(1996) 12 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Sohan Lal Shringi APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Citation : 1996 3 CPJ 571

Hon'ble Judges : N.C.SHARMA , FIROZA BANO , SUBHASH PUROHIT J.

Judgement

1. THIS appeal has been filed by the complainant against the order of District Forum, Bundi dated 2.8.94 dismissing the Complaint Case No. 219/1993 filed by the complainant on the ground that the same was not maintainable under the Consumer Protection Act, 1986 and if the complainant so wished, he can file a regular civil suit in a Civil Court for appropriate relief.

2. FACTS leading to the filing of this appeal are that the complainant was registered owner of an Ambassador Car bearing registration No. RJG 8535. This Ambassador car was insured with the United India Insurance Company Limited under a Cover Note No. 516206 for the period from 23.12.91 to 22.12.92. According to the complainant, the insured car met with an accident on 28.9.92 and a First Information Report of the accident was lodged at Police Station, Talera. The complainant had informed of the accident to the branch office of the opposite party at Bundi. The complainant stated that the opposite party got a spot survey made and after the spot survey, according to the directions of the branch office of the Insurance Company, the car was brought to Kota at the shop of Meratwal Motors. The complainant alleged that the opposite party then appointed another Surveyor who came to Kota and inspected the accidented car at the premises of Meratwal Motors. The complainant alleges that he told the owner of the Meratwal Motors to prepare estimate regarding the loss sustained by the car due to the accident, but the second Surveyor told to the complainant to wait for the estimate. M/s. Meratwal Motors, therefore, did not give to the complainant the estimate of replacement and repairs. The second Surveyor asked the complainant to come to his office at Jaipur. The complainant further

alleged that the second Surveyor charged the fees of Rs. 3,000/ - from the complainant for getting the estimate prepared. The complainant requested the opposite party to get the estimate prepared several times, but no attention was paid to the request. The complainant, therefore, intended to bring the accidented car to Jaipur for repairs and he was permitted to do so by the opposite party Insurance Company. Accordingly, the complainant brought the car after getting it toed on 27.11.92 at the premises of Western Indian States Motor Company, M.I. Road, Jaipur. The complainant incurred an expenditure of Rs. 2,200/ - in bringing the car to Jaipur. The complainant alleged that the opposite party did not want to settle his claim. It took no steps to get the estimate pre pared and to obtain the report of the Surveyor. After much delay, an estimate was got prepared from Western Indian States, Motor Company and the complainant submitted to the opposite party the estimate papers on 3.12.92. The complainant stated that he had purchased the Ambassador Car because he had fracture in spinal cord and therefore, he could not travel by bus as the car had met with accident, the complainant had visited Kota and Jaipur by taxi several times and he had to incur a total expenditure of Rs. 10,000/ - as taxi charges. The complainant further alleged that the accidented car was lying at the premises of Western Indian States Motor Company without the same being repaired by the said company because the opposite party had not issued instructions for getting the car repaired. According to the opposite party, Western Indian States Motor Co. had demanded from him an amount of Rs. 50,000/ - as advance for carrying out the repairs. The opposite party had not made any payment to the complainant. It was further alleged that the Western Indian States Motor Company had informed the complainant that it would charge rent @ 100/ - per day with respect to the period during which the car remains lying at their premises without directions for repairs. Due to the opposite party not permitting the repairs of the car, the complainant had been deprived of the use of the car and he had also to pay interest to the Bank. The complainant further alleged that Western Indian States Motor Company had given estimate of an amount of Rs. 1,13,131.84 without dismantling the car. The complainant stated that if after dismantling the car any further damage was found, the complainant would realise it from the Insurance Company within policy limit. As the claim of the complainant was not settled, he sent a notice to the opposite party but despite the same the claim was not settled. The complainant, therefore, prayed that the opposite party may be directed to pay to the complainant the insured amount of Rs. 1,51,000/ -. Apart from that, the complainant claimed Rs. 50,000/ - as compensation for deficiency in service. He further claimed Rs. 30,000/ - as expenses for getting the car standing in garage. Rs. ,000/ - with respect to estimate charges, Rs. 10,000/ - for travelling expenses to Jaipur and Kota, Rs. 2,200/ - as toeing charges and Rs. 30,000/ - as compensation arising due to non -use of the car by the complainant. Thus, the total claim filed by the complainant was for Rs. 2,76,200/ -. 3. The opposite party filed a version before the District Forum. In the version, the opposite party raised premiliary objection that there was an arbitration clause in the insurance policy and the complainant should have first resorted to arbitration and the complaint under Consumer Protection Act, 1986 was not maintainable. The opposite party admitted that the complainant was registered owner of the Ambassador car which had been financed to him by Bank of Baroda, Branch Nainwa. It was admitted that the car was insured with the opposite party. The opposite party stated that no accident took place on 28.9.92 although the complainant had sent an intimation to the opposite party on 29.9.92 to the effect that the car had met with an accident. The Insurance Company immediately appointed Shri T.C. Nuwal as spot Surveyor. Thereafter the complainant, of his own accord, brought the car at the premises of Meratwal Motors. The opposite party had not given any directions to the complainant to bring the car to the workshop of Meratwal Motors. According to the opposite party, according to rules, the complainant should have immediately submitted the estimate of the damage to the car so that the loss could be assessed. However, the opposite party despite being required in writing again and again did not submit the estimate. The Surveyor and Loss Assessor was to be appointed after receipt of the estimate. On account of non -receipt of the estimate, the Surveyor could not be appointed earlier. Yet the opposite party Insurance Company on 21.10.92 appointed Shri S.K. Malhotra of Jaipur as final Surveyor. Shri Malhotra visited Kota on 21/22.10.92 and inspected the car. Mr. Malhotra asked the Meratwal Motors to give him the estimate, but the said concern told that the owner of the car had already obtained the estimate. Shri S.K. Malhotra told the persons of Meratwal Motors that he may inform the owner of the car to send the estimate at Jaipur so that after examining the estimate, loss could be assessed. Thereafter the complainant made an application to the opposite party that Meratwat Motors was not giving estimates and, therefore, he wanted the car to be repaired at Jaipur. The opposite party, for the purpose of giving to the complainant complete facility, gave the required permission. Thereupon the complainant brought the car to the workshop of Western Indian States Motor, Company M.I. Road, Jaipur. The opposite party further stated that upon Western Indian States Motor Company furnishing the insured the estimate, Shri Malhotra went to the premises of the said company and discussed the matter with them. People of the said company told the Surveyor that first of all body shell of the car would be repaired and only after that the internal damage in the car can be assessed. The said company required the complainant to deposit advance amount for repair of the body shell of the car. However, the complainant despite being asked by Western Indian States Motor Company, and by the Surveyor did not deposit the advance amount. Due to this reason, it was not possible to find out the actual internal damage sustained by the car. The Surveyor Shri Malhotra, therefore, assessed the loss on the basis of estimate which had been given by Western Indian States Motor Company and he assessed the loss at Rs. 55,060/ -. On the basis of the report of Shri Malhotra, the opposite party made to the complainant an offer to pay Rs. 55,060/ - which was accepted by the complainant. The opposite party, according to its rules, asked the complainant to submit the cash memo of repairing, etc. so that opposite party may get re -inspection of the repaired car. However, the complainant did not fulfil the required formalities and therefore, the amount assessed by the Surveyor could not be paid to the complainant and he was not entitled to it. It was, therefore, said that there was no deficiency in service on the part of the opposite party. The opposite party denied for want of knowledge that the complainant had visited Jaipur and Kota by taxi. The opposite party also stated that there was no question of permission or direction from the opposite party to get the car repaired. It was also pleaded that the complainant himself did not deposit the advance amount required by the Western Indian States Motor Company for repair of the body shell and for that reason the car could not be repaired. Had the complainant got the car repaired, it would have not unnecessary remained lying at the workshop of Western Indian States Motor Company. The opposite party was not responsible for that. The opposite party also said that so far it was concerned, it had settled the claim of the complainant and it was the complainant who had to fulfil the formalities. As the opposite party had settled the claim for Rs. 55,060/ - and the complainant had accepted it, the District Forum did not hold jurisdiction to allow any further amount with respect to the damage to the car under the provisions of Consumer Protection Act, 1986.

3. THE District Forum, Bundi after discussing the evidence adduced by the parties in the case stated that the complainants case as set forth in the complaint that he had paid Rs. 3,000/ -as fees to the second Surveyor for getting the estimate prepared could not be believed, because he had change that statement in his cross -examination on the affidavit. The District Forum also held that a document Ex. 4 produced in the case by the opposite party bore the signatures of the complainant whereby he had agreed to accept Rs. 55,060/ - for settlement of the claim. The acceptance given by the complainant for signing Ex. 4 was held by the Forum to be unreliable. The District Forum also held that from the affidavit of Ramesh Sharma and S.K. Malhotra and from the photo copy of the document produced in the case, it cannot be held that the opposite party had shown any indifference in the settlement of the claim. It was, therefore, held that there was no deficiency in service on the part of the opposite party. The District Forum further held that the complainant had raised various type of issues with respect to the repair of the car and those issues cannot be properly decided without framing issues and without taking elaborate evidence. It further held that the various issues raised can only be better decided by a Civil Court in a regularly instituted civil suit. As no deficiency in service was established by the complainant, the District Forum held that the complaint was not maintainable in District Forum under Consumer Protection Act, 1986. On the basis of the above findings, the District Forum dismissed the complaint leaving it upon the complainant to pursue his remedy in a Civil Court by means of a civil suit. Aggrieved by this order, the complainant has filed this appeal. We have heard the learned Counsel appearing for the parties and have gone through the record of the District Forum.

4. IT was contended by the learned Counsel for the appellant that the complainant had purchased the Ambassador car by taking loan from the Bank.

Due to this reason, the complainant got body shell of the car examined by paying the necessary charges. It is submitted that the Insurance Company directed that the Surveyor will assess the loss after the car was dismantled. As the complainant was a poor person, it was not possible for him to pay the advance amount to M/s. Western Indian States Motor Company. It was contended that the opposite party was liable to indemnify the complainant of all the damages sustained by the car. The dealer M/s. Western Indian States Motor Company had given an estimate of Rs. 1,13,131.84.The said dealer had noted in the estimate that the damages were not visible which would be calculated after dismantling of car. It was, therefore, submitted that the District Forum committed error in ignoring the estimate which had been given by M/s. Western Indian States Motor Company, Jaipur. It was also contended that the District Forum was wrong in directing the complainant to avail of the remedy of filing civil suit. Ambassador car bearing registration No. 8535 had been financed to the complainant by Bank of Baroda. According to the complainant, a Cover Note No. GR/9 -516206 had been issued by the Insurance Company, while, according to the opposite party, Bank of Baroda had, on behalf of the complainant, got the car insured with respect to the period from 23.12.91 to 22.12.92 and it had issued an Insurance Policy No. 140602/ 22/1/1461/91 -92 in this behalf.

5. UPON receipt of intimation of the accident, the Insurance Company had appointed Trilok Chand Nuwal for spot survey on 29.9.92 and Shri Nuwal gave his spot survey report on 30.9.92. At the time of spot survey, the driver of the car explained to the Surveyor that he had started during late night hours on 28.8.92 from Kota to Nainwa. On way near the spot he noticed a truck approaching near. To give way, he steered to left, still the truck dashed through rugging the right front and inspite of efforts it further dashed on another truck, parked on left of the road.

6. WHEN the Surveyor went to the spot, he found the accidented car lying at right side of another HTV in a severe damaged condition. He took photographs also, he noted following damages to the car: 1. Sheet Metals. -Left front penal, fender deshaped, dash board bent diagonally, front grill, bumper cracked/pressed on left end, wind screen frame bent out of shape, glass smashed. Roof too deeply dented on this side, left front/rear gates deshaped sheets folded, lock/ glass shifter bent. The left front door glasses smashed while that of rear gate was not broken Gates dealigned/ detatched, fittings uprooted. Chassis bent/ cracked at centre, left centre post also bent. Rear portion was unaffected while the right side gates visibly intact yet received a kind of dealignment - not getting closed properly, to be checked with extra care. The glasses/mirrors broken include wind screen, left front gate glass, inside broken include wind screen, left front gate glass, inside rear view mirror whereas those fitted on right rear side and left rear gate were safe. 2. Steering system -The steering col. bent, wheel shifted towards gate, which was intact, band in arms suspected. System to be received. 3. Instruments -Instruments were intact. The base penal bent diagonally. 4. Electricals -Battery make local was well set at place fastenedly

clamps not affected. Left hand lights, indicator destroyed. Wiper arms bent. Wiring cut/stressed at some places. 5. Cooling system -The radiator pushed inward, core cut by rotating fan blades on rear side. Water body be checked. The Top/Bottom Hose pipes cut/coerced. 6. Engine -The Engine shifted back with massive jerk, hitted on to dash board, found at inclined position -working be checked. 7. Transmission -The Gear shifter not operating smoothly, somewhat bent. 8. ABC Pedals -The control pedals operating hard, be checked.

Suspension -The front suspension especially on left affected, the wheels to be realigned. The tyre of left front wheel was cut on circumference. The insured car so badly damaged required extensive repairs, to be checked strictly with relevancy to inspect, if any other than above ones is represented at the time of final survey. 9. Here we may refer to certain conditions of the policy printed on the back of the policy produced by the opposite party before the District Forum, Bundi. Some of the relevant conditions are : (1) Notice shall be given in writing to the Company immediately upon the occurrence of any accident or loss or damage and thereafter the insured shall give all such information and assistance as the Company shall require. (4) The Company may at its own option repair, reinstate or replace the Motor Vehicle 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 parts damaged or lost less depreciation plus the reasonable cost of fitting and shall in no case exceed the insureds estimate of the value of the motor vehicle (including accessories thereon) as specified in the Schedule or the value of the motor vehicle (including accessories thereon) at the time of the loss or damage whichever is the less.

7. IN the present case, the complainant had given notice or intimation of the accident to the opposite party immediately after the occurrence of the accident. As per Condition No. 4 of the insurance policy, then the option was of the Insurance Company either to repair, reinstate or replace the motor vehicle or any part thereof and/or its accessories. The other option of the Insurance Company was to pay in cash the amount of the loss or damage subject to the limits mentioned in Condition No. 4. The Insurance Company had not exercised its option of repairing, reinstating or replacing the motor vehicle or any part thereof and/or its accessories. Then the Insurance Company was under an obligation to pay in cash the amount of the loss or damage subject to the limits mentioned in Condition No. 4.

8. IN the first instance, after spot survey, the car was taken to the workshop of Meratwal Motors, Kota. it appears from a letter marked Ex. 3 that the complainant had sent this letter on 26.11.92 to someone in the Insurance Company that the car in question was lying in Kota. It was mentioned that the dealer i.e. Meratwal Motors, Kota had so far not given the estimate. Complainant wrote that he was now sending the car to Jaipur and will bring the estimate from Jaipur and would get the car also repaired at Jaipur. The Asstt. Branch Manager of the Insurance Company (Shri Ramesh Sharma) then wrote a letter to the final

Surveyor Shri S.K. Malhotra on 26.11.92 that after considering the difficulties that were being faced in getting the car repaired at Kota, the Insurance Company has permitted the insured to get the car repaired at Jaipur. Shri S.K. Malhotra was directed that upon the insured contacting the Surveyor in connection with the survey, the Surveyor should re -inspect the vehicle at Jaipur and send his final report to the office of the Insurance Company immediately. Complainants assertion in para 4 of the complaint that Shri S.K. Malhotra Surveyor took from the complainant an amount of Rs. 3,000/ - as fees for getting the estimate prepared is not correct because in his cross -examination on his affidavit the complainant himself admitted that he had not given any amount of Rs. 3,000/ - to the Surveyor. On the other hand, the complainant stated that the Surveyor had demanded from him an amount of Rs. 10,000/ -. It was never the case of the complainant in his complaint or affidavit that the Surveyor had demanded from him Rs. 10,000/ -.

9. THE opposite party has produced photocopy of the departmental instructions of the Insurance Company relating to action to be taken after accident and procedural aspects. It is provided in it that ''after notification of the accident to the insurers the insured has to submit a detailed estimate of repairs from any repairers, of his choice''. The insurer generally accepts these repairers, but they may ask the insured to obtain estimate from another repairer if they so wish. On receipt of the estimate and claim form, the insurers appoint an independent automobile Surveyor to assess the loss. The Surveyor inspects the damaged vehicle, discusses the cost of repairs or replacement with the repairers and submits his report to the insurers.

10. IN the present case, the complainant had obtained estimate for the accidented car from Western Indian State Motors, Jaipur on 3.12.92 and had handed over the estimate to the Surveyor Shri S.K. Malhotra. M/s. Western Indian States Motor Company had given the estimate for accidented car amounting to Rs. 1,13,130.84. A note was added in the estimate to the effect that this estimate was non -visible - visible estimate can only be given after opening of body shell. Shri S.K. Malhotra gave his final survey report on 10.3.93. In his survey report Shri S.K. Malhotra inter alia stated as follows : ''I received Bundi Branch Managers letter dated 26.11.92 to contact M/s. Western Indian States Motor Company, Jaipur where the accidented vehicle was shifted and to conduct the final survey. I also received the spot survey report along with the above letter. I then received the repair estimate from Western Indian States Motors, Jaipur on 4.12.92 and other papers. I then discussed the matter with the repairer and the insured and whatever parts without dismantling could be decided were allowed and labour charges discussed. The car could not be dismantled in absence of deposit for the body shell. This also refers to my letter of 31.12.92 addressed to S.D.M. with a copy to Branch Manager and R.O. after discussion with Mr. Narsimba Rao, Dy. Manager. During discussions with Mr. Narsimba Rao, it was advised that this case may need investigation as the owner is a compounder and as per claim form two passengers were in the car who

sustained multiple head injuries and were admitted in Government Hospital out of which one occupant had served notice on the insured as told to me by the insured himself. Hence, the insurer to decide in the matter. Inspite of my repeated reminders to the insured the car was not dismantled. Under the instructions from Branch Manager, Bundi vide letter No. 1220 dated 18.1.93, I was advised to submit report on repair basis/cash loss basis. I advised the Branch Manager to settle the case of salvage value with the insured and advise me but received no confirmation and hence issuing this independent final survey report.''

11. THE Surveyor S.K. Mehrotra then made assessment on repair basis, on total loss basis and on cash loss basis. On repair basis the Surveyor assessed the loss at Rs. 55,060/ - without dismantling. On total loss basis, he assessed the present market value on the date of loss of similar vehicle (1988 -model) at Rs. 1,16,000/ - and the salvage value of the accidented vehicle at Rs. 48,000/ -. Actual liability of the insurer on total loss basis thus worked out as Rs. 62,000/ -. On cash loss basis, assessment was made at Rs. 32,286/ -.

12. IT appears that the Surveyor S.K. Mehrotra had obtained signatures of the complainant on the form of consent letter and in this consent letter marked Ex. 4 by the District Forum, it is entered that the complainant recorded and confirmed that he desired to compromise all his claim and was agreeable to accept without any reservation a sum of Rs. 55,060/ -. It then appears from a letter dated 21.5.93 sent by the Divisional Office of the Insurance Company to the complainant that the Divisional Office came to know that Shri S.K. Mehrotras assessment of damages was not acceptable to the complainant as it was not in conformity with the repairs needed in the vehicle. The Divisional Office called the complainant to the office in order to settle the actual cost of repairs of the vehicle.

13. THEREAFTER on 13.8.93 the Senior Divisional Manager of the Insurance Company sent a letter to the complainant. In this letter the Senior Divisional Manager invited the attention of the complainant to Companys letter dated 13.4.93 whereby the Insurance Company had required (1) cash memo and repair bills, (2) salvage and replaced parts, (3) re -inspection of the vehicle. It was written to the complainant that the Insurance Company had not received the said compliance. The complainant asked to submit the above requirements within 15 days. It was also stated in the letter that the assessment of the Surveyor was in accordance with the consent letter duly signed by the complainant wherein loss has been assessed for Rs. 55,060/ - on repair basis after depreciation without deducting the salvage value and for Rs. 32,286 / - on cash loss basis. The Senior Divisional Manager further wrote to the complainant that: ''You may also refer the letter of Surveyor Shri S.K. Mehrotra dated 14.12.92 advising you to instruct the repairer to repair the said vehicle. Please also refer letter of the repairer M/s. W.I.S.M., Jaipur dated 30.12.92 wherein they have confirmed that your estimation charges has been settled by Surveyor Shri S.K. Mehrotra. You are

again requested to comply with our requirements which are as per the terms and conditions of policy for our finalisation of the claim without further delay.''

14. THE opposite party had also filed the affidavit of Surveyor S.K. Mehrotra. The Surveyor deposed in his affidavit that the complainant had furnished the estimate on 4.12.92. The estimate was only of outer damage to the car. The Surveyor had asked the insured to submit the estimate of internal parts. Complainant told the Surveyor that Western Indian State Motors asks for advance before dismantling the outer body shell. The Surveyor also told that the said car dealer to dismantle the body -shell so that internal side of the car may be inspected, but the dealer told that it will not dismantle the bodyshell till the complainant paid advance amount. It would appear from the above facts that the complainant had furnished the estimate to the Surveyor on 4.12.92. The estimate was mentioned as of ''Non -visible''. Visible estimate could only be given after opening of the body. For dismantling the body shell, Western Indian States Motors demanded from the complainant advance payment of Rs. 50,000/ -. It appears that the complainant was not in a position to pay this amount of Rs. 50,000/ - as advance. There is a copy of letter dated 7.1.93 which had been sent by the complainant to the Divisional Manager of the Insurance Company wherein the complainant mentioned that Western Indian States Motors had asked for deposit of Rs. 50,000/ - in advance for body -shell. Complainant mentioned in the letter that he was only liable to deposit 30% of the above amount and remaining 70% of the amount should be paid by the Insurance Company. Since deposit of Rs. 50,000/ - as advance could not be made with the Western Indian States Motors, estimate of loss of internal parts could not be obtained and furnished. Surveyor Shri S.K. Mehrotra, therefore, made assessment of the loss on the basis of the estimate dated 4.12.92 of Western Indian States Motors which had been furnished by the complainant to the Surveyor. We have already mentioned above the assessment made by the Surveyor by his report dated 10.3 93. We have also reproduced Condition No. 4 of the policy to the effect that the Insurance Company had also the option to pay in cash the amount of the loss or damage and the liability of the Company was not to exceed the actual value of the parts damaged or lost less depreciation plus the reasonable cost of fitting and was in no case to exceed the insureds estimate of the value of the motor vehicle as specified in the Schedule or the value of the motor vehicle at the time of the loss or damage whichever was the less. As per internal procedure of the Insurance Company, the insured has to submit a detailed estimate of repairs from any repairer of his choice. The insurer generally accepted these estimates, but they may ask the insured to obtain estimate from another repairer, if they so wished.

15. IT is clear from the estimate given by Western Indian States Motors dated 3/4.12.92 that they had given estimate of Rs. 17,000/ - for labour and of Rs. 96,131.84 with respect to parts, in all for Rs. 1,13,131.84. The Surveyor assessed Rs. 11,075.00 for labour and Rs..78,294.70 for parts, in all Rs. 89,369.70. Thereafter the Surveyor made deduction of depreciation at 25% for

metallic parts amounting to Rs. 21,858.20 and 50% for plastic parts amounting to Rs. 1,006.88. The Surveyor further made deduction in relation to 3 doors, bonnet and dicky of Rs. 11,444.16. Thus, he made assessment of loss on repair basis at Rs. 55,060.46.

16. IT appears from the assessment of loss on repair basis made by Shri S.K. Mehrotra, Surveyor that he had disallowed the estimate amount with respect to H. Monograms, luggage carrier, battery exide, steering column tube, steering column rod, steering assembly, propeller shaft assembly, oil pump assembly, filter suspension kit, etc., water pump bearing, water pump seal, etc., suspension assy, tape recorder, engine cross, brake liner, master cylinder mentioned in the estimate of Western Indian States Motors. We do not find any reason mentioned in the report of Shri S.K. Mehrotra as to why the estimate with respect to the above items mentioned in the estimate give by Western Indian States Motors was disallowed. The Surveyor should have allowed the estimate given by Western Indian States Motors. This dealer is a reputed automobiles dealer in Rajasthan State and the Surveyor should have accepted the estimate given by it as it generally accepts the estimate of repairer and it had not required the complainant to obtain estimate from another repairer. The estimate of Western Indian States Motors for the parts including 12% as sales tax was Rs. 96134.84. With regard to labour charges for repairs, Western Indian States Motors gave estimate of Rs. 11,000/ - and with regard to complete painting of body shell Rs. 6,000/ -. Surveyor has allowed Rs. 9,000/ - as repair charges and Rs. 2,000/ - for painting. For reduction in painting charges, the Surveyor has mentioned that since painted body shell ex -authorised dealers godown has been taken, hence the painting allowed on new parts, doors etc. We do not find any justification for reducing the amount of labour charges for carrying out repairs. In our view, the Surveyor should have allowed the damage or loss on repair basis as follows : For parts needing replacement. Rs. 96,131.84 Less total depreciation Rs. 22,864.68 Rs. 73,266.16 Estimated parts to bereplaced after dismantling Rs. 5,673.79 Rs. 78,939.95 Net deduction in parts regarding right hand front & rear door, left hand rear door, bonnet and dicky Rs. 11,444.16 Rs 66,495.79 Add for repairs (which have been disallowed by the Surveyor Rs. 2,000.00 Rs. 68,495.79 Thus complainant should have been allowed Rs. 68,495.79 by the Surveyor in place of Rs. 55,060/ - on repair basis as provided in Condition No. 4 of the insurance policy. We may also mention here that it was not necessary for the complainant to furnish to the Insurance Company cash memos and repair bills. In order to entitle the complainant the amount of the loss or damage on the basis of actual value of the parts damaged less depreciation plus the reasonable cost of fitting as stipulated in Condition No. 4 of the insurance policy. The other option before the Insurance Company was to, of its own, repair, reinstate or replace the motor vehicle or any part thereof and/or its accessories. The Insurance Company, however, opted to pay in cash the amount of the loss or damage to the complainant. For that the basis was actual value of the parts damaged less depreciation plus the reasonable cost of fitting not exceeding the insureds

estimate. Calculated on that basis as per the estimate given by Western Indian States Motors, we hold that the complainant was entitled to get Rs. 68,495.79 as mentioned above from the opposite party Insurance Company. It was neither and nor could it be a condition precedent for the settlement of the claim of the complainant that the insured should have first got the parts replaced in and repairs carried out to the accidented car before being entitled to get the indemnity amount from the Insurance Company. Motor Vehicle Insurance is a contract of indemnity and it indemnifies the insured on the occurrence of the event causing loss or damage to the insured. Indemnification to the insured was to be made by the Insurance Company either by itself, of its own, getting the car repaired or replaced or by paying to the insured the loss or damage amount not exceeding the actual value of the parts damaged less depreciation plus the reasonable cost of fitting.

17. AS to Exhibit 4, we may state that no consent letter had been obtained by the Insurance Company from the complainant. It was the Surveyor S.K. Mehrotra who had obtained the signatures of the complainant on a printed form - not of the Insurance Company but of the Surveyor S.K. Mehrotra. Ex. 4 does not bear any date. It has some columns blank as well. We are of the view that the Surveyor had obtained signatures of the complainant on a blank form of a printed consent letter which printed form was of the Surveyor S.K. Mehrotra and not of the Insurance Company. There is nothing in evidence to establish that figure 55,060/ - and other entries in consent letter Ex. 4 were in the handwriting of the complainant. On the other hand, it appears from the letter of the Insurance Company dated 21.5.93 to the complainant that the assessment made by .the Surveyor was not acceptable to the complainant. It was the Surveyor himself who had written the figure of Rs. 55,060/ - in Ex. 4 and not the complainant. Complainant is, therefore, not bound by Ex. 4 as his signatures thereon had been obtained on the blank printed consent letter form of the Surveyor.

18. WHEN both the parties have produced ample documentary evidence and cross -examination had also been made with the complainant on his affidavit and the opposite party had also produced the relevant documents and even affidavit of the Surveyor, the District Forum was not justified in directing the complainant to avail of the remedy by way of civil suit. The Surveyor had already assessed the loss on 10.3.93 and had mentioned in his report that the loss on repair basis was Rs. 55,060/ -. It was not the case of the Insurance Company that it had tendered the amount of Rs. 55,060/ - to the complainant. On the other hand, it appears from the letter of the Senior Divisional Manager of the Insurance Company dated 13.8.93 that he was requiring the complainant to submit cash memo and repair bills and was telling the complainant to instruct the repairer to repair the vehicle. We have already held above that the right of the complainant to get payment of the loss amount from the Insurance Company did not at all depend upon the complainant first getting the vehicle repaired and upon his furnishing cash memos and repair bills. The Insurance Company ought to have

conveyed to the complainant its readiness to pay the amount assessed by the Surveyor and it should not have delayed the tender of the assessed amount. Upon examination of the assessment made, we have already held that the complainant was entitled to get Rs. 68,495.79 from the opposite party as the loss or damage amount on repair basis. We, therefore, allow this appeal and direct the opposite party to pay to the complainant an amount of Rs. 68,495.79 as cash amount of the loss or damage to the insured car on repair basis. For delay in settlement of the claim, the opposite party will pay by way of compensation to the complainant interest on the amount of Rs. 68,495.79 @ 12% per annum with effect from 13.8.93 till its payment. Appeal allowed.