
(2004) 01 NCDRC CK 0089

In the National Consumer Disputes Redressal Commission

DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY

APPELLANT

Vs

R. SOMASUNDARAM

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Citation : 2004 2 CPJ 357 : 2005 1 CPR 176

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal allowed

Judgement

1. THE complainant's case is thus: THE complainant is the owner of a car bearing Registration No. TMA 3004. THE said car was insured with the opposite party. On 18.5.1996, the car met with an accident on the Coonoor Kotagiri Road. It was immediately reported to the opposite party on 20.5.1996 and it was also stated that the cost of repair would come to Rs. 60,000/-. THE car was entrusted with M/s. Shanthi Auto Care, Coonoor for carrying out the necessary repairs. THE opposite party deputed as Surveyor by name Mr. R. Kandavel who inspected the car and stated that he would send the report after verifying the cost of spare parts. On 1.6.1996 the complainant made a payment of Rs. 36,000/- to the workshop. When he made inquiries with the opposite party, the complainant was informed that the report of the Surveyor has not been received. Thus they were evading to settle the claim. On 30.10.1996, the opposite party informed the that they were in receipt of the Surveyor's report and they paid a sum of Rs. 25,000/- on 13.12.1996 to the complainant as against the bill of Rs. 73,890/-. THE opposite party never bothered to settle the rest of the claim. THEREfore, the complainant laid the complaint for a direction to the opposite party to pay the balance amount of Rs. 48,897/- with interest at 18% p.a., to pay a sum of Rs. 20,000/- towards mental agony, pain and damages.

2. THE opposite party filed their objections stating as follows : THE complainant himself arranged for the Surveyor and in order to expedite the matter the said Surveyor Mr. Kandavel who is an independent authority was deputed. THE said Surveyor submitted his report only on 30.10.1996 though he surveyed the

vehicle on 27.7.1996. THE damage was assessed at Rs. 30,400/-. On completion of the work, a Surveyor by name Mr. Palaniswamy was sent to verify the work. As the claim was high and disproportionate to the Surveyor's assessment, the matter was placed before M/s. Rank Associates for valuation. THEy valued the work as per the schedule of Maruti Udyog Ltd. and the amount was arrived at Rs. 31,026/-. As the complainant was not amenable, the opposite party offered to pay the balance of Rs. 6,026/- in settlement. THE opposite party was always ready and willing to settle the claim as per the Surveyor's report. Thus there has been no deficiency in service on the part of the opposite party. The lower Forum, by its order dated 28.12.1998 accepted the claim and directed the opposite party to pay a sum of Rs. 48,897/- with interest at 18% and a sum of Rs. 20,000/- towards compensation for mental agony and Rs. 1,000/- as costs.

In this case, the opposite party has admittedly paid a sum of Rs. 30,400/-. After paying a sum of Rs. 25,000/-, based on the Surveyor's report they sent another sum of Rs. 6,026/-. In this case, the Surveyor was brought out by the claimant himself. Admittedly, after the completion of the work, another Surveyor by name Mr. Palaniswamy was deputed. Later M/s. Rank Associates were also sent to assess the damage. M/s. Rank Associates carried out the survey in accordance with the schedule of M/s. Maruti Udyog Ltd. and arrived at the cost of damage at Rs. 31,026/-. Hence, in such circumstances, it cannot be stated that there is any deficiency in service or that there is any delay or negligence on the part of the opposite party in settling the claim. The opposite party did not reject the claim of the complainant suo motu. The complainant engaged the services of a Surveyor and later two more Surveyors were appointed. Thus it shows that action has been taken by the Insurance Company to settle the claim. The complainant would claim that he has spent a sum of Rs. 73,890/- for repairs. It is based upon the bill issued by M/s. Shanthi Auto Care, Coonoor towards the cost of the repairs. There is nothing to show that M/s. Shanthi Auto Care, Coonoor were authorized persons or were accepted by the opposite party to carry out the repairs. It is also true that there is an arbitration clause stating that if there is a dispute regarding the extent of liability, an Arbitrator shall be appointed to decide the extent of liability between the parties. Considering the case on hand, we find that there is no repudiation, there is no prolongation by the insurer. The complainant has also not informed the insurer about entrusting the repair work to M/s. Shanthi Auto Care, Coonoor. Just because they have issued a bill for Rs. 73,890/- towards repair charges, it cannot follow that the complainant will be entitled to the entire amount as claimed. According to the complainant it is a 1985 model car and the accident took place on 18.5.1996. Therefore, on the date of the accident, the vehicle had become considerably old. Therefore, under the provisions of the insurance policy, they have to provide for depreciation and without providing for the same, the claim cannot be settled. That is what the Insurance Company have done in this case. M/s. Shanthi Auto Care, Coonoor have intimated the total labour charges at Rs. 50,250/- and spare parts at Rs. 2,570/-. Out of the total labour charges, the Surveyor has assessed it at Rs.

19,750/-. They have accepted the evaluation of spare parts and after depreciation at 50% have fixed it at Rs. 7,870/- and have thus arrived at a sum of Rs. 31,190/- in all. For a 1985 model car when the accident had taken place in the year 1996, to claim a sum of Rs. 50,250/- is definitely on the high side. Fixation of depreciation at 50% has been rightly done. The Surveyor's report states that certain damaged spare parts can be repaired and disallowed, as stated above, labour charges which has been claimed at such a high figure by the complainant. Therefore, considering the nature of repairs, the age of the vehicle and the circumstances, we are of the view that this is not a case where we can say that there has been any deficiency in service or inaction on the part of the opposite party Insurance Company. The Insurance Company have paid Rs. 25,000/- and offered to pay the balance of Rs. 6,026/-, which in the circumstances, in our opinion, is a fair compensation to be paid to the complainant for the damages sustained by the complainant.

3. THE District Forum has not chosen to consider these aspects. Just because M/s. Shanthi Auto Care, Coonoor sent a report stating that the total repair charges worked out to Rs. 73,890/-, it does not follow that it is to be accepted as an infallible one. THERE is also nothing wrong in the Insurance Company approaching a Surveyor after the complainant has entrusted the vehicle to M/s. Shanthi Auto Care, Coonoor. THERE is no failure on the part of the opposite party. When there are independent Surveyors, just because M/s. Shanthi Auto Care, Coonoor are authorized dealers, there was no reason for the complainant to leave the vehicle at them, without even informing the opposite party or obtaining the consent or at least they ought to have instructed the workshop to await the Surveyor deputed by the opposite party to come and inspect the vehicle before undertaking the repair work. In such circumstances, we are unable to accept the order of the District Forum . It is also to be pointed out that a sum of Rs. 20,000/- has been granted by way of compensation for mental pain and suffering. That the lower Forum having granted the relief in a sum of Rs. 48,897/- with interest at 18% again can't grant compensation in a sum of Rs. 20,000/- towards mental pain and agony. It is definitely unwarranted. What is the nature of mental pain and sufferings he underwent the complainant has not chosen to adduce any evidence or step in to disclose. This is but a fanciful claim made and it has been accepted by the District Forum without legally testing it. Therefore, that part of the order is also liable to be set aside. Hence, we have no hesitation in holding that the order of the District Forum deserves to be set aside.

4. CONSEQUENTLY, this appeal is allowed with cost of Rs. 250/-. The order of the District Forum, Udhagamandalam is set aside. The complaint will stand dismissed. Time for compliance: 2 months. Appeal allowed with costs.