

(2012) 05 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO LTD

APPELLANT

Vs

Sanjiv Bansal

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 130 : 2012 2 CPJ 504 : 2012 2 CPR 262

Hon'ble Judges : V.B.GUPTA , VINAY KUMAR J.

Final Decision : Appeal is partially allowed

Judgement

1. THIS appeal is filed by the New India Assurance Company Ltd. against the order of the State Consumer Disputes Redressal Commission, UT of Chandigarh, in Consumer Complaint No.20 of 2006. The facts as seen from the records of the case, are that the vehicle of the respondent/Complainant, which was registered with the appellant/OP, was stolen on 3.12.2005. After filing an FIR on 4.12.2005, a claim under the insurance policy was made on 29.12.2005. The insurance company appointed an investigator to report on this incident. His report was submitted on 8.2.2006. But even thereafter, when the appellant insurance co. did not settle the claim, a consumer complaint was filed before the State Commission on 18.4.2006.

2. THE case of the Complainant was that the insurance co. had taken four months and had yet not decided the claim. Due to this delay the Complainant had to per force continue to make payment of EMIs of Rs.45,710/- towards the loan taken for financing the vehicle. The State Commission observed that the investigator appointed by the OP/insurance co. submitted his report on 8.2.2006 in which the facts of the case were found to be genuine. But instead of settling the claim on that basis, the insurance co. asked the Complainant to produce the untraced report as accepted by the Court. Appellant/OP failed to produce any rule or regulation before the State Commission, which could have justified their demand for the untraced report with its acceptance by the Court.

3. THE State Commission has taken note of the fact that the vehicle was eventually recovered by the Police on 15.8.2006 along with certain other stolen

vehicles from Khanna District and had been handed over the Complainant, after completing the formalities. However, the Commission held that even if the claim had been settled in March, 2006, the Complainant would have been in a position to repay the entire balance of the car loan. In any case, interest liability on this loan for this period from April, 2006 to August, 2006 would have been avoided. This was held to be a loss caused to the Complainant due to deficiency of service or negligence on the part of the OP. The State Commission therefore, awarded a total compensation of Rs.86425/- including the amount towards interests on the loan for the period mentioned above.

4. WE have carefully seen the records of the case, and heard Ms. Minakshi Midha, Advocate for the appellant and Mr. Himanshu Gupta, Advocate for the respondent/Complainant. A perusal of the memorandum of appeal filed on behalf of New India Assurance Co. Ltd. shows that the appellant has primarily re-agitated the same grounds, which were raised before the State Commission. It is claimed that the State Commission has failed to appreciate that in theft cases the claim cannot be settled without the untraced report. We find it necessary to observe that the appellant had an opportunity to satisfy the State Commission on this point. But, as categorically observed by the State Commission, the appellant failed to show the rule/regulation under which the untraced report was made a precondition to settlement of the claim. We therefore, have no hesitation in rejecting this contention of the appellant. Learned counsel for the respondent/Complainant also pointed out before us that the requirement of the insurance policy in Condition No.1-- which says that in case of theft or criminal act which may be the subject of a claim under this Policy the insured shall give immediate notice to the police-- had been met. The Complainant had complied with this condition by filing an FIR with the local police, the very next day after the theft.

5. IN the written response before the State Commission, the OP/insurance company has emphatically asserted that for settlement of his claim, the Complainant was required to produce the untraced report, as accepted by the court. Even in the appeal memorandum the same ground has been repeatedly stressed. However, while claiming that there is no deficiency on their part, the appellant mentions in para 2.8 of the appeal memorandum that after receiving the untraced report on 14.7.2006, the appellant had settled the claim of the respondent on 14.8.2006. But, before the same could be communicated to the respondent/Complainant, the vehicle itself was recovered by the police and returned to the Complainant. This has been commented upon by the respondent/Complainant in the written objection filed in this Commission. It is pointed out that when the claim of the Complainant was settled on 14.8.2006, the untraced report was still awaiting acceptance by the Court. No attempt has been made on behalf of the appellant to clarify this. It is therefore, clear that acceptance of the untraced report by the Court could not have been a pre-condition for settlement of the claim. Else, the appellant/OP could not have settled it.

6. THE appeal memorandum also questions the award of compensation when the

vehicle had already been recovered and handed over to the Complainant. During the course of the arguments, learned counsel for the appellant further argued that it was wrong to award a compensation of Rs.50,000/- " for loss on account of non-availability of vehicle for his professional and personal activities ", as in terms of the conditions contained in the Policy, liability for payment of "consequential losses " is expressly excluded. It was argued that non-availability of the vehicle was the direct consequence of its theft. The term "consequential loss "is defined in Black 's Law Dictionary (9th Edition) as - "A loss arising from the results of damage rather than from the damage itself. A consequential loss is proximate when the natural and probable effect of the wrongful conduct, under the circumstances, is to set in operation the intervening cause from which the loss directly results. When the loss is not the natural and probable effect of the wrongful conduct, the loss is remote. "

7. IT is therefore clear that the loss suffered by the respondent/Complainant due to non-availability of the vehicle for use, was in the nature of a direct consequential loss resulting from the theft of the vehicle. In this context, we also note that the State Commission has separately awarded a compensation of Rs.30,000/- for pain and agony suffered by the Complainant due to delay on the part of the appellant in settlement of the claim, in addition to the loss resulting from outgo of interest on the EMIs, payable by the Complainant.

8. THEREFORE , accepting the argument advanced against compensation for consequential loss and taking into account the compensation allowed by the State Commission for pain and agony suffered by the Complainant, we consider it just and proper to reduce the total compensation amount from Rs.86425/- awarded in the impugned order to Rs.36425/- In the result, we agree with the State Commission that delay in settlement of the claim amounted to deficiency of service. However, for reasons detailed in earlier paragraphs of this order, the quantum of total compensation is reduced from Rs.86425/- to Rs.36425/-. Orders of the State Commission in relation to award of cost and interest remain unchanged. The appeal is partially allowed in the aforesaid terms.