(2009) 02 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

National Insurance Company Ltd. and Anr. — APPELLANT

Vs

SANJAY KUMAR — RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Citation : 2009 0 NCDRC 52 : 2009 2 CPJ 223 : 2009 2 UC 1167

Hon'ble Judges : B.K.TAIMNI J.

Judgement

1. PETITIONER was the opposite party before the District Forum, where Respondent/complainant had filed a complaint alleging deficiency in service on the part of the Petitioner.

2. VERY briefly stated the facts of the case are that the Respondent/complainant, who owned a Tata Tipper Trailer, got it insured with the Petitioner company for the period from 2.2.2005 to 1.2.2006. It was the case of the Respondent/ complainant that on 16.1.2006 when the insured vehicle was unloading coal at the site to which it was being transported, the vehicle turned turtle on the left side causing damage to the vehicle. The matter was reported to the Petitioner, who appointed a spot Surveyor and also a regular Surveyor. They assessed the loss at Rs. 2,50,923 but on preferring the claim, it was repudiated by the Petitioner Insurance Company. It is in these circumstances, a complaint was filed before the District Forum, where the matter was contested by the Petitioner and the District Forum after going through the material on record allowed the complaint and directed the Petitioner to pay a sum of Rs. 2,96,372 after deducting 10% of the depreciation value within a period of one month. Aggrieved by this order, an appeal was filed by the Petitioner before the State Commission, which was also dismissed, hence, this revision petition before us. We heard the Learned Counsel for the Petitioner at some length and perused the material on record.

3. LEARNED Counsel for the Petitioner wishes to rely upon the report of one Ramesh Kumar Jain, allegedly, an expert whose opinion was sought by the Petitioner and secondly on condition 2(a) of the terms of the insurance, attached

with the Policy.

4. DEALING with the first point first, the procedure to be followed, by the insurer, in a case, when he is not satisfied, with the assessment of loss made by the Surveyor, has been laid down in Section 64UM 1(A), 2,3, and 4, which read as under: [1(A) Every Surveyor and Loss Assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the Regulations made by the Authority.

(2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the insurance (Amendment) Act, 1968, shall unless otherwise directed by the [Authority], be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a Surveyor or Loss Assessor (hereafter referred to as ''approved Surveyor or Loss Assessor''):

Provided that nothing in this Sub -section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved Surveyor or Loss Assessor.

(3) The Authority may, at any time, in respect of any claim of the nature referred to in Sub -section (2), call for an independent report from any other approved Surveyor or Loss Assessor specified by [it] and such Surveyor or Loss Assessor shall furnish such report to the [Authority] within such time as may be specified by the [Authority] or if no time limit has been specified by [it] within a reasonable time and the costs of, or incidental to such report shall be borne by the insurer.

The above provisions are quite clear and it does not confer any power to the insurer to get any expert opinion. As per Sub -section (3) reproduced earlier, it is only for the Regulator, i.e., IRDA, to "call for an independent report from any other approved Loss Assessor specified by it...."In view of the provisions of law, we are of the view that the Petitioner company had no competence or authority to call for any report of any expert. The only remedy in such case was to refer the case to the IRDA, who would have dealt with the case as per law hi view of which we are not entertaining the report of the expert.

5. NOW , we go on to letter of repudiation, which reads as under: Re: O.D. Claim of Vehicle No. CG -17H -0518 A/c. Sh Sanjay Kumar.

Sir,

With reference to your above said claim we are sorry to inform you that we have closed the above file as NO CLAIM as per the expert opinion Report of Sh. R.K. Jain, Survey or Your claim is No Claim because damages occurred as failure/ Ireakage of its Hydraulic Jack while lifting and/or unloading the loaded trailer, which is not covered as per policy terms and conditions.

6. IN view of above finding that we are not according any acceptability to the report of the ''expert'', and since the letter of repudiation is based on the report of the expert, in our view, the ground of repudiation itself loses any merit as it has no ''legs'' to stand -on. Even otherwise, we see that the report of the expert is based on surmises like, "....may have caused by straining of insured vehicle, while lifting the load...." and/or

"may have caused due to failure breakage of its hydraulic jack....The word ''may'' used repeatedly by the so -called expert will not confer any value to the report, as it appears, he himself is not sure and may, will bring it in the realm of ''uncertainty'' to which benefit has to go to the insured, the other party.

7. IN view of above, we find no merit in the first issue.

8. WE have also gone through the condition 2(a) of the policy, which reads as under: 2(a) Consequential loss depreciation wear and tear mechanical or electrical breakdowns failures or breakage nor for damage caused by overloading or strain of the motor vehicle not for loss of or damage to accessories by burglary housebreaking or theft unless such motor vehicle is stolen at the same time.

We have also seen the complaint filed by the complainant, written version filed by the Petitioner as well as the report of the Surveyor and are satisfied that this clause will not cover the present case for the simple reason that the loss was not on account of "....wear and tear, mechanical or electrical break -down failures....or damage caused by overloading or strain of the motor vehicle....

9. SOMEWHERE in the written statement, a case is attempted to be made out that the hydraulic jack was found to be replaced by a new one and it was found bent by the spot Surveyor. There is no evidence on record that this alleged ''bent of the hydraulic jack'' was the cause of the vehicle turning turtle on the left side. It cannot be denied that this could be post event phenomenon. We have very carefully gone through the Surveyor''s report, and what is mentioned under the heading cause and nature of accident, reads as under: While unloading the coal at stockyard the vehicle was unbalanced and turned turtle on its left side, resulting into this accident. The cause of accident consistent with the nature of loss.

10. IT is clearly mentioned that the vehicle was unbalanced and turned turtle. The factum of ''unbalance'' does not fall in any of the categories referred in condition 2(a). In view of above, we see no merit in this revision petition. Both the lower Fora were justified in granting the relief which they did.

11. HOWEVER , we are of the view that both the lower Fora exceeded the jurisdiction in granting relief more than the amount as assessed by the Surveyor, i.e., Rs. 2.50.923 less Rs. 15.000 being the cost of salvage. In view of which, the Petitioner Insurance Company is directed to pay Rs. 2,35,923 along with interest

awarded by the District Forum and State Commission, within a period of six weeks from the date of pronouncement of this order.

12. IT needs to be made clear that we are modifying the quantum of relief without issuing notice to the Respondent/complainant to save further litigation and inconvenience on the part of the Respondent/complainant. However, if he feels dissatisfied with the relief, he can get the case revived the case before us. This revision petition stands disposed of in above terms.