(1995) 02 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

KALIDAS BHIKHABHAI CHOKSHI — APPELLANT

Vs

New India Assurance Co. Ltd — RESPONDENT

Date of Decision : 22-02-1995

Acts Referred:

Citation : 1995 2 CPR 563 : 1995 3 CPJ 349

Hon'ble Judges : R.C.Mankad , R.K.Shah J.

Advocate : R.N.Mehta , H.J.Bhatt

Judgement

1. - COMPLAINANT No. 1 (complainant for short) owned an Ambassador car bearing Registration No. GJ-I-K 2014 which was insured with the opponent Insurance Company under a policy known as "Private Car Policy B". The sum insured was Rs. 2,05,000/- inclusive of Rs. 3,000/- for electrical and electronic accessories and the policy was valid from June 28, 1992 to June 27, 1993. The complainant had given car for repairs to M/s. Samargul Auto Centre, opp. Gauri Cinema, Highway Road, Ahmedabad on December 28, 1992. There were communal riots in the city of Ahmedabad after the Babri Masjid incident. The complainant came to know from T.V. news that the car belonging to him was burnt in fire. He was, however, not able to confirm this news for 6/7 days because the area in which the garage was located was under curfew. The complainant, when he went to the garage found that his car was totally burnt or damaged. He informed the opponent about the incident. The opponent appointed one K.T. Jhala for spot survey and K.T. Jhala surveyed the damage to the car on January 20, 1993. The complainant submitted claim form to the opponent and also furnished copies of documents which he was required to do. The opponent, however, did not give any reply to the complainant inspite of reminders and telephonic conversations. The complainant, therefore, approached complainant No. 2 which is a recognised Consumer Association. Thereafter, as advised by complainant No. 2, the present complaint was filed. The complainant has prayed for Rs. 5,25,000/- which include insurance money of Rs. 2,05,000/-, interest of Rs. 70,000/-, exemplary damage of Rs. 1,50,000/- and Rs. 1,00,000/- for damages for mental tension and harassment.

2. THE opponent has contested the complaint by its written statement Exh. 8. It has denied the allegations made by the complainant. It has denied that the complainant''s car was damaged or burnt during communal riots in Ahmedabad. It is further submitted that the complainant informed the opponent about the alleged incident only on January 27, 1993, after considerable delay. THE complainant also did not furnish documents such as FIR, Panchnama for a very long time and, therefore, consideration of the complainant''s claim was delayed. It is further submitted that main part of the car viz. engine was removed from the car and this made the claim of the complainant doubtful. According to the opponent, claim made by the complainant was not genuine and, therefore, it did not pay the claim. The complaint filed by Police Inspector S.S. Chudasma of Bapunagar Police Station on January 1, 1993, Panchnama dated January, 23, 1993 and the complainant''s complaint dated February 13, 1993 prove beyond doubt that communal riots had taken place in the city of Ahmedabad and during these riots Samargul Auto Centre, the garage in which the complainant had given his car for repairs was set on fire and damaged. Panchnama also shows that the complainant''s car was damaged and its engine was removed. The Surveyor K.T. Jhala''s report dated March 25, 1993 also proves that the complainant''s car which was lying in Samargul garage was damaged and set on fire. It further appears that some parts of the car were also stolen. The complainant has thus established beyond doubt that his Ambassador car was set on fire and damaged during the communal riots in the city of Ahmedabad. It also appears that some of the parts of the car were stolen. It was urged on behalf of the opponent that the complainant had not satisfactorily explained as to how engine from the car came to be removed. The complainant had admitted that the car was driven to the garage and it would therefore appear that there was no defect in the engine. However, according to the opponent, the complainant has not explained as to how the engine of the car was removed. Now it is difficult for the complainant to explain something about which he has no knowledge. Panchnama drawn up by the police clearly proves that car was burnt and damaged. It also shows that the engine was removed from the car. How the engine came to be removed is something, as observed above, the complainant would not be able to tell. Surveyor has also in his report observed that the engine of the car was removed and one engine was lying in the garage. Later on Surveyor K.T. Jhala by letter dated June 8, 1993 informed the opponent that he had inspected the engine in the garage and the engine number tallied with the engine number written in the registration book. Apparently there was nothing wrong with the engine.

It is not disputed by the opponent that complainant had taken insurance of the car and the policy of insurance was valid for the period from June 28, 1992 to June 27, 1993. The insurance was for Rs. 2,05,000/-. Having regard to the facts and circumstances discussed above, in our opinion, the opponent is liable to indemnify the complainant for the loss suffered by him due to damage of his car under the insurance policy.

3. THE next question which is required to be considered is what amount the

complainant is entitled to claim from the opponent for the loss suffered by him. THE opponent''s Surveyor has estimated the market value of the car at Rs. 1,55,000/- and stated that if the car is sold on "as is where is" basis, it would fetch about Rs. 50,000/-. Thus, the liability of the company would be Rs. 1,05,000/-. On item wise repair basis, the Surveyor assessed the loss at Rs. 1,15,000/- after deducting Rs. 15,263/- as value of salvage. According to the Surveyor, in addition to the said amount, the complainant was also entitled to claim Rs. 10,000/- for suspension and other miscellaneous components. Thus, on repair basis, according to the Surveyor, the complainant would be entitled to claim Rs. 1,25,000/-. On total loss basis, the Surveyor computed the loss at Rs. 1,05,000/-. It appears that at one time the complainant was willing to accept assessment of loss on total loss basis made by the Surveyor. However, the opponent did not show any interest in settling the claim at Rs. 1,05,000/-. THE complainant has claimed loss at the market value of Rs. 1,55,000/- assessed by the Surveyor. However, in the final prayer made in the complaint, the complainant has prayed for the insurance amount of Rs. 2,05,000/-. In our opinion, considering the facts and circumstances of the case, since the complainant was at one time willing to settle his claim for Rs. 1,05,000/-, he is not entitled to claim more than Rs. 1,05,000/-. Rest of the claim made by the complainant is not admissible. The opponent had failed to consider the complainant''s claim for a very long time without any reason or justification. In fact, it appears that the opponent neither repudiated the claim made by the complainant nor paid the amount on total loss basis as agreed to by the complainant. There is therefore deficiency in service on the part of the opponent and as already held above, it is liable to pay compensation for the loss suffered by the complainant under the insurance policy. In the light of the above discussion, we pass the following order. ORDER This complaint is partly allowed and the opponent is directed to pay to the complainant Rs. 1,05,000/- together with interest @ 18% p.a. from May 1, 1993 till realisation and cost of Rs. 1,000/- within one month from the date of this order. Complaint partly allowed with costs.

