(2012) 07 NCDRC CK 0121

In the National Consumer Disputes Redressal Commission

New India Assurance Co Ltd — APPELLANT

Vs

Devrajbhai Mepabhai Bhojani R/O Virani Nagar — RESPONDENT

Date of Decision : 12-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 357 : 2012 3 CPJ 370

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : Kishore Rawat

Judgement

1. Present revision petition has been filed under Section 21 (b) of the Consumer Protection Act, 1986 (for short as ''Act'') against order dated 29.12.2011, passed by State Consumer Disputes Redressal Commission, Ahmedabad (for short as ''State Commission'') in Appeal No.468 of 2008.

2. BRIEF facts are that respondent/complainant got insured ''FIAT SIENA'' car bearing No.G.J.8.D.7798 with the petitioner/opposite party. As per terms and condition of the policy both parties agreed to sum insured IDV (Insured''s declared value) @ Rs.4,64,400/-. Respondent paid premium on said IDV amount and petitioner issued policy accordingly for the period from 1-7-2003 to 30-6-2004. On 19-6-2004, the insured car met with an accident at village Udali near Bhavnagar. Respondent lodged F.I.R. at Vertaj Police Station. Thereafter, respondent filed a claim for Rs.4,64,400/- i.e. the amount for which the car was insured. Petitioner, instead of settling the claim for Rs.4,64,400/- offered to settle the claim as per Surveyor''s report on the replacement basis as per condition No.3 of Policy for Rs.1,75,000/-, which was not acceptable to the respondent. Therefore, respondent filed Consumer Complaint against petitioner to settle the claim as per IDV i.e. Rs.4,64,400/- on total loss of the vehicle.

3. PETITIONER, in its reply stated that considering the survey report and condition No.3 of the Policy, it settled the claim on replacement basis as there was total loss of vehicle. The assessment of loss was not feasible on repair basis, hence considering the market value and as the car was more than four years old, petitioner settled the claim to the tune of Rs.1,75,000/-. Thus, there was no

deficiency in service on the part of the petitioner.

4. DISTRICT Forum, vide its order dated 29.3.2008, partly allowed the complaint and directed the petitioner to pay to the respondent, Rs.1,75,000/- with interest at the rate of 9% per annum from the date of the complaint till realization plus Rs.5,000/- towards compensation and Rs.1,000/- towards the cost of the complaint.

5. AGGRIEVED by the order of the District Forum, respondent filed an appeal before the State Commission, which allowed the appeal vide impugned order and passed the following directions ; "2. Respondent insurance company is directed to pay Rs.4,64,400/- with interest at the rate of 9% from the date of complaint till realization. 3. Insurance company shall make the payment after deducting the amount paid to the appellant."

6. WE have heard learned counsel for the petitioner and have gone through the record.

7. IT is contended by learned counsel for the petitioner that if the settlement on total loss basis is to be made on the basis of the sum insured under the policy, the appropriate depreciation has to be deducted from the sum insured. In then alternative, appropriate value of the salvage is to be deducted from the sum insured. Thus, once the settlement on total sum insured is paid, the insurer becomes entitled to the salvage of the vehicle and the insured is paid the total value of the vehicle. State Commission, thus, committed error in not returning the salvage to the petitioner nor did it pass for deducting the appropriate value of the salvage for the sum insured.

8. STATE Commission in its impugned order has observed ; "8. Ld. Forum has totally relied on surveyor''s report and passed the impugned order. It is true that survey report is an important document and cannot be brushed aside, but contract of insurance is more important where in terms and conditions of insurance policy are agreed between the parties and they are to be read as it is. Appellant has produced private car package policy along with terms, conditions and warranties for private car at page no.20 to 23 of main file. Wherein, the policy condition is very clear that "IDV shall be treated as market value throughout the policy period without any further depreciation for the purpose of total loss claims. 9. In view of the above condition, appellant is entitled for total loss amount which was agreed and decided by both sides i.e. Rs.4,64,400/- throughout the policy period without any further depreciation. As per condition no.3 of policy, it is an option available with insurance company that in case of claims, "the company may at its own option repair, reinstate or replace the vehicle." So reading this condition as it is, insurance company is supposed to replace the vehicle but certainly cannot offer the amount of replacement value of vehicle. If insurance company wants to pay the amount, then it has to offer the market value IDV of vehicle (Rs.4,64,400/-) as agreed between the parties at the time of agreement. As per terms of policy, IDV of obsolete model of vehicle is

to be determined on basis of an understanding between the insurer and insured. Insured vehicle was obsolete model and at the time of agreement, insurance company has accepted the market value of vehicle in question @ Rs.4,64,400/- and got the premium on said amount. So now insurance company cannot fall back and say that replacement value or market value of vehicle is Rs.1,75,000/-. 10. Ld. Advocate for insurance company submitted that the cost of repairing comes more than 75% of IDV and moreover the cost of repairing is on very higher side, uneconomical and not viable. Therefore, insurance company decided to settle the claim on replacement value i.e., at Rs.1,75,000/-. Further, it is submitted that insurance company has made payment on 19.5.2008 of Rs.2,26,938/- to the appellant as per the order of Ld. Forum in CC No.181/2005 and appellant has said amount with objection. 11. Ld. Advocates for both the sides have produced judgments on which they relied upon. We have gone through them carefully. The recent judgment of Hon''ble National Commission reported in III (2010) (PJ 445 CNC) New India Assurance Co. Ltd. Vs. Ramesh Rao Bhounsle, wherein the National Commission has relied on Dharmendra Goel Vs. Oriental Insurance Co.(2008) 8 SCC 279. Here, we have similar point in issue and same stands concluded by a judgment of Hon''ble The Supreme Court of India in Dharmendra Goel Vs. Oriental Insurance Company in which it has been held that "Insurance Company after having accepted the value of particular insured good, disown that very figure on one pretext or other when they are called to pay compensation. This "take it or leave it" attitude is unwarranted being bad in law and ethically indefensible". 12. In the light of the fact that a price of a vehicle had already been agreed by both the parties at Rs.4,64,400/- at the time of issuing policy. We accordingly hold that in these circumstances, the insurance company was bound by the value put on the vehicle while issuing policy following the law laid down by the Supreme Court in the cited judgment (supra). We are of the view that appellant shall be entitled as per the policy condition amount of Rs.4,64,400/- (without any depreciation) with interest @ 9% p.a. From the date of the complaint and cost and compensation as awarded by the Ld. District Forum. Respondent insurance company shall make the payment after deducting the amount paid to the appellant. In this view of the matter, we modify the impugned order passed by the ld. Forum."

9. THIS plea for return of salvage or deduction of the salvage amount from the total sum insured has been taken by the petitioner for the first time in this revision. No such plea was taken by the petitioner in its written statement. It was never the case of the petitioner before the District Forum, that petitioner is entitled for the salvage or in the alternative, value of salvage has to be deducted from the sum insured. Thus, there is no force in this argument.

10. WE fully concur with the reasoning given by the State Commission in the impugned order. State Commission has not committed any illegality or infirmity, in passing the impugned order. Thus, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of the Act. Under these circumstances, present revision petition is not

maintainable. The same is hereby, dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only).

11. PETITIONER is directed to deposit the costs of Rs.10,000/-, by way of demand draft, in the name of "Consumer Legal Aid Account" of this Commission, within four weeks from today. In case, petitioner fails to deposit the said costs within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization.

12. LIST on 7.9.2012 for compliance.

