(2001) 09 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

INTEGRATED ORGANIC PVT. LTD. RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Citation : 2003 2 CLT 557 : 2003 2 CPJ 15

Hon'ble Judges : D.P.Wadhwa , C.L.Chaudhry , Y.Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal is directed against the order of the State Consumer Disputes Redressal Commission, Delhi dated 16th of November, 1994 by which the appellant was directed to pay an amount of Rs. 3,48,000/- with interest calculated @ 15% per annum from 5.3.1992 till the date of payment and also the amount of garage charges paid by the complainant and Rs. 5,000/- as damages. In order to resolve this controversy, it is necessary to narrate the facts briefly :

2. THE complainant purchased a Maruti 1000 CC car from M/s. Competent Automobiles & Co. Ltd., New Delhi on 4th March, 1990. THE complainant paid a sum of Rs. 3,66,298/- to the Competent Automobiles towards purchase price of the car. THEy also got it insured with the opposite party i.e. New India Assurance Co. Ltd., the appellant in this case under cover note No. 3593369 on the same date comprehensively and paid an amount of Rs. 11,544/- as premium. THE cover note was issued by the opposite party immediately after the purchase of the car i.e. 4.3.1992. Shri Manish Jain, the Director of the company went to Agra on 5th March, 1992 alongwith his wife. THE car met with an accident at Farah Town around 2.30 p.m., when it was struck by a truck. THE complainant and his wife suffered multiple injuries. THE complainant informed the Agra office of the Insurance Company on the same date and FIR was also lodged with the police. THE car was brought to Delhi by the complainant in a truck and was stored at the garage of the Competent Automobiles Company at Mehrauli. After a period of

about two months of the accident, Surveyor was appointed by the Insurance Company. However, the claim was not settled by the opposite party. In these premises, the complainant filed a complaint before the State Commission claiming an amount of Rs. 4,99,063/-. The complaint was contested by the Insurance Company. They admitted the accident of the car. However, they pleaded that the car would be deemed to have been insured after the premium had been received by them and the same was received on 5.3.1992, after the time of the accident from the Competent Automobiles Company. Thus the risk of the car had not been covered at the time of the accident. It was further pleaded that the opposite party was liable to re-imburse their liability limited to the amount as proposed by the Surveyor in his report dated 24th May, 1992. It was also pleaded that the claim was barred by time. After considering the material placed on record and the contention of the parties, the State Commission allowed the complaint and directed the Insurance Company to pay the amount as stated earlier.

Aggrieved by the order of the State Commission, the Insurance Company has preferred this appeal which is under disposal. Mr. S.M. Suri, Advocate appearing on behalf of the appellant contended that the Insurance Company could not assume risk until and unless the premium was received by them in advance. The receipt of having received the premium was issued by the Competent Automobiles on 5th March, 1992 and the premium amount was forwarded by the Competent Automobiles to the appellant on 5th March, 1992 after the accident. Thus the appellant Insurance Company having accepted the premium on 5th March, 1992 could not assume risk on a date prior to that.

3. WE have perused the record. The premium was received by M/s. Competent Automobiles on 4.3.1992 by a cheque dated 4.3.1992 for and on behalf of the Insurance Company. Against the said payment, cover note No. 3593369 dated 4.3.1992 was issued. The appellant did not deny having issued the said cover note on 4.3.1992. The cover note clearly states that the insurance cover commenced from 4.3.1992. The cheque dated 4th March, 1992 was given to the Insurance Company on the same date. The State Commission has very carefully examined this aspect. The State Commission observed that it was well-settled that the payment by a cheque, if accepted was a valid payment. The Surveyor, Dalip Wangu, in his report dated 24.5.1992 also admitted that the car was insured from 4.3.1992 to 3.3.1993. The O.P. did not contradict his assertion. Even if the payment was received by the O.P. from its agent on 5.3.1992 it could not be said that the cover note is bad as the payment to the agent of the insurer tantamounts to payment to the insurer itself. It was also a practice that in the case of insurance of the cars, the cover note is got issued at the time of giving delivery of the car by the seller from an authorized agent and, therefore, the car would be deemed to be insured, as soon as the cover note was issued. In that view of the matter, the State Commission relied upon the observations made in Gilivray & Parkington on Insurance, 1975 Edition. The following observations are as under : "Once a cover note in the usual form has been issued, it creates a

binding insurance for the period of time specified in it, but subject to determination by notice at any time within that period. The temporary cover invariably takes effect at once since its subject is to give immediate protection pending the decision of the directors and the issue of a policy. A cover note will not readily be construed as affording merely conditional protection subject to the approval of the directors, because such an interpretation would make it virtually useless. In motor insurance , the cover note must give immediate protection so as to comply with the provisions of Section 143 of the Road Traffic Act, 1972."

We have given a thoughtful consideration to the matter. In our opinion, the contention raised by Mr. S.M. Suri, Advocate is devoid of merit. The complainant paid the amount of insurance by way of cheque dated 4th March, 1992 to the Competent Automobiles who were the authorized agent of the Insurance Company and the cover note was issued on 4th March, 1992 which had specifically mentioned that risk covered was from 4.3.1992 to 3.3.1993. The State Commission examined the legal position and came to a correct finding that the car was insured from 4th March, 1992. Even otherwise there is nothing on the record to indicate that the premium on 5.3.1992 was received after 2.30 p.m., i.e. time of the accident.

4. THE next contention raised by Mr. Suri, Advocate was that the State Commission wrongly awarded a sum of Rs. 3,48,000/- to the complainant. It was contended that the Surveyor appointed by the Insurance Company in his report dated 24th May, 1992 recommended that a sum of Rs. 3,50,000/- would be fair and reasonable compensation for settlement of the claim of the complainant. THE Surveyor estimated that the value of the salvage was of the value of about Rs. 2 lacs and thus they would be paying Rs. 1,50,000/- only to the complainant. We find no force in this contention. THE car met with an accident on the same very day. THE State Commission has allowed depreciation of 5% of the purchase price. THE value of the car was Rs. 3,66,000/- and after deducting @ 5% depreciation, the claim was allowed for Rs. 3,48,000/-. THE State Commission rightly assessed the claim. THE third contention by Mr. Suri, Advocate was that the State Commission awarded interest @ 15%. This was on the higher side. In support of his contention, he relied upon the judgment of the Supreme Court in the case of M.K.J. Corporation where Supreme Court awarded interest @ 12% against the Insurance Company. We see merit in this contention. Relying upon the judgment of the Supreme Court, in the case of the United India Insurance Company v. M.K.J. Corporation, III (1996) CPJ 8 (SC)=(1997) CTJ 648, we award interest @ 12%. As a result the order of the State Commission is modified to the extent that the complainant will get interest @ 12% instead of 15% as awarded by the State Commission. THE order of the State Commission is modified to that extent. THE appeal is partly allowed to the extent that the complainant will get interest @ 12% instead of 15%. However, in the facts and circumstances of the case, we leave the parties to bear their own cost. Appeal partly allowed. c

