

(2014) 04 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Ismail Khan Amir Khan

APPELLANT

Vs

NATIONAL INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Citation : 2014 0 NCDRC 208

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : VIKAS NAUTIYAL , YOGESH MALHOTRA

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 27.09.2011, passed by the State Commission in First Appeal No. 2599 of 2006, National Insurance Company Limited vs. Ismail Khan Amir Khan, vide which, while allowing appeal partly, order of the District Forum allowing complaint was modified.

2. THE brief facts of the case are that complainant/petitioner, owner of matador MH 19S 1758 was insured by opposite party/respondent for a period of one year from 28.01.2005 to 27.01.2006. On 26.06.2005, matador met with an accident and turned down besides roads and smashed. Report was lodged with the police and intimation was given to the opposite party. Opposite party appointed surveyor, who inspected vehicle at the spot and assessed loss. Complainant submitted estimate given by Ujjwal Auto Pvt. Ltd. for Rs. 5,61,098/- and submitted claim to the opposite party. The opposite party did not settle claim. Alleging deficiency on the part of the opposite party, complainant filed complaint before the District Forum. The opposite party resisted complaint and submitted that complainant did not submit necessary documents for assessing loss, so claim was not settled and prayed for dismissal of complaint as premature. The District Forum, after hearing both the parties, allowed the complaint and directed the opposite party to pay Rs. 4,50,000/- with interest and further allowed Rs. 2,000/- for mental agony. The opposite party filed appeal and the State Commission, vide impugned order, allowed appeal partly and reduced compensation from Rs. 4,50,000/- to Rs. 1,84,575/-, against which this

revision petition has been filed. Heard learned counsel for the parties finally at admission stage and perused record.

3. LEARNED counsel for the petitioner submitted that on account of total loss of the vehicle, the District Forum rightly allowed compensation, but the State Commission committed error in reducing compensation, hence revision petition be allowed and impugned order be set aside. On the other hand, learned counsel for the respondent submitted that total loss was not pleaded in the complaint and order passed by the State Commission is in accordance with law, hence revision petition be dismissed.

4. IT is not disputed that complainant 's vehicle was insured by opposite party and vehicle met with an accident and damages were caused to the vehicle. As far total loss of the vehicle is concerned, complainant has not pleaded in the complaint that it was the case of total loss and in such circumstances, total loss of the vehicle can not be inferred and the District Forum committed error in allowing Rs. 4,50,000/ - on the basis of total loss. Perusal of spot survey and surveyors report reveals some discrepancies. In the spot survey, front axle beam has been shown as distorted, whereas in survey report front axle beam is shown to have been unaffected. As per estimate Rs. 11,964/ - has been claimed for its repairs. In the same way in spot survey, both shock absorbers have been shown to have smashed, but surveyor has disallowed shock absorbers repair cost Rs. 2,769/ -. In the same way, as per the spot survey, both side U clamps and central bolts were twisted, but Rs. 74/ - was disallowed. In spot survey, it has been shown that steering wheel was bent, steering column was distorted, steering linkages were pulled, but in surveyors report, Rs. 150 for steering gear box has been disallowed. In the same way, in surveyor 's report some items mentioned at serial no. 40 to 45 have been kept open as vehicle was not dismantled, though surveyor has mentioned that these items rather seems to be unaffected. Without opening vehicle and these assembly items, surveyor rightly did not assess loss, but it can be presumed that some loss must have been caused to these items. In such circumstances, it would be appropriate to allow Rs. 50,000/ - in addition to amount awarded by the State Commission, which will meet expenses to be incurred on repairs and replacement of parts, which have not been dismantled and surveyor have kept them open for assessment.

5. LEARNED counsel for the petitioner placed reliance on IV (2013) CPJ 116 (NC) Vir Singh Malik (Dr.) vs. Oriental Insurance Co. Ltd. and IV (2013) CPJ 154 (NC) Vijay Singh Tomar vs. National Insurance Co. Ltd., but these citations have no relevance with the facts of this case.

6. IN the light of above discussions, revision petition is partly allowed and order dated 27.09.2011, passed by the State Commission in appeal no. 2599/2006, National Insurance Company Limited vs. Ismail Khan Amir Khan is partly modified and respondent is directed to pay Rs. 50,000/ - in addition to amount of Rs. 1,84,575/ -, awarded by the State Commission, as per surveyor report, with no order as to costs.