
(1999) 10 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED

APPELLANT

Vs

Pratibha Singh

RESPONDENT

Date of Decision : 20-10-1999

Acts Referred:

Citation : 1999 3 CPJ 554 : 2000 1 CLT 561 : 2000 1 CPR 288

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

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 3.6.1999 passed by District Consumer Forum, Jhansi in Complaint Case No. 588/1998.

2. THE facts of the case stated in brief are that the complainant purchased an Ambassador car for Rs. 2,86,350/- in January, 1997. THE same was insured with the opposite party. During the continuity of the insurance policy the car was stolen on 12.6.1998. First Information Report was lodged with Kotwali, Satna on 13.6.1998. THE final report of police was submitted which was accepted by the Court. THE opposite party was also informed of the theft on 17.6.1998 and a claim was also put forward for an amount of Rs. 2,92,000/- for loss of the car and Rs. 50,000/- as compensation and mental tension and Rs. 2,000/- as cost. When the opposite party did not pay the amount, the claim petition was filed. Opposite parties have alleged in their written statement that Surveyor Sri C.P. Gupta was appointed who assessed the value of the car at the time of theft at Rs. 2,65,000/-. Opposite parties 1 and 2, i.e. New India Assurance Company Ltd., Jhansi and Divisional Manager, New India Assurance Company Limited, Jhansi wrote a letter to Regional Manager, New India Assurance Company, Kanpur for acceptance of this amount for payment to the complainant. Without accepting the same the opposite party No. 5 appointed another Surveyor Sri Sabharwal who valued the loss at Rs. 2,15,000/-. It is alleged that this was done only to cause loss to the complainant. He, therefore, claimed a sum of Rs. 2,92,000/- as price of the car and Rs. 50,000/- as compensation and Rs. 2,000/- as cost.

Opposite party No. 1 in the written statement has alleged that the car was purchased for commercial purpose and the Forum has no jurisdiction to try this case. It is further alleged that the car was purchased for only Rs. 2,86,350/- and it was stolen after one year and five months. The value of the car in the year 1998 was between Rs. 1,50,000/- to Rs. 1,60,000/- according to news published in the Times of India newspaper. The value of the car which was fixed by Sri Sabharwal, Surveyor at Rs. 2,15,000/- was the correct price and the Insurance Company is prepared to pay the same. It was further alleged that Sri C.P. Gupta who was first appointed as Surveyor was an inexperienced Surveyor and he adopted wrong procedures for fixing the price of the car. The market value of the car was only Rs. 1,50,000/- for an old car. It was further alleged that the report of Sri Sabharwal was more reasoned. It has also been alleged that the complainant has given consent to accept Rs. 2,65,000/- which was the amount assessed by the first Surveyor Sri C.P. Gupta.

3. THE learned District Forum, after considering the entire case of the parties came to the conclusion that the appellant is liable to pay a sum of Rs. 2,65,000/- alongwith 18%per annum interest as well as Rs. 3,000/- as compensation and Rs. 2,000/-as cost. Aggrieved against the order of the learned District Forum, the Insurance Company has come in appeal and has challenged the correctness of the order of the District Forum.

4. WE have heard the learned Counsel for the parties. It has been argued by the learned Counsel for the appellant that the report of the first Surveyor was not accepted because he was an inexperienced Surveyor and has valued the car at a much higher side. The report of the first Surveyor was not filed before the learned District Forum and the District Forum had no occasion to see as to what are the deficiencies in that report and why the second Surveyor was appointed. Learned District Forum has, in a well reasoned order, considered the report of the Surveyor and we have nothing more to add to that judgment. Learned District Forum was perfectly justified in holding that unless there was some patent irregularity or illegality the Insurance Company was not justified in ignoring the first report given by Sri C.P. Gupta. He has also given reasons for not accepting the second report with which we agree. It is an admitted fact that the car was purchased for Rs. 2,86,350/- and accessories were also fitted in the car and therefore the car was insured for Rs. 2,92,000/- with accessories. The Surveyor has not taken any value of the accessories which were fitted with the car. Thus the report of the second Surveyor was rightly rejected by the learned District Forum. It has further been argued by the learned Counsel for the appellant that only question of compensation has to be decided in this case. Hence according to the Arbitration clause in the insurance policy, this matter should be referred to the Arbitrator and the District Forum has no jurisdiction to try this case. This argument is devoid of merits. Section 3 of the Consumer Protection Act provides additional remedy. It does not bar the jurisdiction of Forum or the Commission to decide the controversy even with regard to the claim of damages. In the case of *Fair Air India Engineers v. N.K. Mody*, III (1996) CPJ, page 1 (SC), the Hon''ble

Supreme Court has held that Section 3 of Consumer Protection Act does not place automatic embargo on exercise of powers by the Forum. A discretion lies with the District Forum either to stay the proceedings or not to stay the proceedings. The provisions of Act are in addition to and not in derogation of any law in force. Thus in view of this pronouncement of the Hon"ble Supreme Court we find that this argument of the learned Counsel has no force and deserves to be rejected straightaway. It has been observed in the earlier part of the judgment that the learned District Forum has awarded the price of the car at Rs.2,65,000/- held by 1st Surveyor which was accepted by opposite party Nos. 1 and 2 and for which a letter was also written to opposite party No. 3 of the complaint. Hence this amount is to be paid by the appellant to the complainant. The award of compensation and the cost cannot be said to be on the higher side. The appeal is therefore, liable to be dismissed. ORDER The appeal is dismissed. The judgment and order of the learned District Forum are confirmed. The appellant shall pay a sum of Rs. 2,000/- as cost of this appeal to the complainant. Let the compliance of this order and the judgment of the learned District Forum be made within a period of two months from today. Let copy be made available to the parties as per rules. Appeal dismissed.