

(2001) 03 NCDRC CK 0092

In the National Consumer Disputes Redressal Commission

KRISHNA NAND JOSHI

APPELLANT

Vs

BRANCH MANAGER, THE ORIENTAL INSURANCE COMPANY
LTD.

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Citation : 2001 2 CPJ 526

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal partly allowed with costs

Judgement

1. THIS is an appeal against the judgment and order dated 29.5.1999 passed by District Consumer Forum, Nainital in Complaint Case No. 33/1994.

2. THE facts of the case stated in brief are that the complainant insured his scooter along with accident benefits with the opposite party, Oriental Insurance Company Limited. THE period of insurance was from 3.3.1991 to 2.3.1992 and the personal accident benefits was upto Rs. 40,000/-. On 10.2.1992 the scooter met with an accident on account of which the scooter was damaged and the complainant also received severe injuries in the hand and the left leg was also fractured. THE complainant, being an ex- service man, was treated in the Military Hospital where he had to stay for 2 months for medical treatment. According to him he sustained injuries in leg on account of which he has developed permanent disability. THE complainant, after completing necessary formalities, submitted the claim form. THE complainant has claimed a sum of Rs. 2,436.70 on account of damage to the scooter and Rs. 40,000/- on account of injuries sustained to him. He has claimed interest on the amount claimed at the rate of 2% per month from 13.7.1997 till the date of payment. The opposite party in its written version has admitted the insurance but has denied the allegations of the complainant. According to the opposite party the complainant did not furnish the proof of permanent disability and has not submitted any medical certificate for the same. Therefore, the case was closed as "no claim" with respect to the injuries caused to him. With respect to the damages to the scooter, claim of Rs. 1,343/- was

accepted and the complainant was asked to take this amount. This was intimated vide letter dated 12.8.1992.

The opposite party has further alleged that after deposit of the salvage the claim was finalised for a sum of Rs. 1,343/- and the amount was paid after deductions according to the report of the Surveyor.

3. THE parties filed evidence in support of their respective contentions. THE learned District Forum, after hearing both the parties, directed for payment of Rs. 1,609/- on account of repair charges of the scooter, and a sum of Rs. 16,000/- on account of accident causing injuries to the person of the complainant. Aggrieved against the order of the learned District Forum, the complainant has come in appeal and has challenged the correctness of the order passed by the Forum.

4. WE have heard the learned Counsel for the respondent as well as the complainant who was present in person. A perusal of the file will go to show that the complainant has claimed a sum of Rs. 2,436.70, the amount spent on the repair of the scooter. For this the complainant has filed two bills, one bill is for Rs. 1,000/- and the other bill is for Rs. 1,436.70. The report of the Surveyor has not been filed for our perusal which may have thrown light as to why the entire amount claimed by the complainant was not allowed by the Surveyor and what was the reason for disallowing the rest of the amount. Therefore, in absence of any cogent reasons, the Surveyor could not have deducted any amount from the bill given by the complainant. The learned District Forum has also not considered the report of the Surveyor in detail in order to see whether the reason given by the Surveyor is correct or not. Thus we find that the complainant is entitled to a sum of Rs. 2,436.70 on account of repair to the scooter. The complainant has also argued that he is entitled to get Rs. 40,000/- on account of the injuries on his body. Learned Counsel for the opposite party has argued that no certificate of doctor was produced in order to show what was the permanent disability caused to the complainant. The learned District Forum, on the basis of a medical certificate, has come to the conclusion that there was 40% disability on the person of the complainant. Hence it allowed a sum of Rs. 16,000/- only. As the complainant has not led any evidence to show that he was permanently disabled, therefore, he could not have claimed Rs. 40,000/- as damages. Therefore, the claim of Rs. 16,000/- which has been awarded by the learned District Forum is perfectly justified and no interference is called for. Thus we find that the appeal is liable to be allowed in part to the extent that in place of Rs. 1,343/- the complainant shall be entitled to claim damages of Rs. 2,436.70. ORDER The appeal is allowed with cost of Rs. 1,000/- to the extent that the complainant shall be entitled to get a sum of Rs. 2,436.70 instead of Rs. 1,343/- allowed by the District Forum. With this modification, the rest portion of judgment and order of the learned District Forum are confirmed. Let compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal partly allowed with costs.