(2003) 05 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. — APPELLANT

Vs

KAMAL SINGH PANWAR — RESPONDENT

Date of Decision : 05-05-2003

Acts Referred:

Citation : 2003 2 CPJ 532 : 2004 1 CPR 259

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Appeal partly allowed

Judgement

1. THIS is an appeal by the Insurance Company against the judgment and order dated 25.2.2000 passed by the District Forum, Uttarkashi allowing the claim of Rs. 4,90,465/- along with interest at the rate of 12% from 3.4.1998 on which date, the accident took place.

2. IT is conceded by the parties that in view of the order of the State Commission, Lucknow, a sum of Rs. 2,98,500/- has been received by the complainant. The brief facts of the case are that the complainant has a truck which was insured from 30.6.1997 to 29.6.1998 for a sum of Rs. 4,25,000/-, with the appellant. During the insurance period, on 3.4.1998, the truck met with an accident. The driver died on the spot and the conductor died in the hospital. The truck was totally damaged. The truck was dragged up from the valley and was brought to Dehradun. In this, the complainant has spent a sum of Rs. 30,000/-. He took a plot on rent of Rs. 500/- per month and also spent a sum of Rs. 1,500/- per month in appointing a Chawkidar to guard the salvage of the truck. Entire formalities were completed but the Insurance Company did not agree to pay the total loss and was agreed to pay only Rs. 2,98,500/-. Therefore, the complaint was filed. Since, the learned Forum allowed the total claim of the complainant, the Insurance Company filed this appeal.

We have heard the learned Counsel for the parties and gone through the records. The only dispute is whether the total claim for the total insured money should have been allowed. The accident took place after about 10 months of the insurance and under the terms of the policy, 10% deduction is to be made out of the insured amount. We fully agree with the ruling produced by the learned Counsel for the consumer reported in III (2002) CPJ 264 (NC), New India Assurance Co. Ltd. v. G.P. Malhotra, in which it was held that instead of market value, the claim should have been allowed for total insurance, but is also a settled view of the National Commission that when the truck has been used for more than 6 months as is also clear from the terms of the policy, a depreciation of 10% should be allowed. The truck was insured for Rs. 4,25,000/-. If 10% depreciation is allowed out of the insured amount, Rs. 42,500/- is to be deducted. The claim amount, therefore, becomes Rs. 3,82,500/-. The towing charges also is very excessive although the learned Counsel for the complainant argued that the receipt of the towing charges has been filed in the learned Forum. Anybody can get any receipt of any amount. In the circumstance like it, a towing charges of Rs. 15,000/- may be adequate amount. The other claims of the complainant appears to be just and proper. After calculations, the complainant was entitled to get a compensation of Rs. 3,82,500/- plus Rs. 15,000/- as towing charges plus Rs. 10,000/- as the rent of the plot and wages of the Chowkidar. In these circumstances, a total claim of Rs. 4,07,500/- would be optimum compensation. The expenses of notices etc. and the claim of loss of profit etc. is to be ignored because the amount of compensation as interest includes loss of profit as well. The order of the learned Forum is to be modified to the above extent only. ORDER The appeal is partly allowed. Complainant shall get a sum of Rs. 4,07,500/- as compensation with 12% interest from 3.4.1998 and also cost of Rs.1,000/- as allowed by the learned Forum. The order of payment of punitive cost of 10% is also set aside. A sum of Rs. 2,98,500/- has already been paid and from the date of payment of this amount, the claimant shall get interest only on unpaid amount. Appeal partly allowed.