(2006) 06 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

GIRIRAJ PRASAD KHANDELWAL — APPELLANT

Vs

United India Insurance Co. Ltd. — RESPONDENT

Date of Decision : 01-06-2006

Acts Referred:

Citation : 2006 4 CPJ 66

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal has been filed by the appellant under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as ''1986 Act'') against the order dated 4.1.2003 passed by the learned District Forum, Sawai Madhopur whereby the complaint of the complainant-respondent was partly allowed.

2. IN the case, the complainant had taken comprehensive insurance for a Mahindra Jeep with the respondents for an amount of Rs. 3,08,900 for the period from 12.1.1998 to 11.1.1999. This vehicle met with an accient on 18.5.1998 in which it was badly damaged. The complainant informed the INsurance Company of the incident, lodged a FIR with the Police and Surveyor was appoitned by the respondents. The complainant alleged that in spite of all this, his claim was not settled. Hence he prayed for damages. After hearing both the parties, the learned District Forum partly allowed the complaint. By a minority order, the respondents were directed to pay an amount of Rs. 1,70,000 while the majority order directed the respondents to make payment of loss of Rs. 83,333.

Aggrieved by the majority order of the learned District Forum, the appellant has come up before us in appeal.

3. WE have heared the learned Counsel for both the parties and have considered the materials placed on record. WE feel that the learned District Forum has committed an error in not accepting the first survey report and as such the impugned order deserves to be modified. The learned Counsel for the appellant has contended that the Surveyor has taken the wrong market price of the jeep

which should be Rs. 3,08,900.

4. IN this case, it is not in dispute that the jeep in question was purchased by the complainant on 12.1.1998 at a cost of Rs. 3,08,900 and it met with an accident on 18.5.1998. It is also not in dispute that the respondents had appointed three Surveyors. The appellant has accepted the report of the first Surveyor who has taken the cost of the vehicle as Rs. 2,80,000 on the date of the accident. The other two Surveyors have also come to the same conclusion. Therefore, the cost of the vehicle on the date of the accident has been rightly assessed. The learned Counsel for the appellant has next contended that the Insurance Company had successively appointed Surveyors/Investigators without any justifiable reason. There is great force in this submission. In this case, there are three Survey Reports, one Damages Report and an Investigation Report. The first report is dated 1.8.1998 which has been given by Mr. Ajai Kumar Sharma. It is a very detailed report which has assessed net loss of Rs. 1,70,000 to the vehicle. There is no material or evidence on record which might prompt us to reject this report. In fact this survey report finds corroboration from the report of one Mr. Chndra Kant dated 26.6.1998 which give the extent of the damages. Having reached this conclusion, still we have looked at the other Survey Report. The Second Survey Report is dated 24.8.1998 of Mr. Pramod Chhabra. He had estimated the market value of the vehicle as Rs. 2,80,000 and loss of Rs. 2,80,000 including salvage of Rs. 1,10,000. Thus he had also estimated net loss of Rs. 1,70,000. In this way, there is concurrent estimation of loss by two different Surveyors, and as stated above, there is nothing on record to discard the reports of these Surveyors.

5. IN our considered opinion, the INsurance Company cannot go on appointing one Surveyor after the other, till perhaps the extent of damages is minimized by one of the Surveyors and a report which suits it is submitted. The Hon''ble National Commission and this Commission had, in the past, deprecated the successive appointments of Surveyors by the INsurance Company for obvious reasons. (National INsurance Co. Ltd. v. New Patiala Trading Co., I (2003) CPJ 33 (NC); Virendra Choudhary v. United INsurance Co., III (1996) CPJ 154 (Raj.)

6. IN the present case, the respondents have not taken recorse to this provision and no explanation has been offered by the respondents for repeated appointments of Surveyors. Therefore, there are no reasons before us for rejecting the concurrent reports of the two Surveyors. In this case, a third Surveyor, Mr. Sanjay Maheshwari had submitted a report on 1.5.1999, i.e., after more than nine months after the first survey report. He has assessed the total loss at Rs. 2,80,000 as was done by the other two Surveyors but had taken the salvage value to be Rs. 1,40,000 and the net loss as Rs. 1,40,000. It is true that if the Insurance Company does not agree with the report of the previsous Surveyor, it had the right to apply to the Controller of Insruance to appoint another Surveyor under Section 64 UM(G)(3) of the Insurance Act, but if the Surveyor is appointed without complying with the conditions of this provision and without offering any explanation for such repeated appointments of Surveyors,

the claim has to be allowed on the basis of previous report Ashwani Textiles v. Oriental Insurance Co. Ltd., I (2003) CPJ 43 (NC). In view of the above facts, the report of this Surveyor cannot be believed and has to be discarded.

In this case, there is evidence on record that the engine of the vehicle was also extensively damaged and its repairs has been stated to be not possible. In this view of the matter, the respondents had committed deficiency in service in not settling the claim of the appellant in terms of the Survey Report dated 1.8.1998 given by Mr. A.K. Sharma who was the Surveyor of the respondent-Insurance Company.

7. IN view of the above, the appeal deserves to be partly allowed and the impugned order deserves to be modified. Accordingly, the appeal is partly allowed and the impugned order is modified in the manner that the respondents shall pay within one month from the date of this judgment, an amount of Rs. 1,70,000 in place of Rs. 83,363 to the appellant-complainant. In case this amount is not paid within the aforesaid period of one month, the respondent shall also be entitled to interest on this amount @ 9% p.a. from the date of this judgemnt till the payment/recovery of the amount from the appellants. The rest of the impugned order relating to award of cost of litigation is upheld. No costs. Appeal partly allowed.