(2000) 12 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Sukhdeep Singh APPELLANT

Vs

New India Assurance Co.Ltd. RESPONDENT

Date of Decision : 26-12-2000

Acts Referred:

Citation : 2001 1 CLT 566 : 2001 2 CPJ 449

Hon'ble Judges : H.S.Brar , Davinder Kaur Bhamrahs J.

Final Decision : Appeals dismissed

Judgement

1. VIDE this order, two appeals, Appeal No. 1092 of 1999 and Appeal No. 1047 of 1999 are being disposed of. Appeal No. 1092 of 1999 has been filed by the New India Assurance Company Ltd. - the opposite party before the District Forum and Appeal No. 1047 of 1999 has been filed by Sukhdeep Singh, the complainant, before the District Forum. The challenge is against the order dated 27.8.1999 of District Forum, Ropar in both the appeals. The main order is being prepared in Appeal No. 1047 of 1999.

2. THE New India Assurance Company Ltd. was saddled with the liability of paying a sum of Rs. 1,20,159/- along with interest @ 12% from 1.8.1997 and Rs. 2,500/- as costs of proceedings. Hence aggrieved, the New India Assurance Company has come up in appeal. The case of the complainant was that his truck bearing No. PB-12A-2479 was parked at the premises of M/s. Happy Body Builders, when some of its parts were stolen during the night intervening 30th and 31st January, 1996. The theft was reported to the police and a Surveyor/ Loss Assessor was also appointed by the Insurance Company. However, the report of the Surveyor could not be finalised due to various reasons and also as the insured did not submit the relevant details and estimate of repairs. The Surveyor time and again tried to meet the complainant but the complainant never met the Surveyor nor did he come to the office of the appellant. The final survey report could not be submitted. The Insurance Company was not in a position to proceed further with the claim and the report could not be finalised. This resulted in the initiation of the proceedings on 7.10.1997 before the District

Forum. On the basis of the available evidence of the parties, the complaint was disposed of on 29.7.1998 with an award of Rs. 1,46,190/- as compensation. The complaint was accepted without cost and interest on the amount because the complainant was also held responsible to some extent in delaying the processing of the claim.

In the appeal filed before the Punjab State Consumer Disputes Redressal Commission, Punjab, which was finally disposed of on 31.5.1999. The operating part of the order dated 31.5.1999 reads as under : "The case is remanded to the District Forum who will give opportunity to both the parties to lead evidence on the question of the loss suffered by the complainant in respect of missing parts of the truck. The Insurance Company may submit fresh Surveyor report with regard to the price of such parts then prevalent at the time of commission of theft before the District Forum. Likewise, the complainant may also produce evidence on actual price of such parts as found by the Surveyor missing in his report referred to above before the District Forum. Parties are directed to appear before the District Forum on July 1, 1999."

3. THE complaint was adjudicated afresh and the District Forum saddled the Insurance Company with the liability of paying a sum of Rs. 1,20,159/- along with interest @ 12% from 1.8.1997 and Rs. 2,500/- as costs of proceeding. Though, the complaint was allowed in favour of the complainant, he remained dissatisfied and filed Appeal No. 1047 of 1999 before us. His grievance is that the District Forum did not look into the price list submitted by the respondent (Ex. R-12). According to him, on the face of the said document, it is clear that the same is wrong because in item No. 1, there is difference of Rs. 13,650/- in calculations. THE Insurance Company did not give the price of the tyres which comes to Rs. 80,000/- and the same has not been included in the list. THErefore, he has stated that he is entitled to get the cost of the tyres and Rs. 13,650/- which has been wrongly calculated. It is his prayer that the appeal be accepted and the impugned order be modified in this respect. In the appeal before us, Ms. Radhika Suri, Advocate appeared on behalf of the Insurance Company and Sukhdip Singh, appeared in person to plead his case.

4. THE case relates to the refund of the price of the stolen parts of the truck which S. Sukhdeep Singh had got insured from the Insurance Company. THE Insurance Company has come in appeal to get the modification in the order dated 27.8.1999 of the District Forum to the extent of interest and costs whereas Sukhdeep Singh, the complainant has asked for the cost of the tyres and the amount miscalculated by the Insurance Company in its Surveyor report. We have heard the Counsel for the Insurance Company and Sh. Sukhdeep Singh, the complainant and have also perused the record on file. A bare perusal of the remand order dated 31.5.1999 would show that the District Forum had allowed 50% thereof as compensation to the complainant against the Insurance Company vide order dated July 29,1998. Aggrieved by this order, the Insurance Company came in appeal challenging the sustainability of the District Forum

order with the contention that in the absence of any evidence of the amount actually spent on the repairs, the liability of 50% refund could not be fastened. On the other hand, due to the death of his father, the complainant was unable to assist the Surveyor in the matter of assessment of loss. Furthermore, it had been observed that even if the complainant for certain reasons was unable to associate and did not produce evidence of actual loss, it was ths duty of the Surveyor to get the relevant evidence of price of such parts from the market and then adding the labour charges assess the loss. It had been held that simply on relying upon such a report of the Surveyor, who had not assessed the loss, it cannot be said that the Insurance Company was not deficient in rendering service.

5. WE have perused the record of the District Forum. The Insurance Company had led its evidence and on the basis of the Report of the Surveyor Sh. R.S. Arora, Ex. R-12, who had assessed the loss to the tune of Rs. 1,20,159/-. The report and affidavit of the Surveyor, Sh. R.S. Arora is on record. It is stated in the affidavit that the price of the parts as mentioned were those of new parts at the time of loss.

6. ON the part of the complainant, no evidence whatsoever to show the actual loss was produced. No bills of the parts replaced or the labour cost involved so as to show the actual price of such parts was ever produced. Thus, he did not avail the opportunity given by the remand order to produce evidence before the District Forum. There is nothing on record to prove the price of the tyres for which he is agitating before this Commission. So far as the deduction of Rs. 13,650/- in the item No. 1 of the ''Estimate'' claimed is concerned, it was subject to re- inspection of the vehicle, submission of bills and their verification to check, whether parts replaced were new or reconciderationed/repaired parts. The complainant did not bring the vehicle for inspection. Neither did he produce any bill of parts purchased nor did he file any affidavit before the District Forum that he had got the original parts replaced in the place of the stolen parts of his truck. In the absence of any material on record, it is not possible to accept any of his contention advanced regarding the cost of tyres amounting to Rs. 80,000/- and deduction made of Rs. 13,650/- in the item 1 of the ''Assessment List'' made by the Surveyor. In view of the above factual situation, we are of the considered view that the Insurance Company did not settle the claim of the complainant. It should have either repudiated or settled the claim within the stipulated time period. The complainant was forced to knock the doors of the District Forum to get his grievance redressed and at that stage, the Insurance Company pleaded that the complainant did not co-operate, therefore, the claim could not be settled. If that was so, it was the duty of the Surveyor to get the relevant evidence of price of such parts from the market and then adding the labour charges assess the loss. Therefore, it cannot be said that the Insurance Company was not deficient in rendering service. The deficiency in rendering service being established, the complainant has to be compensated under Section 14(1)(d) of the Consumer Protection Act. The District Forum has allowed interest @ 12%

which is considered as the compensation granted to the complainant and the Insurance Company is made liable to pay that to the complainant. We do not find any infirmity in it. Regarding costs of Rs. 2,500/- awarded by the District Forum, we do not want to interfere as the costs is not highly excessive in comparison to the bouts of litigations the complainant had to undergo. The same is held intact. For the reasons recorded above, the appeals filed by both the parties are dismissed. The order of the District Forum is upheld, however, there will be no order as to costs of appeals. Appeals dismissed.

