(2005) 10 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Sanjeev Tiwari APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 13-10-2005

Acts Referred:

Citation : 2005 4 CPJ 578

Hon'ble Judges : R.C.KATHURIA , BANARSI DAS J.

Judgement

1. THIS appeal is directed against the order dated 21.11.2002 passed by District Forum, Gurgaon in Complaint Case No. 451 dated 14.3.2002, whereby while accepting the complaint against the respondent -opposite parties, the appellant -complainant has been awarded a compensation amount of Rs. 40,000 along with interest @ 9% per annum which shall be payable after three months from the date of accident till the date of payment.

2. THE facts as can be gathered from the record briefly stated are that Sanjeev Tiwari - complainant had purchased a new motor -cycle LML Adreno (silver colour) bearing No. HR -26M -7542 from M/s. Premier Auto Enterprises for Rs. 45,180 and insured the same for Rs. 45,200 on 26.2.2001 with the opposite party No. 4 vide policy No. 117565. On 22.6.2001 the complainant after locking the motor cycle parked in front of the office of opposite party No. 4 and went inside the office and when he returned after 10 minutes, he left his motor cycle stolen. F.I.R No. 417 was registered with City Police Station, Gurgaon on 23.6.2001. Thereafter the complainant submitted all the relevant documents including the FIR with the opposite party No. 4 and untraced report was also submitted on 3.9.2001. On 17.8.2001 urveyor - Khetarpal was deputed but still the claim was not settled. Faced by these circumstances, the complainant invoked the jurisdiction of the District Forum, Gurgaon with the prayer for payment of Rs. 45,180 along with interest @ 2% per month from the date it became due till the date of payment. In addition, Rs. 50,000 claimed as damages on account of mental agony and harassment and Rs. 2,200 as expenses for sending legal notices to the opposite parties. On notice, opposite party Nos. 1 to

4 resisted the complaint. It was pleaded by them that at the time of theft of the vehicle its market value was Rs. 38,000 to Rs. 40,900. It was further stated that the complainant has not completed the formalities by submitting the requisite documents as per report of the Surveyor and at the same time, it was stated that a sum of Rs. 39,000 was offered to the complainant as damages but it was not accepted by him. They repudiated the claim on the ground that the vehicle was stolen due to the negligence of the complainant as he left the motor cycle unlocked. Rest of the allegations made by the complainant were denied.

3. ON appraisal of the pleadings of the parties and evidence adduced on record, the District Forum accepted the complaint vide its order dated 21.11.2002 and issued directions as noticed earlier. Thereafter the present appeal has been filed by the complainant seeking relief claimed in the complaint filed by him.

4. WE have heard the learned Counsel representing the parties at length. It is manifest from the record that the vehicle in question was purchased by the complainant on 26.2.2001 for Rs. 45,180. The theft of the said vehicle had taken place on 22.6.2001 within a period of four months. It is also not disputed by the appellant that it was insured for a sum of Rs. 45,200. The theft of the vehicle was also proved on the record and untraced report has also been placed on the file. Therefore, the stand of the appellant that there was negligence on the part of the complainant having left the vehicle unlocked, as such, cannot be accepted. With regard to the compensation amount, the opposite party has agreed to pay Rs. 39,000 on the ground that it is the market value of the vehicle as per report of the Surveyor on the date of commission of theft. The stand of the opposite party was not accepted by the District Forum and for the reason market value of the vehicle in question was assessed at Rs. 40,000 which was ordered to be paid to the complainant.

5. THE stand taken from the side of the appellant is that the sum assured of the vehicle being Rs. 45,180, the District Forum had committed patent illegality in denying this claim to the complainant. On the other hand, grievance was made from the side of the respondent is that even the necessary documents called for were not submitted by the appellant which dis -entitled him to claim the sum assured.

6. IN order to decide the controversy necessarily Clause 3 of the policy has to be taken into account which provides as under: ''The company may at its own option repair, reinstate, or replace the motor cycle or any part thereof and/or its accessories or may pay in cash the amount of the loss or damage and the liability of the company shall not exceed the actual value of the part damaged of lost less depreciation plus the reasonable cost of fitting and shall in no case exceed the insureds estimate of the value of the motor cycle (including accessories thereon) as specified in the schedule or the value of the motor cycle (including accessories thereon) at the time of the loss or damage whichever is less.''

In terms of the above clause, estimated value at the time the new motor -cycle was insured was admittedly Rs. 45,180. It is a case of total loss because after the theft of the vehicle was committed and untraced report has been filed. The Assurance Company is duty bound to make the payment of the assured sum because in this case it cannot be ignored that the theft has taken place within 4 months of the insurance. This principle has been well -settled as would be noticed from the judgments titled as Vishan Narain v. Oriental Insurance Company Ltd., 2002 ACJ 1833; New India Assurance Company Ltd. v. Ajay Kumar, I (2001) CPJ 175; Shiv Shakti Dairy (P) Ltd. v. National Insurance Co. Ltd., II (1999) CPJ 661 and National Insurance Company Limited v. Rajesh Tripathi, II (1999) CPJ 512. In view of the position of law explained above, the stand taken from the side of the appellant has to be accepted and it is ordered that the complainant shall be entitled to receive Rs. 45,180 for which the vehicle in question was insured with the respondent being the case of total loss on account of theft of the vehicle.

7. FOR the aforesaid reasons, we accept the appeal and while modifying the order of the District Forum, it is directed that the respondent shall pay Rs. 45,180 along with interest @ 9% per annum after three months of the submission of the Surveyors report till the date of payment.