(2007) 09 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

SHASHIBALA GAHLOT APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Citation : 2008 2 CPJ 311

Hon'ble Judges : Neerja Singh , J.P.Vyas J.

Final Decision : Appeal allowed

Judgement

1. -THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 against the order dated 14.9.2006 of the District Forum, Guna passed in C.C. No. 281/2006, whereby the application seeking direction for payment of Rs. 2,80,000 as cost of the stolen vehicle and Rs. 5,000 as damages from the respondent was rejected.

2. THE case in brief is that in the intervening night of 13.7.2004 and 14.7.2004, vehicle Mahindra Marshal No. UP-93 G-3079 belonging to the appellant was stolen away about which a formal FIR was lodged in the police station. She informed the respondent Insurance Company about it. THE latter sent for the report of the Surveyor and asked the appellant to produce F.R. sanctioned by the competent Court. THE appellant sought time to do so, but the respondent allegedly closed the claim case for want of F.R. THE appellant then filed a complaint on 1.7.2006 before the District Forum, Guna praying that the respondent be directed to pay Rs. 2,80,000 as cost of the said vehicle and Rs. 5,000 as damages for the mental agony caused. After hearing both the parties and noting that there is no evidence to show that the copy of the FR sanctioned on 1.12.2005 was sent by the complainant to the opposite party or that the claim case has been closed by the opposite party, the complaint was rejected by the District Forum. This appeal is preferred against this order. The learned Counsel for both the parties were heard. The learned Counsel for the respondent stated that the respondent Insurance Company is willing to decide the claim case on the basis of market value of the stolen property as indicated in the report of the

Surveyor and sought time for the same. He alleged that the appellant despite reminders failed to send the copy of F.R., which was in fact the reason for claim not being settled so far. He also quoted decision of National Commission dated 16.3.2004 in First Appeal No. 7/2003, United India Insurance Co. Ltd., Morena v. M/s. Samrath Resorts Pvt. Ltd., as reported in 2004 (2) CPC 148. The learned Counsel for the appellant argued that the said F.R. had since been filed before the District Forum, the respondent should have decidd the claim of the appellant and that the District Forum had obviously erred in rejecting his application.

We have gone through the entire record of the District Forum. It is on record that the appellant duly informed the respondent company about the theft of the vehicle in question and on their query further intimated that F.R. would be available only after conclusion of the judicial process. During the course of proceedings before the District Forum, the F.R. sanctioned on 1.12.2005 was also produced by the appellant and we see no reason why the respondent did not take note of it and proceed immediately to settle the claim. The respondent as per policy document is legally bound to sanction the insured amount as the vehicle in question stood indemnified by it against loss and, therefore, it should also have pursued the case of F.R. On perusal of insurance papers, it is seen that the vehicle in question was insured on declared value of Rs. 2,14,950. The policy document also provides that IDV shall be treated as market value throughout the policy period without any further depreciation for the purpose of total loss. This Commission has also upheld this principle earlier in First Appeal No. 1495/2006, Krishna Kumar Shukla v. Oriental Insurance Company Limited, decided on 8.8.2007. The facts of the case cited by learned Counsel for the respondent are not applicable in the instant case as there it was a case of accident, whereas this is a case of total loss as a result of theft. We are, therefore, of the considered view that the appellant is entitled to receive the entire amount of IDV viz., Rs. 2,14,950 from the respondent.

3. THE appeal is, therefore, allowed and the impugned order is set aside. It is further ordered that the respondent shall immediately pay to the appellant the entire amount of IDV Rs. 2,14,950. Parties shall bear their own costs. Appeal allowed.

