
(2012) 01 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

H.C.Saxena

APPELLANT

Vs

NEW INDIA ASSURANCE CO

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Citation : 2012 0 NCDRC 1 : 2012 1 CPJ 420

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : stands is dismissed

Judgement

1. THIS revision petition has been filed by the complainant. The petitioner had insured his car Opel Corsa Royale 1.6 with the respondent/opposite party-insurance company for a sum of Rs.7,33,450/- vide insurance policy dated 20.09.2003. On 3.8.2004, heavy flood came in Ambala due to which the aforesaid car of the petitioner got drowned/submerged in water and hence badly damaged. Necessary information regarding the damage to the car was given by the petitioner to the respondent on 5.8.2004, upon which the respondent deputed a Surveyor, namely, Ravi Kumar Gupta, who assessed the damage to the car to the tune of Rs.42,276/-. However, according to the petitioner, he had spent a sum of Rs.1,50,000/- on the repairs of his car, besides other expenses incurred on the cost of oil to the tune of Rs.7,000/-, loss of business for three months @25,000/- per month thereby amounting to Rs.75,000/-, compensation on account of mental agony and harassment at Rs.1,50,000/-, cost of towing of the car Rs.15,000/- and litigation expenses Rs.5,000/-. Therefore, the petitioner sought compensation from the respondent-company to this extent.

2. UPON notice, the opposite party-respondent resisted the claim of the complainant by denying his version and took the plea that the Surveyor had prepared and submitted his report on 30.8.2005 and calculated the total loss of Rs.42,276/- but the complainant failed to comply with the required formalities i.e. deposit of salvage with the opposite party-company, execution of the discharge voucher, submission of the original bills etc. and hence the claim of the complainant could not be settled. Thus, denying any deficiency in service on its

part, the opposite party prayed for dismissal of the complaint. On appraisal of the issues and evidence adduced by the parties on record, the District Forum accepted the complaint vide its order dated 11.1.2007 in terms of the following directions:- Resultantly, the complaint succeeds and the same is hereby allowed with costs. The OP is directed to comply with the following orders within 30 days from the receipt of the copy of order- i) To pay Rs.86549/- with interest @12% P.A. from the date of intimation given to OP about loss i.e. 5.8.2004 till realization ii) To pay Rs.10000/- for harassment and mental agony suffered by the complainant. iii) To pay Rs.2500/- on account of litigation charges.

Aggrieved by the aforesaid order of the District Forum, the respondent/opposite party-company challenged the same by filing an appeal before the State Consumer Disputes Redressal Commission, Haryana, Panchkula (in short, the State Commission). The State Commission vide its order 19.02.2010 disposed of the appeal and modified the reliefs granted by the District Forum in terms of the following order:- Admittedly, in the present case the Insurance Company had appointed Shri Ravi Kumar Gupta, Surveyor who assessed the damage to the vehicle of the complainant to the tune of Rs.42,276/-. Thus, we feel that the ends of justice would met suitably if the complainant is awarded an amount of Rs.42,276/- as assessed by the surveyor, alongwith interest @8% per annum on the compensation amount from the date of filing of the complaint till its realization and we order accordingly. Rest of the order of the District Forum is maintained.

3. AGGRIEVED by the modification in the reliefs granted by the District Forum through the impugned order, the complainant/petitioner has now challenged the same by the present revision petition. We have heard Mr. N. Kumar, Attorney appearing for the petitioner and Mr. Abhishek Kumar, learned counsel for the respondent-company. It is not in dispute that the car in question belonging to the petitioner was insured and got damaged as a result of the floods, which occurred in the Ambala City on the given date. The controversy involved in the matter is in respect of two different assessments regarding the extent of damage to the car done by the two surveyors, namely, M/s Gupta and Associates (Mr. Ravindra Nath Gupta) and Mr. Ravi Kumar Gupta. The report of Mr. Ravindra Nath Gupta of M/s Gupta and Associates is dated 21.2.2005 and that of Mr. Ravi Kumar Gupta is by way of re-inspection dated 30.8.2005. Copies of both the survey reports are placed on record and have been perused by us. It appears from the copy of the complaint placed on record that even though there is no specific mention to that effect but the first surveyor i.e. M/s Gupta and Associates carried out the survey and submitted his survey report at the instance of the petitioner. He has assessed the damage to the tune of Rs.86,549/- whereas the other surveyor, who was officially deputed by the respondent-company took into consideration the first survey report and after investigating assessed damage to the car to the extent of Rs.42,276/-.

4. THE District Forum has discussed the two survey reports in its order but has

discarded the report of the Surveyor officially deputed by the respondent-company. THE reasons given by the District Forum for preferring the conclusions drawn by the private surveyor over those of the official surveyor, have been recorded as under:- 6. THE OP has asserted that the surveyor was appointed after the intimation received from the complainant. THE complainant concealed the true facts regarding the loss of said car and did not submit the original bills, discharge voucher of Rs.42276/- and salvage despite companys letter dated 30.08.2005. THE complainant did not co-operate the OP company at any stage. It was asserted that there was no deficiency in rendering the service on the part of the OP. 7. THE Ld. counsel for the complainant has argued that the OP has considered the assessment report of Ravi Kumar Gupta, Surveyor copy of which is Ann. R-5 who has assessed the loss of Rs.42276/-. But the OP has not taken into account the report of the Surveyor, namely, Gupta and Associates, who has given its report to the OP on 21.2.2005, Ann. CZ much earlier Howwe Hto the report dated 30.8.2005, on the basis of which the OP has assessed the loss. THE OP has not given any reason to discard the report Ann. CZ whereby the Surveyor Gupta Associates have assessed the loss to the tune of Rs.86549/-. Accordingly, agreeing with the report in question we assess the loss to the tune of Rs.86549/-. In view of the aforesaid discussion, we are of the considered opinion that the OP is deficiency in rendering the service on its part. Under the circumstances, there is no reason to disbelieve the complainant who has been able to bring home the deficiency in rendering the service. 8. On the other hand, the State Commission in its impugned order has rejected the view taken by the District Forum in this regard and observed that the Surveyors report is an important document and the same cannot be ignored without any cogent and convincing evidence contrary to it. Obviously, the reference in the impugned order is to the report of the official surveyor appointed by the respondent-company. The contention of the representative of the petitioner is that the first surveyor, namely, M/s Gupta and Associates had inspected the vehicle thoroughly and much earlier than the second Surveyor and hence, should have been relied upon by the State Commission as was done by the District Forum. According to the petitioner, the respondent-company itself had appointed the first Surveyor also but because the respondent-company considered the assessment of damage done by him to be on the higher side, it had appointed second surveyor i.e. M/s Ravi Kumar Gupta, who reduced the assessment of damage to the tune of Rs.42,276/-. It has been submitted on behalf of the petitioner that the respondent-company misled the State Commission and wrongly persuaded the State Commission to ignore the report of M/s Gupta and Associates dated 21.2.2005 and to accept the report of Mr. Ravi Kumar Gupta, which was dated 30.08.2005. Per contra, learned counsel for the respondent-company has submitted that the company did not appoint M/s Gupta and Associates and according to his information, M/s Gupta and Associates were no longer companys official surveyors. Nonetheless, it would be seen from the survey report of Mr. Ravi Kumar Gupta, who was deputed officially by the respondent-company that Mr. Ravi Kumar Gupta had duly taken into consideration the earlier report of M/s

Gupta and Associates and had assessed the damage to the vehicle appropriately. It was for the petitioner to co-operate with the investigation being carried out by the official Surveyor but since he failed to furnish the required information, he cannot be allowed to find faults with the report of the official Surveyor. Winding up his arguments, learned counsel further submitted that it is well settled law that the report of Surveyor appointed under the provisions of Insurance Act has to be given greater importance (New Horizon Sugar Mills Ltd. V. United India Insurance Co. Ltd. & Ors. 2003(3) CPR 136 (NC)). He contended that perusal of the order of the District Forum particularly paras 6 to 8 would clearly establish that no convincing or adequate reasons have been recorded by the District Forum while discarding the report of the official Surveyor. In view of this, the State Commission rightly modified the reliefs granted by the District Forum by relying on the assessment of damage contained in the official survey report. Having considered the rival submissions of the two parties and on perusal of record particularly the two survey reports placed on file, it is clear that the first Surveyor, M/s Gupta and Associates was not deputed by the respondent-company as such. In fact, we do not find any mention regarding his appointment officially by the company in his report dated 21.2.2005. On the other hand, the re-inspection survey report of M/s Ravi Kumar Gupta clearly mentions that the survey in question has been allotted to him by the respondent-company and accordingly, the same has been carried out at the instance of the company. Besides this, it is also seen that the official Surveyor has duly taken into consideration the earlier survey report and the assessment done by M/s Gupta and Associates before making his observations regarding the assessment of the damage. In this context, the following observations made by the official surveyor in his report may be reproduced as under:-

IN ACCORDANCE WITH YOUR INSTRUCTIONS DT 05-05-2005 THE UNDERSIGNED PROCEEDED TO M/S INTERNATIONAL BIOLOGICAL LABORATORIES, KABARI BAZAR, AMBALA CANTT FOR REINSPECTION OF ABOVE NOTED REPAIRED CAR ON 11-05-2005. THE VEHICLE WAS LYING AFTER REPAIRS/REPLACEMENT OF PARTS. I TOOK ENCLOSED PHOTOGRAPHS OF THE REPAIRED VEHICLE ALONG WITH SALVAGE. M/S GUPTA ASSOCIATES OF AMBALA CANTT ASSESSED THE LOSS. ON GOING THOROUGH THE REPORT THE FOLLOWING ARE THE OBSERVATIONS:- THE FINAL SURVEYOR HAS RECOMMENDED THE ENGINE PARTS I.E. PISTON SET, MAIN AND BIG END SET, RING SET GASKIT KIT, SEAL SET, VALVE SET, BLEEVE SET AND BORING OF ENGINE. THERE IS NO PHOTOGRAPHS OF THE DISMANTLED VEHICLE (ENGINE ASSY). IF THE RAINY WATER ENTERED THE ENGINE BLOCK FIRST DRAIN OUT THE RAINY WATER FROM ENGINE ASSY, DISMANTLED THE ENGINE, CLEAN WITH CLEANING OIL AND REFITTED THE SAME BY REPLACING ENGINE RINGS, GASKIT KIT, OIL SEALS MAIN AND CON. ROD BEARING OF THE SAME SIZE OIL FILTER. THE SLLEVES ARE ALLOWED BUT THESE ARE NOT BULLIED BY PRINCIPAL. THERE IS NO EFFECT OF RAINY WATER ON ENGINE PISTON SET. THERE IS DIFFERENCE IN RATES AS I CONFORMED FROM DEALER AT KARNAL ON 07-07-2005 AND 12-07-2005. I ALLOWED THE SAME AS UNDER. CLUTH PLATE DAMAGED DUE TO WATER, PRESSURE PLACE ALSO DAMAGED. SELF AND

ALTERNATOR EFFECTED DUE TO WATER , PARTS ALLOWED, RATES ALLOWED AS PER DEALER LIST. RELAYS DAMAGED BUT RATES AS PER DEALERS PRICE LIST. REGARDING CAR C.D. PLAYER AS FITTED IN THE VEHICLE AT THE TIME OF REINSPECTION. THE STERIO WITH FITTINGS WAS SUPPLIED BY THE MANUFACTURER NOT C.D. PLAYER WITH PARTS. I ALLOWED THE COST OF STEERIO WITH SPEAKER AND WIRING. I REQUESTED THE INSURED SO MANY TIMES ON TELEPHONE AND PERSONAL CONTACT REGARDING THE CLARIFICATION OF THE SAME BUT HE DID NOT DO THE SAME TILL TODAY SO THE REPORT IS LATE.

5. BESIDES the above observations, the official surveyor has also given comparative assessment in respect of each item in his report which would indicate as to why the extent of damage, according to him is to the tune of Rs.42,276/- only. In such a situation, it was for the petitioner to furnish necessary information to the official surveyor deputed by the respondent-company. We do not see anything wrong in the petitioner to have approached a surveyor to assess the loss but it does not mean that the information required by the other Surveyor officially deputed by the insurance company in terms of the provisions of law should not be furnished. In fact, when the complainant/petitioner had already received the report of the first surveyor and was in the know of the basis of assessment, he was in a better position to convince the official surveyor to assess the loss in the manner which the complainant considered appropriate but rather than doing so, he chose to simply rely on the report of the private Surveyor. The District Forum committed grave error in discarding the assessment done by the official surveyor without giving adequate reasons for such a view. We agree with the counsel for the respondent that the report of the Surveyor appointed under the provisions of law is an important document and cannot be brushed aside without any compelling evidence to the contrary.

6. IN the circumstances, we do not see any reason to interfere with the impugned order passed by the State Commission. The revision petition, therefore, stands dismissed with no order as to costs.