(1995) 08 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

TAMIL NADU INDUSTRIAL INVESTMENT CORPORATION LTD. APPELLANT

Vs

J.R.DAVID RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:

Citation : 1995 0 NCDRC 77 : 1995 2 CPC 519 : 1995 3 CPJ 37 : 1995 3 CPR 132 : 1996 1 CLT 204

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , S.P.BAGLA J.

Advocate : R.VIDUTHALAI , SUDARSH MENON , CHINNAPPA K.KAMBAYANDA

Judgement

1. THIS First Appeal is directed against the order dated 30.7.93 of the State Commission, Tamil Nadu at Madras allowing the complaint.

2. THE facts may briefly be noticed. On 5.2.88 the Complainant availed of a transport loan of Rs. 2.22 lakhs from the Tamil Nadu Industrial Investment Corporation Ltd. (for short T.N.I.I.C) Opposite Party No. 2 before the State Commission, the Appellant herein, to enable him to purchase a vehicle. The Complainant purchased a D.C.M. Toyota Lorry registered as No. TSH-1854 and plied it as a public carrier. The vehicle was covered under the Insurance Policy No. 011201/1012/27/00253/89 valid from 1.3.89 to 28.2.89 issued by the United India Insurance Co. Ltd.-Opposite Party No. 1, before the State Commission, when the vehicle met with an accident on 29.1.90. The Appellant had a lien on the insurance policy amount since the vehicle was under hypothecation to the Appellant as security for the loan mount advanced. The Complainant lodged a complaint with Opposite Party No. 1 and towed and handed over the vehicle to Hajee Group-Opposite Party No. 3 before the State Commission-for repairs. The Complainant stated that Opposite Party No. 3 wrote a letter dated 24.5.90 to the Complainant stating that the vehicle is ready for delivery after repairs and called upon the Complainant to complete the formalities and take delivery of the vehicle. The Complainant is alleged to have completed all formalities and supplied all documents and written to Opposite Party No. 1 to settle the claim and to do the needful to enable him to take

delivery and also made personal visits, and sent reminders, but the claim has not been settled despite legal notice dated 25.5.90. The Complainant filed the complaint dated 21.8.92 before the State Commission praying for a direction being issued to Opposite Party No. 1 to pay a sum of Rs. 4.00 lakhs towards damages for the deficiency in service to the Complainant. The Appellant herein (Opposite Party No. 2) filed its version before the State Commission placing all facts relating to the grant of transport loan, non-payment of the amount due, repossession of the vehicle and sale in exercise of the powers under Section 29 of the State Financial Act, 1951. It is apparent that the Appellant was arrayed as Opposite Party No. 2 primarily because of the fact that it has a lien on the insurance policy since the said vehicle was under hypothecation to the Appellant. The relief of damages was prayed for against Opposite Party No. 1 and no relief was sought against Opposite Party No. 2 nor any deficiency in service was alleged in the complaint against Opposite Party No. 2.

3. DURING the pendency of the complaint before the State Commission an application dated 7.6.93 was moved by the Complainant to amend the prayer in para 10 of the complaint to add "Opposite Party Nos. 1 and 2" instead of "Opposite Party No. 1" and that amendment was allowed.

4. THE State Commission by the impugned order dated 30.7.93 has held that the negligence of Opposite Party No. 1 is established in not settling the claim despite Surveyor''s Report and directed Opposite Party No. 1 to pay towards settlement of claim under the Insurance Policy a sum of Rs. 90,593.92 as recommended by the Surveyor plus 12% interest from May, 1990 upto the date of the payment to the Complainant. As against Opposite Party No. 2 the finding of the State Commission is that no honest attempt was made by Opposite Party No. 2 to get body of the vehicle repaired instead the vehicle was sold for a throw-away price of Rs. 62,000/- to one P.T. Arasu the so-called highest bidder in action after the Complainant preferred the complaint before the State Commission and that too without notice. The State Commission directed that Opposite Party No. 1 would pay Rs. 80,000/- to Opposite Party No. 2 in full settlement of its claim against the Complainant and the difference between the claim of Opposite Party No. 2, Rs. 231,000/- according to their books and Rs. 80,000/- arrived at by the State Commission would be construed as the damages to be paid to the Complainant towards mental agony. We have perused the records and heard the learned Counsel for the parties. The Counsel for the Appellant is right in his submission that the complaint does not contain any allegation of deficiency in service nor any damages were prayed as against the Appellant in the original complaint which was only amended in pursuance of application dated 7.6.93 and that too in the prayer clause. Unless the Complainant has made the allegations of negligence and deficiency in service in the complaint, no amount of evidence could be looked into upon a plea not put forward. The allegation in the rejoinder is only an attempt to improve upon the case and could not be construed as allegation of deficiency in service.

5. THE Complainant admitted in the complaint itself that he had taken a transport loan of Rs. 2 lakhs. It was on record that the Complainant made no payment in his loan account since 27.12.89 and huge arrears to the tune of Rs. 0.79 lakh had accumulated when the Appellant issued notice dated 27.11.90 and called upon the Complainant to surrender the vehicle within 7 days to enable them to bring the same to sale. The Complainant received this notice and replied back in his letter dated 5.12.90 claiming the Insurance Co. in not settling the claim and issuing work orders for repairs. The Complainant however said that "under these circumstances I request you to kindly take up my case with Insurance Company. The vehicle may he disposed off as deemed fit,'', (emphasis supplied). The Complainant then wrote a letter dated 26.3.92 to the United India Insurance Co. Ltd. with copy to the Appellant that the Insurance Company may kindly communicate thereafter to T.N.I.I.C regarding this matter as he had duly given his consent to them to take delivery of the vehicle DCM Toyota Van TSH 1854 directly from M/s. Hajees Group, Opposite Party No. 3. It is manifest that the Complainant had requested the Appellant to take the delivery of the vehicle for the dues in the account. After the possession of the vehicle, it was put to auction on 14.8.92 and the maximum offer received was Rs. 51,000/-. This price was not considered adequate by the Appellant but no objection was raised by the Complainant regarding the sale of the vehicle. The vehicle was brought for auction second time on 25.9.92 and in second auction the vehicle fetched a price of Rs. 67,000/- and the sale was confirmed. The successful bidder in the second auction could not comply with the terms and conditions of the sale and he forfeited the 10% of the bid amount. Thereafter third auction was conducted on 22.1.93 and the vehicle was sold for Rs. 62,000/-. The assets were valued independently by the Government Automobile Workshop, Vehicle Maintenance Department, Dharmapuri, Tamilnadu at Rs. 35,000/-. At no point of time there was any objection raised by the Complainant regarding the sale. The State Commission, was therefore, wholly wrong in holding that the vehicle was sold without notice to the Complainant and reasonable market price was not obtained. It is evident that it was the Complainant who had requested the Appellant to sell the vehicle. This Commission has taken the view in "JanakM. Chandran v. AhmedNagar Sahakari Bank Ltd/., II (1993) CPJ 168 that whether proper notice had been served or not before auctioning the hypothecated vehicle is not a question to be decided by the Fora constituted under the Act.

6. THE State Commission seems to have been oblivious of the provisions contained in Section 29 of the State Financial Corporation Act, 1951 which provision is distinct and different from the remedy available under Section 31 resulting in the order passed under Section 32 of the said Act. The Appellant has the option to choose either of the remedies and if the remedy under Section 29 is chosen, then it cannot be considered as a deficiency in service on the part of the Appellant. The judgment of the Supreme Court in "Mahesh Chandra v. Regional Manager, IIP. Financial Corporation Ltd/'', 1993 (2) SCC 279, has no application on the facts of this case. In the present case three attempts were

made to obtain the right value of the vehicle which was sold at Rs. 62,000/-. The Appellant has taken due care and caution to obtain the maximum price of the vehicle. In the result, the Appeal is allowed and the impugned order of the State Commission in so far as it is against Opposite Party No. 2-Appellant herein is set aside. The Insurance Co. will pay a sum of Rs. 90,593.92 plus 12% interest from May, 1990 upto the date of payment to the Appellant herein who would adjust the amount towards the amount due under the transport loan from the Complainant. It will be open to the Appellant to recover their dues, if any, that are remaining from the Complainant in accordance with law. We make no order as to costs.