(1991) 10 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

PRAVINCHANDRA CHANDULAL PATEL APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 21-10-1991

Acts Referred:

Citation : 1992 1 CPJ 382 : 1992 1 CPR 305

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Order accordingly

Judgement

1. IN this complaint the facts are practically admissible. The complainant insured his truck No. GQA 6474 Ashok Leyland of 1988 model with the opposite part, the United INdia INsurance Company Limited and took a comprehensive policy for Rs. 2,50,000/-. The policy was effective from 15.12.89 to 14.12.90.

2. ON 14.11.90 an accident took place at Ankleshwar Piraman Naka on NH No. 8 whereby the truck was seriously damaged. The Insurance Company was informed and a spot survey was made on the next day i.e. on 15.11.90. After the spot survey the truck was sent to the repairer and a labour estimate was submitted and certain parts were required to be fitted. The complainant sent the bills for the labour as well as repairing charges amounting to Rs. 65,690/- whereas the Insurance Company sent a surveyor who surveyed the damage and disallowed certain bills and certain works and arrived at a figure of Rs. 36,000/- only. It appears that while estimating the cost of parts and labour in certain bills the surveyor has deducted 30% amount by way of depreciation. And thereafter he has further made a deduction of Rs. 5,695/- as scrap value of the parts and the Insurance Company offered Rs. 30,305/- only which the complainant has accepted under protest.

Being aggrieved by the less payment made by the Insurance Company and the damages suffered on account of delay and loss of business, pain and suffering the complainant has preferred a claim of Rs. 1,39,335/-.

3. SO far the payment of less amount is concerned and the interest accrued

thereon demanded by the complainant we may say that he may file that claim but rest of the claim is not understandable. No evidence has been led to prove the contention raised in the affidavit. It is not disputed that the truck was repaired by the complainant through his repairers. Assuming for the sake of argument that the Insurance Company made delay in payment there was no handicap for the complainant to get his truck repaired by making payments by himself which he can demand from the Insurance Company with interest Similarly we are not able to understand as to how in a case where the reparation is absolutely necessary to put the truck in a running condition and thereby the complainant suffered damages how 30% depreciation can be deducted by the Insurance Company. Kum. S.S. Shah, learned Advocate relies upon Clause 2 of the conditions of the insurance policy under Section 1 for loss or damage. 1. The Company will indemnify the insurer against loss of or damage to the motor vehicle and/or its accessories whilst thereon (a) by accidental external means (b) by fire external explosion... (c) by malicious act (d) while transit by road, rail, inland waterway lift, elevator or air 2. The company shall not be liable, to make any payment in respect of (a) consequential loss depreciation wear and tear mechanical or electrical breakdowns failures or breakages not for damage caused by overloading or strain or by explosion of the boilers of the Motor vehicle not for loss of or damage to accessories by burglary housebreaking or theft unless such Motor vehicle is stolen at the same time or (b) ... The first Section clearly obliges the Company to indemnify the insurer against loss or damage of the Motor vehicle or its accessories whilst thereon. Under Sub-section 2 of the Company may not be liable to make any payment in respect of consequential loss, depreciation, wear and tear, mechanical or electrical break-downs, failures etc. This consequential loss depreciation is not the depreciation of Motor vehicle. If the claimant suffers any course loss as claimed like depreciation in his business, or any other depreciation he may not be entitled under the policy. But that does not mean according to our opinion that the Company can deduct depreciation of 30% in the price of spare parts and labour.

4. SINCE the Insurance Company has to indemnify the loss or damage occurred to the Insurer within the framework of the Policy at the most we can say that the claimant will get new spare parts in the place of spare parts which might have suffered some wear and tear. It is not disputed that the model was 1988 model and met with the accident within 2 years. It is also not disputed that now under the new policies 10% deduction has been mentioned. Therefore, we are of the opinion that 30% deduction in a case where the truck was only 2 years old is excessive. Moreover, the value of the truck has gone higher in two years and therefore ultimately even if the new spare parts are used and the full payment is made the complainant will not be much benefitted. We are, therefore considering 10% wear and tear as the reasonable percentage which has been now adopted in the new policies. We make it clear that the terms and conditions of new policy cannot be made applicable to the old trucks. But when we are considering the question of indemnifying the complainant we have to take both things into

account - increase in price and the benefit of new spare parts which the complainant will be entitled. Similarly the deduction of Rs. 5,695/- as the scrap value is also excess. Considering the facts and circumstances of the case we are of the opinion that the Company ought to have paid Rs. 36,000/- as certified by the surveyor which is a reasonable amount. Mr. Gohel is also satisfied with this amount since we do not desire to enter into the percentage value of the depreciation. We, therefore, permit the claim to the extent of Rs. 5,695/- to the claimant. ORDER The Insurance Company shall pay Rs. 5,695/- to the complainant within 4 weeks from today. We do not award any cost to any party because the claim made by the complainant is excessive and major part has been dis-allowed. Order accordingly. Order accordingly.

