

(1994) 03 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

PIARA SINGH

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 19-03-1994

Acts Referred:

Citation : 1994 2 CPJ 473 : 1994 2 CPR 667 : 1999 1 CPC 394

Hon'ble Judges : S.N.Phukan , A.C.Bora J.

Final Decision : Complaint allowed

Judgement

1. THE case of the petitioner is that, he is a retired Army Officer. After his retirement he purchased a Vehicle (Tata Bearing Registration No. AXA- 1189 with the help of his service benefits and private finance. With the income from the Vehicle petitioner was able to runs his family after his retirement. THE petitioner got his Vehicle insured with the Opposite Party, vide Insurance Policy No. 3151120100208 which was valid from 31.3.88 to 30.3.89. That the said Vehicle was found missing/stolen on 2.11.88 from the side of the National High Way, Chapaguri Station situated by the side of the Chapaguri Petrol Pump. THE value of the Truck was worth Rs. 2,25,000/- on the date of occurrence. In the morning of 3.11.88 the petitioner lodged a FIR with the Dhaligaon Police Station about the missing/theft of the said Vehicle. THE petitioner also searched for the Vehicle in various places in Assam and in the different parts of India personally but could not find any trace of the Vehicle. THEREafter the petitioner fell ill, and after his recovery, he lodged a complaint case before the Chief judicial Magistrate, Bongaigaon on 13.3.90 and the said Complaint petition was forwarded to the Officer-in-charge, Dhaligaon Police Station for investigation and necessary action. Dhaligaon Police registered a case being Dhaligaon P.S. Case No. 130/90 and investigated the case, and searched for the Vehicle in various places, and also sent W. T. Messages to different Police Stations, but could not find the Vehicle. THEREafter, Dhaligaon police vide final report No. 10 dated 5.3.1991 stated that the theft of the said Vehicle on 2.11.88 is true, but could not recover the Vehicle. THE said Final Report was accepted by the learned Chief judicial Magistrate, Bongaigaon on 1.4.91.

2. THE petitioner thereafter made claim before the Opposite Party for compensation and damages for the loss of the Vehicle. Along with the claim the relevant papers and documents (in original) were furnished. THE Opposite Party No. 2 entertained the claim of the petitioner as Claim No. 31/530301/OD/071/90. It is stated in the complaint that on the basis of the documents and papers, the Opposite Party No. 2 was pleased to settle the claim amount by assuring to make the payment early. THE Opposite Party also wrote a letter dated 12.4.91 to the District Transport Officer, Kamrup, Guwahati to treat the Vehicle as withdrawn and to issue a Confirmation Certificate of the same. It is further stated in the complaint that the Opposite Party after much pursuance and correspondence was satisfied to settle the compensation at Rs. 1,49,500/- and agreed to pay a sum of Rs. 1,12,125/- only being 75% at the first stage. THE Opposite Party No. 2 obtained a letter of subrogation for the said amount of Rs. 1,12,125/- from the petitioner in respect of the said Vehicle. That the entire matter proceeded smoothly, and as the petitioner was awaiting to receive the aforesaid amount as per approval of the Opposite Party No. 1, he was surprised to receive a letter dated 29.6.92 from the Opposite Party No. 1 asking him to produce documentary proof in support of the claim that the concerned Vehicle was produced before the Motor Vehicle Inspector on 30.10.88 as the Fitness Certificate was dated 7.11.88. THE petitioner in pursuance to the aforesaid letter and in support of his claim filed an affidavit alongwith a petition dated 21.9.92 whereby it was stated on oath that the concerned Vehicle was inspected by the Motor Vehicle Inspector on 30.10.88, and as per advise of the Motor Vehicle Inspector deposited with the D.T.O. the necessary fees for fitness certificate through his agent. THE concerned M.V.I, issued Fitness Certificate on 7.11.88 after perusing the concerned deposited challen. That the Opposite Party even after having been furnished with the full particulars have not paid to the petitioner the settled amount till to-day, non-payment of which has caused immense hardship, loss, damages and mental agony to the petitioner. Being aggrieved, the petitioner has prayed for the following reliefs: (a) Total settled amount of Rs. 1,49,500.00 (b) Interest @ 20% on the aforesaid amount from 28.8.90 to 28.4.93 Rs. 79,733.00 (c) Compensation for causing mental agony, inconvenience and other expenses incurred by the complainant in perusing the aforesaid matter Rs. 60,000.00 Total: Rs, 2,89,233.00 (Rupees Two Lakhs eighty nine thousand two hundred thirty-three) only. In the instant case, no oral evidence has been adduced by the parties. We have carefully examined the Complaint Petition alongwith the Annexures, Written objection filed by the Opposite Party and taken into consideration argument advanced by the learned Counsels of both the parties. The Opposite Party in their written objection has stated that although there was no settlement of the amount between the petitioner and Opposite Party, yet at one stage the Opposite Party believing upon the settlement available decided to sanction 75% of the claim amount as full and final. In view of the letter dated 12.4.91 to the D.T.O. by the Opposite Party requesting the D.T.O. to treat the concerned Vehicle as withdrawn, and in view of the Opposite Party not disputing obtaining/accepting the letter of subrogation for

an amount of Rs. 1,12,125/- from the complainant, it can reasonably be held that there was exchange of promise and acceptance between the two parties. In such circumstances, the question raised by the respondents that as the fitness certificates dated 7.11.88, the Vehicle could not have been lost or missing from 2.11.88, is too technical in nature. The complainant has annexed an affidavit with the complaint explaining the technicality involved in the process of obtaining the Fitness Certificate. The Respondents has not adduced any sworn testimony in this respect nor they have been able to produce the original documents as directed by our order dated 9.10.93. We, therefore, reject the contention of the respondents in respect of the Fitness Certificate.

In view of our discussions above, we are inclined to award an amount of Rs. 1,12,125/- (approximately half of the estimated value of Rs. 2,25,000/- put up by the complainant) as compensation for the loss of the Vehicle. The amount of 75% of the (settlement available) was decided to be paid by the respondents at one stage. The assessment of Rs. 1,12,125/- has been arrived at taking into consideration that depreciation value of the 1983 TDV make vehicle. We are not satisfied with the conduct of the complainant in not informing the Police forthwith, and there had been other laches on the part of the complainant in the manner of proving his case to the hilt. We, therefore, reject the claim of the complainant with regard to the interest and mental agony etc.

3. WE, therefore, held that the complainant in the interest of justice is entitled to an amount of Rs. 1,12,125/- (Rupees one lac, twelve thousand and one hundred twenty five) only as compensation for the loss of his Vehicle for no falt of his own, and accordingly we direct the Opposite Parties-respondents to make payment of the said amount of Rs. 1,12,125/- to the complainant within a period of two months from the date of receipt of this order, failing which the amount shall carry interest at the rate of 12% per annum. WE make no order as to costs. Complaint allowed.