(2004) 05 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

Oriental Insurance Company Ltd. APPELLANT

Vs

PRADEEP SINGH CHAUHAN RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Citation : 2005 2 CPJ 36

Hon'ble Judges : Rachna , R.N.Prasad J.

Final Decision : Appeal partly allowed

Judgement

1. THIS is an appeal against the judgment and order dated 25.7.1994 passed by District Consumer Forum, Jalaun at Orai in Complaint Case No. 176 of 1993. THIS appeal has been filed under Section 15 of the Consumer Protection Act (hereinafter called the ''Act'').

2. INITIALLY a complaint was filed by the complainant alleging that his scooter detailed in the application was insured with the opposite parties on 5.5.1992 for a period upto 4.5.1993 and the same was lost on 8.5.1992. An F.I.R. was lodged and the claim was lodged as Claim No. 423/1992. Inspite of all attempts the scooter could not be recovered and the culprit could not be brought to book. It was claimed that the scooter was insured, the loss was caused during the currency of contract and as such the complainant was entitled for recovery of Rs. 18,271/- with damages of Rs. 1,000/-. In the written statement the appellant while admitting the factum of entering into contract, averred that the scooter in question was to be physically presented for verification, but the same was not done by the complainant and as such for want of physical verification, the terms and conditions of the insurance were not in process. It was further argued that since the reluctance was shown by the complainant for coming for verification, the premium was sent back along with cheque on 11.5.1992. The learned District Forum after perusing the evidence, passed the impugned order.

Aggrieved the opposite party, Insurance Company, has come in appeal.

3. WE have heard the learned Counsel Mr. Vishnu Prakash, brief holder of Mr. H.P.

Srivastava and have perused the records. The first argument of the appellant was that since deficiency was on the side of the complainant by not producing the scooter for verification, the appellant returned the premium money on 11.5.1992 by way of a cheque and as such there was no liability on the part of the appellant. This argument on the face of it does not carry any credence. Admittedly the premium money through the cheque was remitted on 11.5.1992 whereas the loss of the scooter in question occurred three days before, i.e., on 8.5.1992. Thus the contract of insurance was in the process having all its legal entity when the loss of the scooter occasioned to have been occurred.

4. IT was then submitted that the rate of interest awarded is too excessive. After giving anxious consideration to this aspect of the argument, the Commission is of the view that the rate of interest @ 18% per annum in any case is very excessive. We reduce it to 9% per annum. It was then submitted that even the impugned order on merit does not survive in view of the fact that complainant failed to prove that the vehicle in question was stolen on 8.5.1992 and it was argued that merely because an F.I.R. was lodged and a case was registered with the Police Station concerned, it will not be taken as proof that the theft had actually taken place. Prima facie this argument could have been justified in case there would have been merely lodging of the F.I.R. In the instant case subsequent to lodging of the F.I.R. case crime number 423/1992 was registered and thus the formalities were completed. The theft had actually taken place but the vehicle could not be verified. Thus in view of the fact that heft had taken place the liability is on the Insurance Company. The finding on merits recorded by the learned District Forum does not need any interference. ORDER The appeal is partly allowed. While maintaining the judgment and order on merit, the rate of interest is reduced to 9% from 18% per annum. Under the circumstances of the case, no order as to the costs. Let copy as per rules be made available to the parties. Appeal partly allowed.