments, the complainant filed this complaint

claiming a sum of Rs. 1,98,899, which comprises of the costs of replacement of power steering assembly Rs. 16,615, legal expenses Rs. 15,500, depreciation charges Rs. 11,790, loss of no claim bonus Rs. 4,994 and Rs. 1,50,000 as mental agony, stress, strain and time wasted in the process resulting in professional losses and disruption of normal personal family life.

3. THE Assurance Company in rely challenged the locus standi of the complainant to file the complaint. A preliminary objection about the jurisdiction of the District Forum was also raised but the District Forum held that it had the jurisdiction to adjudicate the complaint case as Assurance Company had got his office located in Chandigarh. It was, however, mentioned that the workshop of O.P. No. 2 was at Panchkula. O.P. No. 2 did not put in appearance to challenge the jurisdiction of the District Forum and they have acquiesce to territorial jurisdiction of the District Forum. THE objection regarding the bar of limitation in filing the claim was also repelled on the ground that the claim of the complainant for replacing of power steering assembly was repudiated vide letter dated 14.1.2004. Likewise, the claim of repair charges and no claim bonus were held to have arisen within the prescribed period of limitation. In the light of the authority, Dr. J.J. Merchant v. Srinath Chaturvedi, III (2002) CPJ 8 (SC)=IV (2002) SLT 714=2002 CTJ 757, the District Forum held that it had jurisdiction to dispose of the complaint case, which could not be ordered to be filed before a Civil Court of competent jurisdiction on account of complicated questions of law and fact. Coming on the merits of the case, the District Forum after referring the rival pleadings, evidence and contentions held that so far as no claim bonus was concerned, the same was not admissible as the complainant had received his insurance claim for the car under the policy of insurance for the preceding year and deficiency on this count was not held on the part of the Assurance Company. Regarding the claim of Rs. 11,790 deducted as depreciation charges, reference was made to the terms and conditions of the insurance policy and Section 1 of the standard form for private car package policy, which stated, inter alia, that the company would indemnify the insured against the loss/damage to the vehicle insured and/or its accessories whilst thereon, under ten eventualities stated therein. The payment of the loss and damaged would be subject to deduction for depreciation rates mentioned as under : (i) for all rubber and plastic parts, the depreciation would be 50%.; (ii) for fiber glass components, the depreciation would be 30%; (iii) for all parts made of glass, the depreciation would be nil; (4) rate for depreciation for all other parts including wooden parts will be as per the following schedule:

"Age of vehicle depreciation % of Not exceeding 6 months Nil Exceeding 6 months but not exceeding 1 year 5% Exceeding 1 year but not exceeding 2 years 10% xxx xxx xxx"

4. THE District Forum held that the depreciation for metal parts at 10% has been applied and for rubber/plastic, it is 50%. In view of the terms and conditions of the insurance policy, no exception could be made to these deductions. A finding was returned that O.Ps. have not committed any deficiency in service on this

count. Regarding the damage caused to the power steering assembly, the District Forum, held, inter alia, in paragraph No. 15 as under : "...Furthermore, when the original repair estimate (R-13) dated 2.9.2003 was submitted by O.P. 2, there was no mention of hair crack in the power steering assembly or leakage in the tube which would have certainly been mentioned in R-13 if these had existed on 2.9.2003. But since these were not mentioned in it, so the presumption would be that they did not exist on 2.9.2003...."

In Paragraph No. 17, the District Forum compared the letter (Annexure C-1) with letter (Annexure R-5) and observed as under : "17. On comparison of his letter C-1 with his letter R-5, it becomes immediately clear that in his letter C-1 dated 3.10.2003, the complainant has made a clever but clumsy attempt to distort material facts. In R-5, he is categorical and emphatic that the car was fully repaired to his satisfaction on 24.9.2003 and payment to the repairers had been made. So, there was no earthly reason to "finally complete the repairs on 3.10.2003", when it had already been fully repaired to his satisfaction on 24.9.2003 and payment had been made to the repairers. Therefore, the earlier his version contained in the letter C-1 dated 3.10.2003 relating to the date of completion of repairs and date of taking of delivery is rejected the better."

5. THE date of 3.10.2003 has wrongly been mentioned as Annexure C-1 is dated 5.10.2003. THE District Forum considered in Para 19 of the impugned judgment the possibility that the crack might have been caused by the respondent No. 2 for the lack of care on their part while effecting repairs. THE District Forum further held, inter alia, as under : "...On 24.9.2003, the complainant admitted and certified in writing that the repair had been carried out fully to his satisfaction. He had paid all the repair charges to O.P. 2 by this time. As per his own admission, he is wholly dependent on the car. THEREfore, it was natural that he had taken the delivery of the car from O.P. 2 on 24.9.2003. His version that he took the delivery on 3.10.2003 has already been examined and found wanting. Thus, it stands proved that he took the delivery of the car from O.P. 2 after it had been fully repaired to his full satisfaction. After that obviously he continued using this car right upto 2.10.2003 and there was no complaint of the hair crack in power steering assembly or the leakage in the pressure pipeline upto 2.10.2003. THEse alleged defects appeared on 3.10.2003 only after the car had been in possession and use of the complainant for about nine days. THEREfore, all these circumstances and use of the car from 24.9.2003 to 3.10.2003 were in the exclusive knowledge of the complainant. At least, there was no complaint of hair crack in the power steering assembly or leakage in the pressure pipeline till 2.10.2003, after complete repair of the car to the full satisfaction of the complainant on 24.9.2003. THEREfore, for the obvious reasons, these defects cannot be attributed to the alleged carelessness of O.P.-2 while carrying out the repairs."

6. ON these findings, the District Forum dismissed the complaint. The learned Counsel for the appellant mainly contended that the damage to the power

steering assembly could not be cause due to normal wear and tear of the car and that too for a period of nine days and specially in the absence of any evidence that during this period of nine days, the car developed the problem of leakage of oil from power steering assembly due to any other powerful impact by way of accident and not under the normal wear and tear in the use of the car. There are two disputed facts in this case regarding which the finding has been recorded against the complainant.

The first dispute is about the date when the complainant/appellant took delivery of the car from respondent No. 2-M/s. Surendera Autos Pvt. Ltd. i.e., whether it was on 24.9.2003 or on 3.10.2003. The District Forum referred to in great detail the material placed on record and in our considered opinion, the District Forum rightly held that the car in question had in fact been taken delivery of by the complainant after repairs by respondent No. 2 - M/s. Surendera Autos Pvt. Ltd. on 24.9.2003 after recording in job card his note of being fully satisfied that the repair of the car for which he duly received the payment with reference to his claim. Once this fact stands proved, the complainant cannot now allege that despite his recording the satisfaction, there was leakage from the power steering assembly and he on 3.10.2003 itself, when he went to take delivery of the car from respondent No. 2 - M/s. Surendera Autos Pvt. Ltd., point out this fact to respondent No. 2 when his doubts were cleared and it was found out that there was hair crack in the power steering assembly and while repairing the same, the respondent No. 2 found that it could not be repaired and it had to be replaced with a new power steering assembly. If it is a fact that the complainant had gone on 3.10.2003 and not earlier on 24.9.2003, then the question of his signing the job card and recording his full satisfaction about the repair of the car and submitted the same before the Assurance Company - respondent No. 1 for payment of his claim would not arise.

7. WE find from perusal of the material placed on record as well as from the affidavit of Shri Kuldeep Singh, Surveyor that the delivery of the car was not taken on 3.10.2003 and instead it was taken delivery of on 24.9.2003. There is an affidavit of Shri Sandeep Sharma of M/s. Sandeep Sharma and Associates, Surveyor and Loss Assessor, which has been filed in support of the affidavit of Shri Kuldeep Singh, Surveyor. Annexure R-6 is the receipt issued by respondent No. 2 - M/s. Surendera Autos Pvt. Ltd., which is dated 24.9.2003. It is for a sum of Rs. 74,285. The photocopies of the receipts of payments made of a sum of Rs. 35,000 on 23.9.2003, Rs. 16,000 on 18.9.2003 and Rs. 19,000 on 17.9.2003 have been filed. A letter was sent by the Assurance Company on 20.10.2003 to Shri Kuldeep Singh, Surveyor wherein it was mentioned that the vehicle was repaired and delivered on 24.9.2003. It was further mentioned that the said Surveyor had already considered the supplementary estimate of 9.9.2003 and 10.9.2003. The Assurance Company wrote to the Surveyor Shri Kuldeep Singh that the insured had raised a claim about the damage of the power steering assembly. A copy of the letter was enclosed. The observations of the Surveyor regarding the supplementary claim for the damage to the power steering

assembly was called for. The Surveyor Shri Kuldeep Singh wrote a letter dated 14.11.2003 to the complainant regarding accident to Indica DLX car CH-03-6720 A/C Yourself, vide C.N-488767, wherein he mentioned as under: "Submitted in BO Section 27, Chd. on 24th Oct., 03 undersigned inspected the above said damaged Parts at workshop M/s. Surindera Autos (P.) Ltd. on 31.10.2003 in your presence and taken the photographs. Undersigned discussed the matter with the repair and gone through the clarification given by the repairer dated Letter 4.11.2003. I am of the opinion that is no such heavy impact on the casing of steering R&P (rack and pinion). During survey undersigned noted that at intake place of mtg. to pipe threading found damaged and there is hair crack on body which is not due to impact during the accident. It is very clear/mishandling of job during work by the repairer. It is not covered under the policy terms and conditions. So this loss is not payable. It is for your information please."

The said Surveyor also wrote to the Senior Branch Manager of Assurance Company vide letter dated 6.1.2004 wherein it was mentioned, inter alia, as under: "Undersigned had already clarified to the insured vide letter dated 14.11.2003 that steering rack and pinion case is not damaged due to impact and it is also accepted by the insured in his current letter dated 18.12.2003 at para 4. If repairer had found any damages after completing the vehicle, he must have informed to underwriter before dismantling. Casing had damaged in process to remove the damaged pipe from the casing. So underwriter is not liable to consider the same."

8. A careful perusal of these documents and affidavits will go to show that the damage to the power steering assembly was not established on account of the accident, which caused damage to the said vehicle about which the complainant was already paid his claim. After carefully considering the matter, we are of the considered opinion that the District Forum has rightly held that the appellant/complainant has failed to prove that there was any deficiency in service on the part of the respondent No. 1-Assurance Company or respondent No. 2-M/s. Surendera Autos Pvt. Ltd. and has rightly dismissed the complaint. Resultantly, the appeal lacks merit and is dismissed by leaving the parties to bear their own costs. Copies of this order be sent to the parties free of charge. Appeal dismissed.