(2001) 06 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

MAHABIR PRASAD JAIN — RESPONDENT

Date of Decision : 29-06-2001

Acts Referred:

Citation : 2002 2 CPJ 269 : 2003 1 CLT 609

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

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 11.9.2000 passed by District Consumer Forum-II, Agra in Complaint Case No. 792/1995.

2. THE facts of the case stated in brief are that the complainant is owner of scooter Bajaj Chetak No. UP-08C-5841. He got this scooter insured with the National Insurance Company Limited on 27.1.1993. THE policy was valid for a period of one year i.e. from 27.1.1993 to 26.1.1994. THE said scooter met with an accident on 25.7.1993 and was damaged. It was shown to the Engineer and then it was got repaired. Before the repair of the scooter, the information of accident was reported to the Insurance Company. THE complainant filed a claim for Rs. 7,137/- but after a long discussion the claim for Rs. 750/- was passed by the Insurance Company. THE complainant had paid a sum of Rs. 7,137/- to the repairer. THE complainant has claimed this amount along with interest at the rate of 18% per annum and Rs. 300/- as cost. The opposite party in its written version has alleged that by letter dated 26.7.1993 the complainant had informed about the accident of the scooter and it also informed that the same is standing in Sheel Auto for repair where it can be inspected. The scooter was inspected by Surveyor Sri V.K. Jain and the survey report was submitted on 4.10.1993. A loss of Rs. 805/- was assessed by the Surveyor. The complainant asked for report of the Surveyor but no reply was sent. After the report of the Surveyor, the Insurance Company demanded papers by letter dated 8.10.1993. When the complainant did not complete the formalities a sum of Rs. 750/- was sanctioned on account of the claim. The complainant was asked to take this amount but he

did not accede to this request.

The parties filed evidence before the learned District Forum who came to the conclusion that there is a deficiency in service on behalf of the opposite party, hence it directed the Insurance Company to pay a sum of Rs. 7,137/- along with interest at the rate of 12% per annum with effect from 11.10.1995. The amount was to be paid within 30 days failing which the interest shall be paid at the rate of 15% per annum.

3. AGGRIEVED against this order, the opposite party, National Insurance Company Limited has come in appeal and has challenged the correctness of the order passed by learned District Consumer Forum. We have heard the learned Counsels for the parties. The accident to the scooter is admitted. According to the complainant, he has spent a sum of Rs. 7,137/- in repair of the scooter. The copies of the cash memos are also on record which indicates that the complainant has spent this much amount on the repair of the scooter. The report of the Surveyor Sri Vijay Kumar Jain dated 4.10.1993 is on record. A perusal of the report goes to show that according to the Surveyor the vehicle was not available at the workshop on 26.7.1993 and on other dates but the vehicle still not dismantled till the submission of report. This observation of the Surveyor at Sl. No. 6 on page-1 is misleading. If the vehicle was not available when he visited to inspect the vehicle how can he say that the vehicle was not dismantled till the submission of report. It means that the Surveyor has seen the vehicle at the workshop. The Surveyor has mentioned the defects which were apparent at the time of survey but the vehicle was not dismantled in his presence. The estimate for repair of the vehicle submitted by the complainant was also mentioned in this report. The matter was discussed with the complainant but no agreement could reach, the Surveyor has given his report. The Surveyor has not said anything about the bills and the cash memos which were filed by the complainant. He has not mentioned in his report as to whether he talked to the repairer shop in order to show that the amount which the complainant claims has been actually spent or not. He could have seen whether the old chassis which was lying at the repairer''s shop was so much damage that it could not have been repaired and used. He has not taken pains to find out all these things. It was the duty of the Surveyor to get this vehicle dismantled and then to come to a definite conclusion about the damage caused to the vehicle, therefore, this report of the Surveyor has no value. In the case of Srinivasa Iyer v. New India Assurance Company Limited, 1983 AIR SC 899, it was held in para 16 as under : "The insurer may at its option either repair, reinstate or replace the motor car once the car is damaged in accident. The obligation to repair to the damaged car arose under the Contract of Insurance. The insurer had absolute discretion either to repair, reinstate or replace the motor car. When the insurer has the option to replace the motor car it can take over the damaged car and the insured is bound to submit to the same. If the insurer on the other hand exercises the option to repair the car it is entitled not merely to choose the repairer but also to determine the charges for repairs to be negotiated and settled between the

insurer and the repairer and the insured has hardly anything to do with it."

4. THUS in view of the observations of Hon''ble Supreme Court it is clear that it is the primary duty of the insurer to first get the vehicle repaired. In the present case the insurer should have got the vehicle repaired. The insurer has failed in his duty to do so. Hence it cannot complain that the charges of the garage which repaired the vehicle are excessive. The second Surveyor was appointed whose report is dated 15.4.1995. He has mentioned that the first Surveyor has given the repair charges of the chassis while the complainant has claimed its value. He has further mentioned that from the picture taken of the accidental scooter the chassis could have been repaired. None of the Surveyors have taken trouble to see the chasiss as to whether it could have been repaired or not. They have merely relied on the photograph and without getting the scooter dismantled. He has also mentioned in para 13 that after the estimate was prepared the scooter was taken away by the complainant. He has mentioned that if the scooter had suffered an accident it could not have been taken by road. There is no mention by the complainant any where that the scooter was taken by road. The scooter could have been taken in rickshaw which is the usual mode of taking the accidental scooter in rickshaw. Thus we find even the second report does not carry any weight and deserves to be rejected. As mentioned in the earlier part of the judgment, the Surveyor has not mentioned as to what was the excessive amount which has been claimed by the complainant according to the cash memos supplied by him. Thus we find that the judgment and order of the learned District Forum are perfectly correct and requires no interference. The appeal is, therefore, liable to be dismissed. ORDER The appeal is dismissed. The judgment and order of the learned District Forum are confirmed. The appellant shall pay a sum of Rs. 2,000/- as cost to the complainant. Let compliance of this order be made within a period of two months. Let copy of this order be made available to the parties as per rules. Appeal dismissed.