(1992) 02 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

PHUMALSINGH CHARANSINGH GUJJAR — APPELLANT

Vs

CHAIRMAN, NEW INDIA ASSURANCE CO. — RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Citation : 1992 2 CPJ 589 : 1992 2 CPR 765

Hon'ble Judges : G.G.Loney , M.G.Gavai J.

Final Decision : Complaint allowed

Judgement

1. THIS is a complaint regarding the delay in the settlement of the claim by the Insurance Company. The facts of the complaint are that the complainant''s truck was insured by the opposite party No. 1 during the period from 2.11.89 till 1.11.90. The said truck met with an accident on 11.4.90 in which three persons died. The accident occurred during the duration of the aforesaid insurance policy. Immediately after the incident, the complainant lodged a claim with the opposite party. The estimate of the repairs were obtained by the complainant from the authorised agent, M/s. Jaika Automobiles, Nagpur. The complainant went on pursuing the matter with the opposite parties but could not get any reply as regards the settlement of his claim and, therefore, served the opposite party with a legal notice dated 26.11.90 through his Lawyer claiming the early settlement of claim. Ultimately, the complainant filed this complaint before the District Forum, Nagpur and since the claim was above Rs. 1,00,000/- it has been resubmitted before this Commission.

2. THE opposite party filed written reply and opposed the claim of complainant. THE fact that the complainant''s Truck No. MP/23/4877 was insured and it met with an accident is admitted by the opposite party. However, according to the opposite party, the complainant was non-cooperative with the officials of the Insurance Company. THE opposite party also submitted that there was no delay on their part to survey the estimated loss and to process the claim of the complainant. It also submitted that the bills of purchase of spare parts by the complainant are bogus. In short, she opposite party denied that there was any

delay on their part to settle the complainant''s claim. Both the parties filed their respective affidavits. We heard the complainant through Shri Jain, Advocate and the opposite party through Shri B.N. Kukade, Advocate. On the basis of the allegations made in the complaint and the disputed claim by the opposite party the following issues arise for our consideration:- (i) Whether the complaint is maintainable; (ii) Whether there is any deficiency in the service of the opposite party? (iii) Whether the complainant is entitled for compensation?

It is an admitted fact that the complainant had hired the services of the opposite party for purposes of insuring their truck. The issue of the insurance policy by the opposite party in favour of the complainant and the payment of premium is not in dispute. The hiring of a service of Insurance Company is included in the definition of service u/Sec. 2(o) of the Act. Since the complainant alleged the deficiency in the service of the opposite party whereas the opposite party denied the allegations a consumer dispute was established in this complaint. The delay in the settlement of insurance claim is obviously a deficiency in the service of an Insurance Company. The law has been well settled by now that the Insurance Company claims are required to be settled as early as possible with a view to get the consumers their legitimate benefits of their insurance claim in theevent-of a mishap. Thus, in our view, the complaint in the event of is maintainable under the provisions of the Consumer Protection Act, 1986.

3. ON going through the complaint and the facts appearing therein, we find that the accident occurred on 11.4.90. The complainant informed the opposite party about the incident on 18.4.90 or 23.4.90 and addressed a detailed letter on 28.5.90. The estimate of the repairs obtained from Jaika Automobiles dated 23.5.90 was annexed with the letter dated 28.5.1990. It is important to note that the Jaika Automobiles quoted the amount of Rs. 2,85,649.80 for the repairs of the said truck. However, the complainant purchased the spare parts from the local market and got the truck repairs,-Comparatively at a cheaper rate compared to the estimate of M/s. Jaika Automobiles. The complainant spent Rs. 1,96,268/- towards the repairs of the truck and informed the opposite party for settlement of the claim. The truck was inspected by Incharge Surveyors of opposite party Shri Subhedar and Shri Wani on 15.1.1990. Yet the complainant''s claim has not been settled. We had directed the opposite party to file original reports of surveyor for our perusal. It was presented before the Commission and it is placed on record. The survey report of Sampat Jayant, Surveyor dated 20.4.90 shows that the truck was badly damaged and the details of damages are mentioned therein. No amount of damage was quantified in that report. There is another final survey report dated 9.7.90 by M/s. D.S. Deshpande and R.V. Raval. The said report shows the estimated labour charges at Rs. 57,845/- and cost of the parts of Rs. 2,65,281/ There is a list of damaged parts annexed with the said report. Finally on page 4 of that report net estimate of the loss is stated at Rs. 1,70,378.66. Despite the clear indication of the estimate of loss, the claim of the complainant was not settled. It appears that the opposite party engaged the services of one Mr. G Bhandari, Surveyor to submit the report. However, despite

all the efforts on the part of the complainant, no claim was settled. In our view, the facts clearly show that the opposite party delayed the settlement of the claim despite the estimated loss of Rs. 1,70,378.66 indicated in the survey report dated 9.7.90. Shri Kukade, the learned Advocate appearing for the opposite party vainly tried to suggest that the bills of purchase submitted by the complainant are bogus and, therefore, could not be calculated for purposes of settlement of the claim. This argument of Shri Kukade cannot be accepted in view of the estimate of loss arrived at by the Surveyor appointed by the opposite party which is not repudiated by them. Under these circumstances, we are of the view that the opposite party deliberately delayed the settlement of the claim without any rhyme or reason and thus caused loss to the complainant. The complainant has stated that he purchased the truck through the assistance of M/s. Tata Finance Company under the hypothecation Scheme and was required to pay the installments with interest and was being put to loss every day, due to the complete break down of the truck. We also find that the delay in settlement of the complainant''s claim was due to the negligence of the opposite party which has caused considerable loss to the complainant. The complainant has claimed in his complaint an amount of Rs. 2,56,690/- with interest at the rate of 15% p.a. on the aforesaid amount. The estimated losses has been calculated by the Surveyor on the basis of the inspection of the vehicle, in his survey report dated 9.7.90 at Rs. 1,70,378.66. We, therefore, find it safe to accept the estimate of loss which has been arrived at after due deliberation by the three Surveyors viz., M/s. A.D. Deshpande, D.S. Deshpande and R.V. Rawal, and not the one claimed by the complainant i.e. Rs. 2,56,690/-. We find it safe to accept the same assessment for purposes of calculating the loss of the complainant. Hence, we pass the following order:- ORDER

4. THE opposite party, the New India Assurance Company, Bombay is hereby directed to settle the complainant''s claim for the amount of Rs. 1,70,378.66 with a period of thirty days from the receipt of this order and make the payment of the loss to the complainant with @ 18% p.a. interest from the date of estimate i.e. 9.7.90 till actual payment. THE complainant also be paid Rs. 1,000/- (Rupees One thousand only) towards the costs of the complaint. Complaint allowed.

