(1999) 04 NCDRC CK 0113

In the National Consumer Disputes Redressal Commission

SIVASAKTHI DAIRY PRIVATE LIMITED APPELLANT

Vs

National Insurance Company Limited RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Citation : 1999 2 CPJ 661 : 1999 2 CPR 374

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Complaint disposed of

Judgement

1. THE complainant had purchased a new Ford Escort Car from the 3rd opposite party under the hire purchase agreement with one Ford Credit Kothak Mahindra Limited, on 12.3.1997. He insured the said car with the National Insurance Company 1st and 2nd opposite parties. During the currency of insurance on 30.5.1997 the car met with an accident in which one passenger died and the car was badly damaged. It was brought to the notice of the 3rd opposite party and it was requested to repair the car and the 3rd opposite party, according to the complainants assessed the value of the spare parts to be replaced at Rs. 4,81,216/- besides the labour and painting charges. It is further according to the complainants that they claimed compensation from the Insurance Company. But the Insurance Company deliberately failed and neglected to pay compensation. Due to inaction of the Insurance Company the car was lying continuously with the 3rd opposite party without effecting any repairs. THE 3rd opposite party had raised a debit note against the complainant towards demurrage charges @ Rs. 500/- per day. This was also informed to the Insurance Company by the complainant''s letter dated 26.8.1997 but it all was of no avail. THE further case of the complainant is that the Insurance Company had undertaken that they would indemnify the loss up to 100% if the age of the car is within 6 months. THE accident happened well within 6 months from the date of purchase. THE complainant sent a legal notice to the Insurance Company who sent a reply in which they had stated that they would compensate or indemnify only a meagre amount. THE complainant would state that because of the non-availability of the car he had to hire a vehicle for his use and thereby he had incurred a loss of Rs,

1,50,000/-. THE opposite parties not compensating the complainant amounted to deficiency in service. On these grounds the complaint has been filed for an award directing the Insurance Company to pay a sum of Rs. 5,56,216/- as compensation for the damage suffered by the car, and for Rs. 1,50,000/- as hire charges of other cars for use of the complainant and Rs. 500/- per day to be paid to the 3rd opposite party from 3.6.1997 till date of the finishing of the repair and further a sum of Rs. 1,000/- per day for hiring the car for the complainant''s use from the date of complaint.

2. THE 1st and 2nd opposite parties in their written version would contend that the estimate made by the 3rd opposite party is subject to scrutiny of an independent Surveyor. THEy also contend that on receipt of claim form, they appointed a Surveyor on 24.7.1997 itself to assess the damage and they secured a report. Immediately the Insurance Company had discussion with the complainant but he was not prepared for any mode of settlement. THE complainants have filed the complaint in the Commission only as an intimidatory tactics. THE complainant''s claim for hiring charges of other cars for his use is not maintainable since consequential loss cannot be claimed under the policy. Hence the complaint is liable to be dismissed. The 3rd opposite party filed a written version stating that the complaint is not maintainable as against them.

The point that arises for consideration is whether there was deficiency in service on the part of the 1st and 2nd opposite parties and if so what relief can be granted to the complainant.

3. POINT : It is not in dispute that the vehicle in question had been insured with the 1st and 2nd opposite parties and during the currency of the insurance the vehicle met with an accident. Therefore, there is no doubt that the Insurance Company is liable to pay compensation for damages resulted there from. The question is what is the quantum of compensation payable. According to the complainant as per the estimate made by the repairers the 3rd opposite party the total damage would be Rs. 5,56,216/-. This is disputed by the Insurance Company. The Insurance Company had appointed a Surveyor and he has filed a report Ex. B6 dated 12.12.1997. As per this report the net liability of the insurers is Rs. 2,92,044/-. During the calculation he had deducted a sum of Rs. 35,180/- as depreciation. But as per the conditions in the policy no depreciation shall be deducted if the age of the car is below 6 months. As above on the date of the accident the age of the car was not more than 6 months. Therefore, the depreciation made by the insurer cannot be accepted. If the said depreciation made is disallowed the total amount payable to the complainant by the Insurance Company would be Rs. 3,27,224/-. Otherwise we do not see any fault in the assessment made by the Surveyor. While so as per the repair charges estimated by the complainant''s repairers in their report dated 18.12.1997 for parts/body shell a claim of Rs. 1,23,078/- has been made. But in their report dated 16.9.1997 which is an earlier one the repair charges was mentioned as Rs. 1,81,778/-. This would show that it is difficult to rely on the estimates made by

the complainant''s repairers. In these circumstances, we hold that for the damages the Insurance Company shall pay the said sum of Rs. 3,27,224/- to the complainant. For the balance amount if the complainant still claims more amount, he could file a civil suit where he could prove it. As regards the other compensations claimed by the complainant namely the alleged expenditure for hiring other cars for his use and the 3rd opposite party''s claim of demurrage charges from the complainant, they are, if true, only consequential and hence they cannot be claimed from the insurers. In the insurance policy it is clearly mentioned that the Insurance Company shall not be liable to make any payment in respect of consequential loss, etc. Now, it is not in dispute that as stated in the written version the claim was first made on 22.7.1997. Normally at least 3 months'' time must be given for the Insurance Company to process the claim and make payments. Therefore, the Insurance Company should have made payments by 22.10.1997. A reading of the written version shows that according to the Insurance Company after the claim was made the complainants did not come for any settlement but it is not stated that they offered to pay any particular amount. Since no payment was made or offered it will be reasonable to hold that the Insurance Company shall pay interest from 23.10.1997. As per the order of the Supreme Court in United India Insurance Company Limited v. M.K.J. Corporation, III (1996) CPJ 8 (SC), the interest payable would be 12% p.a. We, therefore, hold that the Insurance Company shall pay interest @ 12% p.a. to the complainant on the said sum of Rs. 3,27,224/- from 23.10.1997. In the result, therefore, we pass an award directing the 1st and 2nd opposite parties to pay to the complainant a sum of Rs. 3,27,224/- with interest thereon @ 12% p.a. from 23.10.1997 till payment. We give liberty to the complainant to file a suit if he so desires for any excess claim. We also order that the Insurance Company shall pay a sum of Rs. 2,000/- towards costs of this proceeding. We further order that the said sums shall be paid within 3 months from today. Complaint disposed of.