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(2003) 02 NCDRC CK 0104

In the National Consumer Disputes Redressal Commission

M.LINGAN APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Citation : 2003 2 CLT 575 : 2003 2 CPJ 26

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Revision Petition dismissed

Judgement

1. THIS revision petition is filed against the order of the State Consumer Disputes Redressal Commission, Tamil Nadu, whereby the State Commission set aside the order of the District Forum and allowed the appeal of the Insurance Company. The facts in brief which lead the complainant to approach the District Forum are as under :

2. THE complainant got his Premier Sedan 138-D diesel luxury car insured with the opposite party Insurance Company for Rs. 3,30,000/- and paid the premium of Rs. 7,133/-. THE car met with an accident on 17.3.1996. THE Surveyor appointed by the Insurance Company assessed the loss at Rs. 1,13,018/-. THE claim of the complainant before the District Forum was that the claim should be settled on total loss basis and claimed on that basis a sum of Rs. 2,13,410/- along with a sum of Rs.1,00,000/- for compensation was prayed for. But the Insurance Company, basing on Clause 3 of the policy, offered to settle the claim on repair basis. The District Forum upon hearing both the parties and adverting to the material placed on record, came to the conclusion that the claim had to be settled on total loss basis after giving due allowance towards depreciation in the sum of Rs. 2,625/- from the original value of the car, i.e. Rs. 3,30,000/- i.e. Rs. 3,27,375/- with interest at the rate of 18% from 30.4.1998 till the date of payment. The District Forum disallowed the sum of Rs. 1,00,000/- on account of mental agony and pain. Costs of Rs. 2,000/- were also awarded.

Feeling aggrieved by the order of the District Forum both the parties went in appeal to the State Commission. The grievance of the complainant in appeal was that he was not granted compensation of Rs. 1,00,000/- on account of mental agony and that the District Forum was not right in deducting Rs. 2,625/- on account of depreciation. The Insurance Company''s appeal was for setting aside the order of the District Forum as the claim was to be settled on repair basis and not on total loss basis.

3. RELYING on Clause 3 of the insurance policy, the State Commission held that it is the discretion of the Insurance Company to settle the claim on repair basis, as the engine of the vehicle was not damaged and only the body shell of the vehicle was damaged and it does not amount to total loss, as held by the District Forum. In view of this discussion the State Commission allowed the appeal of the Insurance Company by directing it to pay the amount to the complainant as assessed by the Surveyor, i.e. Rs. 1,13,190/- with interest at the rate of 12% from 18.11.1996, i.e. the date of the report of the Surveyor, till the date of payment, and dismissed the appeal of the complainant. Now, the complainant has come in revision before us. We have heard the learned Counsel appearing on both sides. We have also gone through the orders of the State Commission and the District Forum. We are in agreement with the order of the State Commission that the Insurance Company has the discretion of settling the claim relying on Clause 3 of the Insurance Policy. In view of this, we uphold the order of the State Commission which has directed the Insurance Company to pay to the complainant the assessed amount of Rs. 1,13,190/- with interest at the rate of 12% p.a. With these observations we dismiss the revision petition with no order as to costs. Revision Petition dismissed.

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