(1999) 03 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

SANGAT SINGH CHAUHAN APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Citation : 1999 2 CPJ 12

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Dismissed

Judgement

1. ORDER

2. THE complainant has prayed that no interest be charged on the outstanding loan amount with effect from 27.7.1992 and Rs. 10,000/- for expenses incurred at heavy rate of interest on loan raised for repair of the vehicle. This relief is claimed against opposite party No. 1, State Bank of India. Against opposite party No. 2, THE New India Assurance Company Ltd., a relief of damage of Rs. 1,33,330.50 and Rs. 17,500/- has been claimed along with interest at the bank rate from 11.9.1992. He has also claimed damages on account of inconvenience, harassment and cost of litigation. THE facts of the case, in brief, are as under : The complainant is owner of Truck No. UGA-9371. It was financed by opposite party No. 1, State Bank of India. This truck was comprehensively insured with opposite party No. 2, The New India Assurance Company Ltd. Initial insurance was done in the year 1985 and there was no claim under this policy till June, 1992. Thereafter it was renewed from 30 June, 1992 to29 June, 1993 and a cover note was issued. The complete policy of the insurance was not sent to the complainant but only certificate of insurance was provided. The said truck met with an accident on 26 July, 1992. As a result of this, the truck had fallen on the houses of three villagers damaging their houses. The persons concerned had to be pacified by paying them Rs. 17,500/-, otherwise those villagers would have caused total loss to the truck. The complainant is entitled to recover this amount from the Insurance Company.

Of this incident, First Information Report was lodged and opposite party No. 2, Insurance Company, was intimated in writing on 27.7.1992. Insurance Company arranged for the Spot Survey of the accidented truck and the damage to the truck was noted as well as damage to the houses of other persons. By letter dated 10th August, 1992 the claimant requested for the final settlement of the claim. Thereafter a final survey was done by Sri B.B. Garg. The Surveyor wrote a letter dated 31.8.1992 asking for certain documents required by him. These were supplied to him for which he did not issue any receipt. The Surveyor started harassing the complainant by calling him several times for illegal bargaining for himself and the officers of the Insurance Company. The complainant refused and resisted all such attempts. When the claim was not settled in due time, the claimant raised loans on exorbitant rates of interest and got the truck repaired. Even letters and reminders issued by the complainant to the Insurance Company was not acknowledged. Thereafter a registered letter was sent to the opposite party by the complainant, copies of which have been filed as Annexures 13 & 14. The estimate of damages amounting to Rs. 1,33,330.50. was submitted to the Insurance Company along with demand of a sum of Rs. 17,500/- which was paid to the third parties for minimising the loss. All the documents required by the Surveyor were also delivered. Opposite party No. 1 started troubling the complainant for payment of the loan which he could not do on account of accident of the truck Thereafter, on 13 February, 1993 the complainant received a letter dated 1.2.1993 from the Insurance Company informing the complainant that the claim has been settled at Rs. 42,883.11, a copy of which is enclosed as Annexure 16. This letter does not give the details as to how this amount has been arrived at. The claimant want that the claim should be settled on the basis of repairs made by the complainant.

3. THE opposite parties have contested the claim of the complainant, State Bank of India, opposite party No. 1, had admitted having given loan to the complainant. It is alleged that upto 31 March, 1993 the total loan liability of the complainant was Rs. 78,556,45. THE vehicle, which had been registered, with the finance of Bank, had to be compulsorily insured. As far as Bank is concerned, there is no deficiency in services and no damages are liable to be paid by them. The opposite party No. 2, Insurance Company, had admitted the accident of the vehicle and lodging of the claim. The Spot Surveyor recorded the statement of those persons whose houses were damaged. They have not accepted that any amount was paid to them by the complainant. No receipt etc. was given to the Surveyor in support of the claim made by the complainant of having paid the amount. The claim could not be settled on account of the fact that the chassis number of the vehicle as given in the chassis of the vehicle and the survey report were not the same. The second Surveyor was appointed for valuation of the damages caused to the truck. Insurance Company asked the complainant to complete the formalities but they were not done. Route permit was not submitted to any of the Surveyors. It is wrong to say that there was delay in the settlement of the claim as alleged by the complainant. It has also been alleged that according to the repairer of the truck, the amount of repairs of Rs.

1,33,330.50 could not have been spent. The second Surveyor after considering the relevant facts, allowed Rs. 42,483,11. claim.

4. IN their application, the complainant has alleged that the INsurance Company took several opportunities to file their version of the case but the same was not filed by them. Lastly the Commission gave time for filing written statement till 24.2.1994. Even on this date opposite party No. 2 could not file written statement. Hon''ble Forum ordered that opposite party No. 2 should provide copy of written statement with cost of Rs. 250/-, but the same has not been paid so far and the written statement was filed after due date. According to the complainant, third party loss is covered under the policy. The statement of third parties, which were recorded by the INsurance Company, have been suppressed and have not been filed before this Commission as part of the evidence. The second Surveyor had delayed the filing of the report for a very long time and took 65 days in submitting the same. No survey report was filed by the INsurance Company till 21.12.1992. The report is fabricated 1and concocted by the second Surveyor. All the documents which have been asked for by the Surveyor or the opposite party were not submitted till date. The intention of the staff of INsurance Company was malicious from the very beginning. We have heard learned Counsel for the parties. Learned Counsel for the complainant has argued that after the accident which took place on 26.7.1992a written claim was submitted to the Insurance Company and the Company was also informed of this fact. The first question which has to be considered in this case is whether any loss was caused to the house on account of the accident and whether any payment has been made to those persons whose houses were damaged or not. As a matter of fact, this is admitted that the damage was done to the houses of three persons on account of falling of truck on their houses. In the final survey report dated 1.7.1992, this fact is clearly mentioned that the boundary wall of a house and as well as the cattles sheds which were built in Village Seogi got damaged in this accident. Along with this, in the survey report one more fact is mentioned that while the truck body was being taken out from the deep ravine styeneny of the truck got detached from its hanger and rolled and impacted and pierced into the outer wall of the house belonging to Shri Kalam Singh, and body of the truck had fallen on cattle sheds belonging to Shri Bhopa Singh and damaged during the accident. From the report itself the fact is apparent that the damage has been caused to cattle sheds and the houses of third parties by fall of the truck after the accident. Now as regards payment made to these persons amounting to Rs. 17,500/- complainant has filed copies of receipts showing amounts paid to them. The receipts issued by Sri Bhola Singh shows that a sum of Rs. 5,000/- was paid to him on account of damages. Similarly a sum of Rs. 5,000/- was paid to one Sri Bhattu Singh and a sum of Rs. 7,500/ was paid to one Kalam Singh. Thus these receipts goes to prove that the amounts have been paid to these persons whose houses were damaged. All these receipts are dated 6.8.1992. The contention of complainant is that the amount had to be paid to these persons on account of saving the truck from total loss from the persons

whose property were damaged. This statement can be safely relied upon because if the amount of compensation would not have been paid for the damages caused to their building, then the villagers might have taken the recourse of damaging the vehicle or putting it to fire, which is the usual practice these days. In order to save the truck and to minimise the loss that would have been caused to the truck, the complainant had to pay this amount to those persons.

5. THE learned Counsel for opposite party No. 2, National Insurance Company, stated that the claimant had not mentioned in the claim form that the amount of Rs. 17,500/- was paid to the three persons whose property was damaged after the accident had taken place and the truck fell into the deep ravine. THEre is no evidence on record to suggest that the claimant had not claimed this amount in the claim put forward by him before the Insurance Company. Had it been so, the Insurance Company would have definitely filed the claim form submitted by the claimant. Moreover, it was also the duty of the Company to have enquired about the amount from the claimant. THE Surveyor, in his report, has specifically mentioned that at the time of survey, it came to his knowledge that the boundary wall of a house as well as the cattle shed which was built in the village were damaged too in this accident. Thus when this report was submitted to the Insurance Company, the Insurance Company had the knowledge that the houses were damaged for which it is natural that the parties must have demanded amount to compensate the damages. THE Insurance Company could have demanded receipts if the same were not supplied by the claimant. THE claimant had specifically mentioned this fact in the complaint and the evidence but it has been alleged that the payment was not made. It has also been mentioned in para 4 of the replication by the claimant that statements of third parties who had suffered these damages, were recorded by the Insurance Company, but these statements have not been produced before the Forum to show that no payment were ever demanded by them or it was not made. Thus in view of these facts, we believe the statement of the complainant, and hold that the sum of Rs. 17,500/- was paid by the complainant to those persons whose buildings were damaged.

6. THE next item relates to the compensation which has been challenged by the opposite party No. 2, the Insurance Company. By letter dated 21.8.1993 the Insurance Company had informed the complainant for payment of damages to the tune of Rs. 42,883.11 against the claim of Rs. 1,33,330.50 as damages to the truck and Rs : 17,500/-, the amount paid to the persons whose houses were damaged. We have pursued the second report of the Surveyor by which the damage amount which had been arrived. This report had been filed along with evidence by the Insurance Company. It had mentioned a total amount of claim made by the complainant which includes the labour cost and the cost of the spare parts. While the labour cost has been arrived at Rs. 41,225.00 and spare parts cost has been arrived at Rs. 4,978.12 after making depreciation 40% and 50% salvage value has been taken at Rs. 400/ Final figure of Rs. 42,483.11 has been arrived at. In the present case it would be seen that the vehicle was of 1985 model which fact is apparent from the date of registration. According to

learned Counsel for the Insurance Company route permit was not supplied by the Insurance Company. There is no document on record to show that the route permit was ever demanded by the Insurance Company. As a matter of fact the complainant has alleged that the documents were supplied to the Surveyor but he had not issued the receipt. Thus we do not find any reason to disbelieve this statement of the claimant. The licence and the permit were also endorsed for operation in the hill area. As a matter of fact, the claim had been lodged in time. The first survey was also done quickly. After the second survey was done, about two months time was taken for submitting the report. Why this delay was caused has not been satisfactorily explained by the Insurance Company. It cannot be said that the complainant did not co-operate with the Insurance Company and did not supply the basic documents required by the opposite party No. 1, when there was delay in settling the claim, the claimant took loan from the State Bank of India and got the truck repaired. According to the learned Counsel for the complainant, the complainant was in need of money on account of pressure put up by the State Bank. Therefore, he got the truck repaired and spent a sum of Rs. 25,850/- in getting the truck repaired. He has also given the details of all these repairs along with his rejoinder affidavit. It cannot be held that if the repairs of the vehicle were got done by the complainant then the amount spent on repairs would not be payable to the complainant by opposite party No. 2 in order to settle the claim made by him.

In the case of New India Assurance Co. Ltd. v. S.K. Pruthi, III (1994) CPJ 5 (NC), the decision of the Apex Court was relieved upon in order to show that the repair is the liability of the Insurance Company. The decision of the Apex Court was relied upon in the case of N.R. Srinivasa Iyer v. New India Assurance Company Ltd., (1983) AIR 899. Remarks given by the Court have been reproduced. They are also reproduced for the sake of convenience : "The insurer may at its option either repair, reinstate or replace the motor car once the car is damaged in accident. The obligation to repair to the damaged car arose under the Contract of Insurance. The insurer had absolute discretion on either to repair, reinstate or replace the motor car. When the insurer has the option to replace the motorcar, it can take over the damaged car and the insured is bound to submit the same. If the insurer on the other hand exercises the option to repair the car, it is entitled not merely to choose the repairer but also to determine the charges for repairs to be negotiated and settled between the insurer and the repairer and the insured has hardly anything to do with it."

This shows that the insurer had the discretion to repair the vehicle or replace the same. In case of B.V. Nagaraju v. Oriental Insurance Co. Ltd., II (1996) CPJ 28 (SC), the Hon''ble Apex Court while considering the terms of insurance policy, relied upon the judgment in the case of Suissee Atlantique Societed Armement Maritime S.A. v. N.V. Rootterdamsche Kolen Centrale, 1967 (1) AC 361. The Hon''ble Supreme Court relied upon the following words : "Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract." In case of Vinod Kumar

Nagrath v. Oriental Insurance Company, I (1996) CPJ 125 (NC), it was observed that the assessment of loss is the entire function of the Insurance Company and the Surveyor and the complainant cannot be compelled to accept the claim as argued by the Insurance Company and the Surveyor. It was further held that if the insured is not available for settlement of that loss, then the Insurance Company cannot take any advantage.

7. IN the present case, the complainant had specifically alleged in the affidavit that the second Surveyor several times called him for certain purposes but he did not oblige the Surveyor and the report was submitted late. The INsurance Company could not justify as to why the Surveyor took about two months time to settle the claim. If the settlement of the claim is based on the delay committed by the INsurance Company, it has to pay the damage, as it amounts to deficiency in service. The second Surveyor has not, in his report, given the prevailing prices of the parts which he had taken in his report. He has also not taken any estimate from any repairer about the amount to be spent on the repair of the vehicle which was damaged. Spot survey report mentions that prevailing market rate/trend in regard to repair of such nature and extent of damages which factually suffered by the vehicle in the state mishap were considered. But the actual price of the parts which were to be replaced have not been taken from any authorised dealer or from the market and submitted along with report for consideration of the Commission. Similarly no estimate of the bill of the labour has been submitted alongwith the report in order to show that the labour charges taken by the Surveyor are justified. The Surveyor has also not taken any pains to correctly assess the money spent by the claimant on repair of the truck. The Surveyor should have item-wise considered and should have arrived at a judgment as to what was the correct amount which was spent on the repair of the truck by the complainant. The report of the Surveyor merely showed the estimated amount. This estimate is not based on any facts to justify the amount taken by it.

8. THE copy of the policy has also not been filed which will show as to how much percentage of depreciation has to be deducted. THE vehicle was of 1985 make and it met with accident in the year 1992, i.e. after 7 years of the date of registration. THE depreciation has been taken at 50% and 40% by the Surveyor. While learned Counsel for the complainant has argued that the depreciation should be taken at 40%. In absence of policy of insurance, the depreciation is taken as 40% only. No depreciation is to be deducted from labour charges. THE Surveyor has also deducted depreciation of sales tax paid. This tax is not to be included in the depreciation amount, because the tax has already been paid and no depreciation on account of the tax takes place. Thus we find that there is no reason for us to disbelieve the estimate submitted by the complainant for getting the truck repaired. Thus we find that the claimant is entitled to a claim of Rs. 1,43,350/- in all against the amount claimed. A perusal of the order sheet dated 24.2.1994 shows that Rs. 250/- as cost was awarded for filing of written statement but that cost has not been paid by the opposite party so far. Hence

this cost is also liable to be paid. ORDER The claim for Rs. 1,43,350/- is allowed. Thus the claim petition is allowed partly as mentioned above. The claimant is also entitled for damages in the form of interest at the rate of 18% p.a. till the date of payment for the delayed period. A sum of Rs. 5,000/- on account of harassment and a sum of Rs. 3,000/- by way of cost is also payable to the complainant by the opposite party No. 2.

9. UNPAID cost of Rs. 250/- as mentioned in the earlier part of the judgment shall also be payable by the opposite party No. 2 to the complainant.

10. THE compliance of this order shall be made within two months from the date of the order. THE claim against State Bank of India, opposite party No. 1, is dismissed as not pressed. Let copy of this order be made available to the parties ass per rules. Complaint allowed with costs.

