

(2007) 07 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

NAIN SINGH

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 26-07-2007

Acts Referred:

Citation : 2007 4 CPJ 303

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta , Vimla Sethias J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal has been filed by the complainant-appellant against the order dated 26.9.2000 passed by the District Forum, Pali in Complaint Case No. 144/99, by which the complaint of the appellant was dismissed.

2. IT arises in the following circumstances: That the complainant-appellant had filed a complaint against the respondents before the District Forum, Pali on 23.9.1999 inter alia stating that the tractor bearing No. RJ-22 R-1655 was got insured by the complainant-appellant with the respondents for the period 21.3.1998 to 20.3.1999 for a sum of Rs. 1.50 lacs. IT was further stated in the complaint that on 16.3.1999 when the tractor in question was driving by the son of the complainant-appellant, a Neel Gai came suddenly and the tractor had met with an accident with Rojara and tractor was damaged and for the damage a claim was preferred. But the claim of the complainant appellant was repudiated by the Insurance Company respondents through letter dated 12.8.1999 inter alia holding that the damage which has been caused to the tractor was not because of accident but because of mechanical break down and as per terms of the policy the claim was not payable. Thereafter the present complaint was filed. A reply was filed by the respondents Insurance Company in which they have taken the same pleas which they have taken in the repudiation letter dated 12.8.1999.

The District Forum after hearing both the parties through the impugned order dated 26.9.2000 had dismissed the complaint inter alia holding that as per reports of both Surveyors, Suresh Pareek (Spot Surveyor) and Jitendra Singh (Final Surveyor), the loss to the tractor was because of mechanical break down

and not because of accident.

3. AGGRIEVED from that order of the District Forum, this appeal has been filed by the complainant-appellant. In this appeal, the main contention of the learned Counsel for the appellant is that the tractor was damaged not because of mechanical break down but because of accident which had taken place, that fact could be found even in the report of Mr. Suresh Pareek dated 21.3.1999 and even in the final survey report of Mr. Jitendra Singh dated 3.8.1999, the assessment was found to the tune of Rs. 10,700, therefore, findings recorded by the District Forum are erroneous one and should be quashed and set aside and appeal be allowed.

4. ON the other hand, the learned Counsel for the respondents-Insurance Company has supported the impugned order. We have heard the learned Counsel for the parties. In the survey report dated 21.3.1999 of Mr. Suresh Pareek details on losses of the damages which were found are quoted here: "Details of losses/damages I have carefully inspected the vehicle and noted down all visible damages, which are here as under: Bonnut pressed, LH headlight broken, Engine block broken/burst and engine oil drained off block broken from both sides (RH & LH) fr. Guard broken at welded ends."

5. THE above observations clearly made out a case that damage to the vehicle was done and even the engine block was broken.

6. IN our considered opinion, the loss which have been mentioned above could not occur simply because of mechanical break down and it had certainly occurred when the vehicle in question would dash against any object. Therefore, the basis of the survey report that the loss was only due to mechanical break down could not be appreciated and thus this Commission is of the view that the findings recorded by the District Forum are not based on correct appreciation of evidence on record and could not be sustained. Not only this to support the case of the complainant-appellant a report which was lodged by Babu Singh on 17.3.1999 with Police Station, Kerla, District Pali may be perused which supports the version of the complainant-appellant. From that point of view also it could not be said that no accident had taken place meaning thereby accident had taken place. Thus the result is that the repudiation of the claim by the respondents could not be sustained and similarly findings recorded by the District Forum by which complaint was dismissed could not be sustained and appeal deserves to be allowed so far as the merits of the case is concerned. On point of compensation.

Since the final Surveyor had assessed the loss to the tune of Rs. 10,700, therefore, to that extent the complaint of the complainant-appellant deserves to be allowed.

7. THE result is that the appeal is allowed, impugned order dated 26.9.2000 passed by the District Forum, Pali is quashed and set aside and complaint filed by the complainant-appellant is allowed partly in the manner that the respondents Insurance Company would pay a sum of Rs. 10,700 as amount of compensation

for the damage of the vehicle with interest @ 9% p.a. from the date of filing of the complaint till the payment is made. Appeal allowed.