

(2001) 04 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED

APPELLANT

Vs

DIWAKAR AGNIHOTRI

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Citation : 2002 2 CPJ 425 : 2003 1 CLT 80

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna , Rachna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 22.7.2000 passed by District Consumer Forum-I, Moradabad in Complaint Case No. 61 of 2000.

2. THE facts of the case stated in brief are that the complainant got his Motor Cycle No. UP 21 E6322 insured for a sum of Rs. 42,000/- from 16.9.1997 to 15.9.1998 with THE New India Assurance Company Limited. On 30.6.1998 at about 6.15 p.m. this motor cycle was looted near Village Anauta, at Sambhal-Chandausi Road. THE complainant lodged an F.I.R. on 30.6.1998 and also informed the Insurance Company. THE complainant submitted the claim. THE opposite party got the claim processed but a sum of Rs. 10,000/- was demanded as illegal gratification which the complainant refused to pay. Hence the claim was repudiated on 24.3.1999. The opposite party did not appear before the learned District Forum inspite of service. Hence the complaint proceeded ex-parte.

The learned District Forum after perusing the evidence on record directed the Insurance Company to pay a sum of Rs. 42,000/- as cost of the motor cycle along with 18% per annum interest with effect from 30.9.1998 till the date of payment. A sum of Rs. 2,000/- was also allowed as cost of the complaint.

3. AGGRIEVED against the order of the learned District Forum, the Insurance Company has come in appeal and has challenged the correctness of the order passed by the Forum. We have heard the learned Counsel for the parties. Learned Counsel for the appellant has argued that in the present case the complainant did not have a valid driving licence. Therefore, the claim of the

complainant was repudiated by the Insurance Company. A perusal of the file will go to show that the complainant's vehicle was looted in the incident. There is no nexus between the incidence and not having a valid driving licence. Even if the complainant would have a valid driving licence, then the matter would not have been different at all. It is a case of looting of the motor cycle. It is immaterial whether the complainant was having a driving licence or not. Had the vehicle met with an accident then the question of having driving licence would have been material. Therefore, not having a valid driving licence will not bar the complainant from seeking the insurance amount of the motor cycle when it was a subject of looting.

4. THUS we find that the learned District Forum was perfectly justifying in coming to the conclusion that the complainant is entitled to claim the insurance amount. Now the question of rate of interest arises. Learned Counsel for the Insurance Company has argued that the interest should be fixed at the rate of 12% per annum. In support of his argument he has placed reliance on the case of *United Insurance Company Ltd. v. M.K.J. Corporation*, III (1996) CPJ 8 (SC)=1996-1999 Consumer 4781 (NS), in which it was held that the rate of interest in the case of Insurance Company should be 12% per annum. However, the learned Counsel for the complainant has argued that the interest should be awarded at the rate of 18% per annum in view of the decision of the Hon''ble Supreme Court in the case of *United India Insurance Company Limited v. Fancy Traders*, VII (2000) SLT 365=JT 2000 (10) SC 337. The Hon''ble Supreme Court in this case held that the interest at the rate of 18% per annum is justifiable. The order of the Hon''ble Supreme Court is very short and is being reproduced below : "1. Leave is granted. 2. Heard learned Counsels for the parties. 3. The net loss caused to the respondent due to fire was assessed at Rs. 4,72,146/- but the applicant paid only a sum of Rs. 2,75,146/- to the Bank of the respondent. The balance amount together with interest at the rate of 18% was ordered to be paid to the respondent by the State Commission. 4. Having regard to the facts and circumstances of the case, the High Court also did not interfere with the rate of interest awarded by the State Commission. We find no justification for our interference in the matter under Article 136 of the Constitution. 5. The appeal is accordingly dismissed. There shall be no order as to the costs."

In a more recent case, *National Insurance Company v. Jit Ram Shiv Kumar*, III (2000) CPJ 5 (SC)=VI (2000) SLT 624=2001 CTJ 1 (CP), the Hon''ble Apex Court had also considered the quantum of interest which should be awarded in the case of Insurance Company. In that case before the Apex Court, it was held that the repudiation of the claim by the Insurance Company was wholly mala fide. It was held that all the risks were covered by the insurance policy. The ship which was carrying the goods was lost on the high seas. Before the Hon''ble Supreme Court it was contended that the Commission was not justified in awarding interest at the rate of 18% per annum to the respondent. The Hon''ble Supreme Court repelled the contention of the Insurance Company about the rate of interest in the following words : "So far as the question of quantum of interest is concerned,

we see no infirmity in the order passed by the Commission except that the order of the Commission requires a little alteration so that the date 6.12.1987 is altered to 12.8.1987 in consonance with the judgment of the Commission itself."

5. THUS in view of the latest decision of the Hon"ble Supreme Court, it is now clear that the interest at the rate of 18% per annum is to be paid by the Insurance Company when it is found that the deficiency is on behalf of the Insurance Company. THUS the appeal is liable to be dismissed. ORDER The appeal is dismissed and the judgment and order of the learned District Forum are confirmed. The appellant shall also pay a sum of Rs. 2,000/- as cost of appeal to the respondent/complainant. Let compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal dismissed.