(2012) 07 NCDRC CK 0087

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LTD — APPELLANT

Vs

Natural And Essential Oils Pvt Ltd — RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 NCDRC CK 0087

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Advocate : Abhishek Kumar

Judgement

1. THE respondent had insured Gas Chromatograph Mass Spectrometer with IDV value of Rs. 17,00,000 which was valid from 19.10.2007 to 18.10.2008. On 11.7.2008 the machine broke down and it was found that two vital parts of the machine were damaged which were required to be replaced and cost towards replacement was about Rs. 7,09,000. Attempts were made to secure the spare parts, but the same were not available and in the meantime, the Company had stopped the manufacture of the said model. The respondent filed a claim of Rs. 17,00,000 with the Insurance Company and sought Rs. 1,00,000 towards mental agony and inconvenience besides cost of Rs. 10,000. The District Forum after relying upon the relevant terms and condition of the policy ordered payment of Rs. 15,00,000 with 12% interest from the date of claim as also Rs. 5,000 towards mental agony/inconvenience and a sum of Rs. 5,000 towards cost of the proceedings. The District Forum rejected the valuation arrived at by opposite party and held that the depreciation from the year 2001 could not be allowed. The Surveyor had assessed the loss at Rs. 4,84,500 after taking into consideration 70% depreciation. The depreciation could be allowed from 19.10.2007 when the policy was taken on the declared IDV till break down on 11.7.2008 that is to say for about 9 months. The depreciation as also salvage value, which was stated to be Rs. 2,000 was quantified as Rs. 2,00,000 and the award for Rs. 15,00,000 was made. This order was challenged by the OP/ petitioner before the State Commission. The State Commission dismissed the appeal referring to the relevant terms and conditions of the policy, which reads as under: "in cases, where the insured item is subjected to total loss and

meanwhile it becomes obsolete, all costs necessary to replace the loss or damaged insured item with a follow up model (similar type) of similar structure/ configuration (similar quality) that is low average, high capacity will be reimbursed."

2. THE State Commission found that the spares were not available and the manufacture of the said model was stopped and since the machine was beyond economical repairs, the complainant had no other alternative, but to replace with the other new model as the old model of that configuration was not available. It was held that though the machine had been purchased for more than 26,00,000, but the claim was restricted on the basis of IDV. The State Commission found that Surveyor had kept the report pending for more than one year, which has not been explained. It was noticed by the State Commission that two vital parts of the machine were damaged which parts were not available and the machine in question resulted in total loss.

3. LEARNED Counsel for the petitioner has urged before us that since the machine was purchased in 2001, the depreciation has to be calculated w.e.f. 2001 and as such, the Surveyor had taken 70% depreciation from the declared value of the machine, which was 17,00,000. The depreciation at 70% of the same came to Rs. 1,90,000 and the gross loss was assessed by the Surveyor at Rs. 5,10,000 out of which, policy excess of Rs. 25,500 was deducted and claim payable was only Rs. 4,84,500. When the petitioner had accepted the IDV value of the said machine at Rs. 17,00,000 lakh on 19.10.2007, we fail to understand as to how the Surveyor could deduct 70% depreciation of the IDV within 9 months of the said policy. The Apex Court in Dharmendra Goel v. Oriental Insurance Company Ltd., III (2008) CPJ 63 (SC)=IV (2008) ACC 750 (SC), has in a motor accident claim resulting in total loss has laid down that the Insurance Company was bound by the value put on the vehicle. In that case, the IDV on the date of insurance was Rs. 3,54,000. After that the vehicle was used for 7 months and after taking into consideration depreciation for the said 7 month, the Insurance Company was held liable to pay Rs. 3,44,000. On the same principle, the petitioner/Insurance Company could only deduct depreciation for 9 months in the present case and taking the said depreciation at 10% the depreciated amount would come to Rs. 1,70,000 and adding to this Rs. 25,500 which was policy excess, the total amount which could be deducted would be approx. Rs. 2,00,000. Therefore, the respondent was entitled to receive Rs. 15,00,000 with interest @12% p.a. from the date of claim besides Rs. 5,000 towards mental agony and Rs. 5,000 towards costs, which was awarded by the District Forum and was confirmed by the State Commission. In view of this, we do not find any merit in this revision and the revision is hereby summarily dismissed with no order as to cost. Revision dismissed.

