

(2000) 08 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited	APPELLANT
Vs	
VED PRAKASH KAMRA	RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Citation : 2001 1 CPJ 76

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 29.7.1992 passed by District Consumer Forum, Shahjahanpur in Complaint Case No. 63/1991.

2. THE facts of the case stated in brief are that the complainant filed this complaint for recovery of Rs. 1,456.75 against the opposite party on account of damages sustained to his scooter. The learned District Forum has not given the facts of the case in the judgment and the parties have not filed copies of complaint or written statement. Therefore, the only fact which appears from record is that the scooter of the complainant was insured with the Oriental Insurance Company which met with an accident on account of which the complainant had filed this complaint.

The District Forum, after consideration of the facts on record came to the conclusion that the Insurance Company should pay Rs. 1,475/- to the complainant within one month alongwith Rs. 500/-. It also ordered that the parties shall bear their own cost of the arbitration.

3. AGGRIEVED against this 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 the learned District Forum had appointed an Arbitrator who has given an award in favour of the complainant for a sum of Rs. 210/-. According to the learned Counsel, the learned District Forum should have accepted the finding of the Arbitrator, and should have only decreed

the claim for a sum of Rs. 210/-. According to the learned Counsel the learned District Forum had no jurisdiction to set aside this award. In this respect it would be suffice to say that the District Forum had no powers under the Consumer Protection Act to appoint an Arbitrator to decide the matter. If the District Forum had appointed an Arbitrator for decision of the case, then that order is without jurisdiction and if an Arbitrator has given an award that is also without jurisdiction and such an award which is without jurisdiction cannot be taken into consideration by the District Forum or the State Commission. The learned District Forum was perfectly justified in rejecting the report of the award of the Arbitrator and deciding the controversy by itself.

4. ACCORDING to the arguments of the learned Counsel for the appellant the insurance policy was taken from 1.6.1990 to 31.5.1991. The accident took place on 9.10.1990. The Surveyor was appointed by the Insurance Company which reported damages worth Rs. 210/-. While the complainant has submitted workshop bills of Rs. 1,606.75, the payment to the repairer was made only for a sum of Rs. 1,450.75. It has also been argued that till the filing of the complaint, the repudiation of the claim was not made by the Insurance Company. Learned Counsel for the Insurance Company has argued that only the amount awarded by the Surveyor should be allowed to be awarded to the complainant. As a matter of fact during the arguments, it was told that the payment of Rs. 210/- has been made to the complainant. This is the amount which was awarded by the Arbitrator. The report of the Surveyor is on record. A perusal of this goes to show that the Surveyor has not considered the repair bill submitted by the complainant because no copy of it has been attached with the report of the Surveyor. The Surveyor has mentioned that some of the items claimed by the complainant are not admissible but the reason for not being admissible has not been disclosed. Even the claim amount put forward by the complainant was reduced in many cases without supplementing his survey report by the cash memos and bills of any authorised service garage or dealer in spare parts. The complainant has claimed a sum of Rs. 575/- on account of denting and painting. Out of this amount only a sum of Rs. 75/- has been allowed by the Insurance Company. It has only been written in the remarks column that this amount has been given only on account of the repair of the affected part of the vehicle in the accident. How the Surveyor has come to know that only a sum of Rs. 75/- would have been spent on this much portion and not Rs. 575/- and what was the area which was damaged in the accident ? This report is, therefore, perfunctory in nature and it cannot be relied upon. Thus if we do not take into consideration this report, then the estimate given by the complainant has to be accepted. The learned District Forum, therefore, has not done any wrong in accepting the amount of repairs given by the complainant. The judgment and order of the learned District Forum are correct and no interference is required. Order The appeal is dismissed and the judgment and order of the learned District Forum are confirmed. 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.