(1999) 06 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

JASWANT SINGH TOOR — RESPONDENT

Date of Decision : 01-06-1999

Acts Referred:

Citation : 1999 2 CLT 575 : 1999 2 CPJ 667

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal is by the National Insurance Company and the challenge is to the order of the District Forum, Jalandhar dated March 24,1998 whereby direction was given to the appellant, Insurance Company to pay the insured amount of Rs. 3,30,000/- with 18% per annum interest five months after filing of the claim alongwith costs of Rs. 1,000/- to the complainant Jaswant Singh Toor.

2. JASWANT Singh Toor got his Maruti Zen car insured with National Insurance Company in the sum of Rs. 3,30,000/-. The policy commenced from May 27, 1995 and was for an year. On January 12,1996 the aforesaid car was stolen. Subsequently on February 27, 1997 the aforesaid car met with an accident near Karnal. The Insurance Company was immediately informed when theft took place. Since the claim was not settled, District Forum was approached. The Insurance Company contested the complaint by submitting a reply. Certain preliminary objections were taken. Complaint was stated to be pre-mature as the Surveyor had not assessed the loss. The complaint was filed through alleged attorney, which was not valid. The estimate relied upon by the complainant was not reliable. The real owner was JASWANT Singh Toor. He is stated to have sold the car to Suresh Kumar, who was projecting himself as the attorney; the complainant was estopped by his own act and conduct to file the complaint. He left the car unattended in the police station. Similar pleas were taken on merits. Information of the accident was given by an employee of Packex Limited, Jalandhar. Several letters were written to the insured but there was no response. An Investigator was appointed. The complainant submitted the claim on June

24,1996 alongwith certain documents, FIR etc. The complainant did not take the car on Supardari to make it available for inspection. The Company had no free assess to examine the car. Both the parties led their evidence on affidavits and documents, on the basis of which, impugned order was passed. Learned Counsel for the Insurance Company has argued that the Surveyor ultimately assessed the loss at Rs. 49,912/-. Copy of the report was being produced alongwith the appeal. This report at this stage cannot be taken notice of. As already stated above, the Surveyor did not complete his work within reasonable time and the report submitted after about two years and that to after filing of the complaint cannot be given any credence. On the other hand the complainant has produced the estimate of the loss of the car prepared by M/s. Saini Motors, Annexure C-6. It was assessed at Rs. 2,74,176.41 P. in addition to a sum of Rs. 16,000/- was to be added for denting, paint and labour charges. Suresh Kumar gave his own affidavit of obtaining such a report from M/s. Saini Motors. The contention of Counsel for the appellant that the aforesaid report was simply tendered into evidence and cannot be relied upon cannot be accepted. It was open to the appellant to challenge the mode of proof before the District Forum if so advised.

Learned Counsel for the appellant has argued that compensation by way of interest in the case of nationalised Insurance Companies cannot be granted more than 12% per annum. There is force in this contention. The Supreme Court in United India Insurance Company Limited v. M.K.J. Corporation III (1996) CPJ 8 (SC). has held so.

3. LEARNED Counsel for the Insurance Company has argued that if the insured amount was to be allowed, depreciation should also be allowed to the extent of 5% as the complainant had used the car for about 6 months before theft took place. There is merit in this contention. Taking the value of the car at Rs. 3,30,000/- and deducting 5% thereof, the remaining amount would be Rs. 3,13,500/-. On payment of the aforesaid amount as is being ordered, the Insurance Company would become owner of the salvage of the vehicle and it is left to the Insurance Company to recover the salvage from the appropriate Authority where the salvage is lying.

4. FOR the reasons recorded above, this appeal is partly allowed. The order of the District FORum is modified. The Insurance Company would pay Rs. 3,13,500/- with 12% per annum interest thereon with effect from five months after submission of the claim form, which was submitted on June 24,1996 till payment alongwith Rs. 1,000/- costs of litigation. Appeal partly allowed.

