**(1997) 04 NCDRC CK 0036**

**In the National Consumer Disputes Redressal Commission**

RAVINDER KUMAR AGGARWAL APPELLANT

Vs

ORIENTAL INS.CO RESPONDENT

**Date of Decision :** 04-04-1997

**Acts Referred:**

**Citation :** 1997 2 CPJ 260

**Hon'ble Judges :** A.P.Chowdhri , Desh Bandhu J.

**Final Decision :** Appeal disposed of

# Judgement

1. RAVINDER Kumar Aggarwal and his father Lekh Ram, hereinafter referred to as complainants, purchased a new open bodied truck from Pearey Lal and Sons (E.P.) Ltd. on 11.2.91 for Rs. 3,38,635/- They got built a cabin for Rs. 65,000/-. The complainant had raised a term loan from Nainital Bank Limited and the truck was hypothecated in favour of the Bank. The truck met with an accident on 17.7.91 at Pratappur, District Meerut (U.P.) at 11.00 a.m. F.I.R. was lodged at the police station and the Insurance Company informed on 18.7.91. M/s. Naveen & Co. Surveyors carried out a preliminary survey and noted in their report that the truck had been extensively damaged. The complainants requested for treating the case as total loss which was not accepted and it was decided that repairs be carried out. The truck was towed to the workshop of Pearey Lal and Sons (E.P.) Limited on 30.7.91. Alongwith a detailed estimate, claim was submitted by the complainants. By his report dated 21.12.91, Mr. B.K. Rahan, Surveyor recommended settlement of the claim by payment of Rs. 1,78,288.08 including rebuilding of the cabin and towing charges. The truck was re-inspected on 17.1.92 by S.N. Singh, Surveyor who reported that except for certain parts and the cabin, the other repairs had been carried out and salvage was in order. A cheque for Rs. 91,800/- was released by the Insurance Company in favour of the repairer on 17.12.91. In a later report dated 17.10.92 the Surveyor Mr. S.N. Singh stated that the truck had been duly repaired and cabin also rebuilt. The claim was ultimately settled for Rs. 1.43.000/- on 28.7.92. A cheque for Rs. 49,500/- was released by the Insurance Company on 15.12.92. The repairer did not release the truck unless it had received the total cost of repairs. The balance

amount was paid by the complainants themselves and the vehicle was delivered to the complainants on 22.12.92.

2. THE grievances of the complainants are: (i) That the second instalment of Rs. 49,500/- was released 12 months after the payment of the first instalment of Rs. 91,800/- on 17.12.91 and 17 months after the accident when all along the complainants liability was mounting as the term loan carried interest @ 20.25% per annum compounded quarterly.

(ii) THE truck was ready for delivery by the repairer on 17.12.92, as the complainants could not arrange payment of the repair charges and the Insurance Company took its own time for releasing the balance payment, the delivery of the repaired truck was effected only on 22.12.92.

(iii) THE complainants were unable to use the truck for earning their livelihood from 17.7.91, the date of accident till 22.12.92 when it was delivered after repairs by Pearey Lal & Sons. During this period, the complainants were not only deprived of the income from the truck, they also incurred heavy interest liability on the term loan due to Nainital Bank Limited.

(iv) THE amount determined on summary assessment on account of loss was Rs. 2,42,350/- vide Column 13 of the Report of Rahan Brothers at page 65 of the paper book). THE Surveyor recommended settlement of the claim on payment of Rs. 1,78,288.08/- But the said amount was arbitrarily slashed down to Rs. 1,43,000/- for no apparent reason. THE complainants have claimed:

(a) Rs.78,000/- being the difference of actual expenses incurred for repairs and the amount given by the Insurance Company. (b) Interest @ 22% on the aforesaid amount of Rs. 78,000/-. (c) Rs. 5,50,399/-on account of loss suffered by the complainants @ Rs. 32,000/- per month as they could not ply the truck from 17.7.91 to 22.12.92. (d) Payment of interest on the aforesaid sum of Rs. 5,50,399/- @ 22%. (e) Rs. 40,000/- on account of harassment and mental agony caused to the complainants. (f) Rs. 20,000/- for the efforts made by the complainants for release of the claimed amount. (g) Rs. 22,000/- towards cost of the present proceedings.

In the written version filed by the oppo site party it is admitted that the complainants had obtained insurance policy and the truck was under hypothecation with Nainital Bank Ltd. It was also admitted that in the accident, the truck was very badly damaged. It was admitted that the complainants with their letter dated 21.2.92 submitted a bill or the repairer in the sum of Rs. 1,76,400/- and requested the Company to release the payment. In reply dated 23.3.92, the Insurance Company asked the complainants to submit payment receipt of the repairer along with certain other documents. In their letter dated 31.3.92, the complainants stated that the payment receipt would be submitted only after the payment was made and the Insurance Company was, therefore, requested to make the payment to the repairer directly. Normally payment is made to the repairer by the insured himself and a receipt to this effect is submitted alongwith the original bills. In the present case, the insured were unable to make the payment and, therefore, requested the Insurance Company to make an on account payment to the repairer. It has further been stated that the release of on account payment was not within the authority of the Branch/ Divisional Office and accordingly after getting the vehicle reinspected, the Branch/ Divisional Office approved the claim for Rs. 1,69,653/- and referred the file to the Regional Office recommending on account payment to the repairer. The recommendation was made on 24.4.92. The Regional Office relying on the report of the Surveyor deducted value of the parts which had not been replaced at that time as well as salvage value of axle and approved the claim for Rs, 1,43,000/- on repair basis subject tore-inspection of the cabin after repairs. The Regional Office conveyed its approval by its letter dated 28.7.91 (this date appears to be wrongly typed as 28.7.90 in the written statement). On receiving the file, the Divisional Office authorised Branch Office to make an on account payment of Rs. 91,500/- and accordingly the said payment was made on 17.8.92. The insured by their letter dated 9.10.92 informed the Company that the truck had been fully repaired, parked in the work-shop of Pearey Lal & Sons at Mathura Road, New Delhi and the same be got re-inspected. Accordingly Mr. S.N. Singh, Surveyor re-inspected the repaired truck and submitted his report dated 17.2.92. In pursuance of the letter of the Branch Office dated 4.11.92, the complainants deposited the salvage on 11.11.92 and thereafter the balance payment of Rs. 49,500/- was released on 3.12.92. It was not disputed that the truck had been purchased with the financial assistance of Nainital Bank Limited. It was, however, denied that the loan amount carried interest @ 20.25%. The claim on account of loss in income during the period the truck remained with the repairer was denied as not covered by the policy.

The documents placed on records included copy of the cash memo regarding purchase of the new truck, bill for the construction of the cabin, insurance cover note, estimate of repairs given by Pearey Lal & Sons (E.P.) Ltd. correspondence exchanged between the complainants and the Insurance Company and affidavits of both the complainants. The documents also included notice dated 16th August, 1993 sent by Nainital Bank Limited to the complainants calling upon them and their guarantors to make payment in the term loan accounts which was outstanding against them. Receipts of various payments made by the complainants in connection with the cabin and the balance payment made to the repairer and a statement of accounts of the term loan issued by the Nainital Bank Ltd.

3. ON behalf of the opposite party, the Insurance Company has filed copy of the report of B.K. Rahan, various reports made by Mr. S.N. Singh, Surveyor relating to the re-inspection of the truck after the repairs and affidavits of Mr. S.L. Arora, Manager of the Oriental Insurance Company, Regional Office, Connaught Circus, New Delhi. We have heard Mr. Ravinder Kumar Aggarwal, complainant, in person and Mr. G.N. Rathi, Advocate for the opposite party and have carefully gone through the records.

 

4. THERE is no dispute with regard to salvage which was duly deposited by the complainants. The material on record shows that first instalment of on account payment was made on 17.12.91 and even though the complainants ran from pillar to post, the balance amount of Rs. 49,500/- was paid nearly one year thereafter on 15.12.92. The insistence of the Insurance Company that the complainants must first pay to the repairer and then claim the amount from the Insurance Company appears to be totally unreasonable. This fact has been clearly brought out in the peculiar facts of the present case where the complainants could not afford to pay to the repairers from their own pocket. The idea of a request for making the payment on account was to save time as the truck was ready for delivery after repairs on 17.12.91 and it had to remain standing in the repairer''s garage for more than one year from 17.12.91 to 22.12.92 only because the Insurance Company was dealing with the urgent request of the complainants to make on account payment. What was required was that the Insurance Company should have taken action without any delay and made the payment so as to avoid loss to the complainants on two counts, namely, loss in earning and interest liability of the Bank amounting against them. In our view, this clearly constitutes deficiency. In may be added here that the report dated 21.12.91 of Mr. B.K. Rahan had already been received and it was not a case where the Insurance Company might have been waiting for the report of the Surveyor. The fact that the truck had been" purchased by the complainants on the basis of a term loan advanced by the Nainital Bank Ltd. was very well within the knowledge of the Insurance Company as the insurance policy clearly records this fact. The complainants were incurring interest liability @ 20.25% with quarterly rests. On careful perusal of the report submitted by B.K. Rahan, it is seen that he had recommended settlement of the claim for Rs. 1,78,288.08 and he had made deduction on account of depreciation as well as on account of Policy Clauses. It has not been explained to us on what grounds was the recommended amount of Rs. 1,78,288.08 was not acceptable. No acceptable reason has been furnished by the Insurance Company for applying a cut of a sizable amount of Rs. 36,988/- from the amount worked out by the Surveyor. The Surveyor had in his report dealt with each and every part repaired or replaced and we see no reason why the amount should have been arbitrarily reduced. In order to make good the deficiency, the Insurance Company shall pay the following amounts: (a) Rs. 36,988/- being the difference between the amount recommended in the Surveyor''s report for detailed reasons given therein and the amount arbitrarily fixed by the Insurance Company. (b) Interest @ 12% per annum of Rs. 86,488/- which amount should have been paid when the truck was ready for delivery on 17.12.91, part of which, namely, Rs. 49.500/- was paid on 15.12.92 and the balance has not yet been paid. Interest on the said amount to the extent of Rs. 49,500/- directed above shall cease from 16.12.92 the balance interest is, however, payable in terms of the above directions till date of payment.

(c) In addition to the interest, the opposite party shall further pay Rs. 10,000/-

 

on account of loss suffered by the complainant by the deficiency in service and mental agony. (d) Rs. 5,000/- as costs of the present proceedings.

Appeal disposed of.

 