

(2003) 01 NCDRC CK 0106

In the National Consumer Disputes Redressal Commission

K.DURAISAMY

APPELLANT

Vs

DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Citation : 2003 2 CPJ 112

Hon'ble Judges : M.S.Janarthanam , Kayal Dinakaran J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order dated 15th day of October, 1998 in O.P. No. 274/1997 on the file of the District Consumer Disputes Redressal Forum, Erode.

2. THE appellant is the complainant while the respondents are the opposite parties. Short facts may be related in order to understand the crux of the issue arising for consideration in this action.

The complainant is the registered owner of a lorry going by the name Ashok Leyland 1992 Model vehicle bearing No. TN 60 0149. The said vehicle was insured with the second opposite party for a period from 30.8.1995 to 29.8.1996. The said vehicle met with an accident during the coverture of the policy of insurance, that is to say, on 26.8.1996 near Old Bus Stand, Vellakoil. The accident was intimated by the complainant to the opposite parties. The opposite parties Insurance Company in turn also appointed a Surveyor to assess the damage caused to the vehicle.

3. THE vehicle at the time of the accident was driven by a driver having a licence for driving heavy passenger transport vehicle only. THE opposite party Insurance Company despite assessing the damage caused to the vehicle met with the accident by their Surveyor appointed, however, repudiated the claim on the ground that the driver in question was not having an effective driving licence to drive the vehicle on the date of accident. The complainant knocked at the doors of the Forum below contending that the act of the opposite parties Insurance

Company in repudiating the claim on the ground that the driver in question was not having an effective driving licence on the facts and in the circumstances of the case would tantamount to deficiency in service and for certain reliefs as prayed for in the complaint.

4. THE opposite parties Insurance Company in pith and substance would contend as below : True it is that the complainant took a policy of insurance with them for the period between 30.8.1995 and 29.8.1996. THEy are not disputing the accident said to have happened on 26.8.1996. THEy also pointed a Surveyor and assessed the damage caused to the vehicle in the accident. THEy would, however, contend that the complainant is not entitled to any damages to the vehicle caused in the accident in view of the fact that the driver of the vehicle in question was not having an effective driving licence to drive the vehicle. As such the complaint is liable to be dismissed. The Forum below after taking into consideration the materials placed on record, recorded a finding that the driver in question was having an effective licence to drive the vehicle. What is further found by the Forum below is that the repudiation of the claim by the opposite parties on the ground that the driver in question was not having an effective driving licence is not just and proper. The Forum below, however, found that in view of the fact that the complainant had not filed the receipts for effecting the repairs to the damage vehicle is not entitled to the claim as he had made for damages having been caused to the vehicle in the accident. It is on those findings, the Forum below dismissed the complaint. Aggrieved by such an order, the complainant resorted to the present action by engaging a Counsel of his choice namely, learned Counsel M/s. V. Raghavachari, V. Srimathi and V. Lakshminarayanan.

5. ON service of process, the respondents/opposite parties also entered appearance through a Counsel of their choice namely, learned Counsel Mr. C.V. Gopalakrishnan.

6. WE heard the arguments of learned Counsel M/s. M. Kavitha representing learned Counsel appearing for the appellant/complainant and learned Counsel Mr. C.V. Gopalakrishnan appearing for the respondents/opposite parties. During the course of argument, learned Counsel Mr. C.V. Gopalakrishnan appearing for the respondents/opposite parties was fair enough to file a memo before this Commission stating that the Surveyor they had appointed to assess damage caused to the vehicle had submitted a report quantifying cost of repairs to the vehicle in an amount of Rs. 37,230/-. He has also filed a copy of the survey report along with the memo so filed. The said learned Counsel, however, in the memo would contend that though the Surveyor had assessed the damages at Rs. 37,230/-, yet the Insurance Company was able to arrive at the quantum of damages only at Rs. 34,758/-. The survey report, if at all, is to be accepted or rejected as a whole. A piecemeal acceptance of the report while rejecting other portions may not be proper and justified. It is not as if the Surveyor appointed is one appointed at the instance of the complainant. The Surveyor is the own

Surveyor of the opposite parties Insurance Company. Such being the case, we are inclined to accept the report of the Surveyor when he estimated the cost of effecting repairs to the vehicle met with an accident at Rs. 37,230/-. The reasons for the non-production of the bills by the complainant before the Forum below, it appears, was that all those bills had been submitted to the Insurance Company while making the claim. It is only on the basis of the bills, learned Counsel would say that the opposite parties was in a position to assess the damages caused to the vehicle at Rs. 34,758/-. However, we have already given reasons for accepting the report of the Surveyor wholly. In this view of the matter, the appeal is allowed; and the opposite parties Insurance Company are directed to pay to the complainant a sum of Rs. 37,230/- with interest at 9% per annum on and from 13.3.1997, the date of the repudiation as evidenced by Ex. A2 till realization. In view of the grant of interest, we are, however, not inclined to pay damages for mental agony and anguish said to have been suffered by the complainant.

In fine, the appeal is allowed; the order of the Forum below is set aside as relatable to the claim of damages for the restoration of the vehicle to its original position and the opposite parties are directed to pay to the complainant a sum of Rs. 37,230/- with interest at 9% per annum on and from 13.3.1997, the date of repudiation till realisation. We, however, make no order as to costs on the facts and in the circumstances of the case. We, however, make it crystal clear that the opposite parties are required to comply with the order as above within a month from the date of receipt of our order, of otherwise, it would be perfectly open to the complainant to invoke jurisdiction of Section 27 of the Consumer Protection Act, 1986 [for short, "the Act, 1986"]. Appeal allowed.