(2011) 08 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

Ram Raj Sharma APPELLANT

Vs

Branch Manager The United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Citation : 2011 0 NCDRC 529 : 2011 3 CPJ 517

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Revision petition is disposed of

Judgement

1. THIS revision petition has been filed by the original complainant against Respondent no.1 Insurance Co. and Respondent no.2 Finance Co. which were OPs -1 & 2 respectively before the District Forum. Briefly stated, the petitioner insured his 2001 model car for Rs.4,25,000/- on IEV basis for a period of one year from 20.2.2001 to 19.2.2002. THIS car was stolen on the intervening night of 8th - 9th February 2002, i.e., at the time when the car was only 11 months old and the insurance was in existence. The fact of theft is not under dispute. The surveyor appointed by the OP Insurance Co. assessed the net loss at Rs.2,75,000/- which the complainant refused to accept and approached the District Forum claiming the entire sum assured, i.e., Rs.4,25,000/-. It is not under dispute that the vehicle in question was made available to the complainant by OP-2 Financer Co. under the Hire Purchase Agreement and it was on the basis of an application moved by OP-2 Financer Co. that the Financer Co. was also impleaded in the matter at a later stage as OP-2. After taking evidence of the parties, the District Forum assessed the market value of the vehicle on the date of theft at Rs.3,61,250/- and passed the order for payment by the OP Insurance Co. by its order dated 3.8.2005. Not satisfied with the relief granted by the District Forum, the complainant filed an appeal before the M.P. State Consumer Disputes Redressal Commission, Bhopal (State Commission for short) with two-fold grievances, namely, that he is entitled to the entire sum assured, i.e., Rs.4,25,000/- and secondly that the direction for payment of the sum assured through OP-2 Financer Co. was not justified. The OP Insurance Co. also filed an appeal against the order of the District Forum before the State Commission

challenging the order of the District Forum. The State Commission vide its impugned order dated 13.4.2007 observed that the vehicle being only 11 months old when it was stolen, applying 35% depreciation by the surveyor in his report looked arbitrary and the view taken by the District Forum for applying 15% depreciation was just and proper. Regarding the second grievance in respect of release of the compensation through the Financer Co., the State Commission held that the amount has to be released through the Financer Co. and cannot be paid to the complainant directly. In view of this, the State Commission upheld the order of the District Forum and dismissed both the appeals by its common impugned order. The short point for our consideration in this petition, therefore, is in respect of quantum of depreciation which should be applied for arriving at the amount of compensation to be awarded to the petitioner in respect of the vehicle stolen. Against the view of the fora below, the contention of the petitioner is that since the vehicle was stolen within a period of 12 months, at the most, the depreciation could be upto 5%. In support of his claim, the petitioner has placed a copy of the insurance policy in question on record in response to the order passed by us on 8.8.2007.

2. WE have heard counsel for the petitioner and respondent Insurance Co. None is present on behalf of Respondent no.2 Financer Co. Learned counsel for the petitioner submits that Respondent No.2 is a proforma party and there is already a no dues certificate dated 18.6.2007 issued by Respondent No.2 Financer Co., a copy of which has been placed on record at page 28. In support of his submission, learned counsel for the petitioner has submitted that the policy document itself has specified that deduction for depreciation @ 5% will have to be made in respect of motor cars between the age of 6 months and one year. Learned counsel for the respondent Insurance Co. does not dispute either the policy document or the provision in respect of rate of depreciation regarding the vehicles which are upto one year old. However, learned counsel for the respondent Insurance Co. has submitted that in a number of cases, depreciation @ 10% on vehicles which are upto one year old has been accepted by this Commission as well as fora below as fair rate of depreciation and hence depreciation @ 10% could be applied while calculating the amount of compensation. In view of the specific provision regarding rates of depreciation given in the policy document itself which is not under dispute, we do not accept the plea taken by the learned counsel for the respondent Insurance Co. Accordingly, the impugned order is modified to the extent that the amount of damages shall stand enhanced to an amount equal to 95% of the insured value of the car stolen after deducting 5% depreciation. In other words, the respondent Insurance co. is directed to pay an additional amount of Rs.42,500/- along with interest @ 6% p.a. w.e.f. 3.8.2005 till actual payment to the petitioner. This amount shall be over and above and in addition to the amount of relief already granted by the fora below. This order shall be complied within a period of 4 weeks failing which, the respondent Insurance Co. will be liable to pay interest @ 9% p.a. on the amount of relief covered by this order till actual

payment. Revision petition is disposed of in terms of these directions.