(2015) 05 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Case No : 4689 of 2008

The Cholamandalam Ms General Insurance Co. Ltd. APPELLANT

Vs

Sandeep Joshi RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Citation : (2015) 05 NCDRC CK 0029

Hon'ble Judges : M.SHREESHA J.

Final Decision : Petition Partly Allowed

Judgement

1. CHALLENGE in this Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), is to order dated 15.10.2008 passed by Delhi State Consumer Disputes Redressal Commission (for short the ''State Commission''), in First Appeal No. 925 of 2008. By its impugned order dated 15.10.2008, the State Commission has concurred with the findings of the District Consumer Disputes Redressal Forum, Barracks Kasturba Gandhi Marg, New Delhi (for short the ''District Forum'') in CC No. 134 of 2007, by which order the District Forum allowed the Complaint and directed the Insurance Company to pay the assured amount of 4,00,000/ - together with compensation of 1,00,000/ - and costs of 10,000/ -.

2. SUCCINCTLY put, the brief facts in the Complaint are: that the Complainant obtained an Insurance Policy for 4 lakhs for his Lancer car covering the period from 5.5.2004 to 4.5.2005. While so, on 8.6.2004, the vehicle met with an accident and the Complainant averred that he had got it repaired spending 1,75,986/ -. On 18.7.2004, once again, the said car met with an accident and was sent for repairs to M/s. H.M. Western Indian States Motors Workshop, Jaipur. It was pleaded that the surveyor, Mr. Anshu Misra, submitted his Survey Report of the first accident on 7.7.2004. Mr. G.B. Mathur and Mr. Vikram Arora submitted their Investigation Reports on 1.3.2005 and 19.4.2005 respectively concluding that both the accidents were genuine. The workshop had written to the Complainant that the vehicle was lying with them since July, 2004 and was

demanding demurrage charges at 5,000/ - per month. The Complainant had claimed in all 5,86,084/ -. The first claim was repudiated by the Insurance Company on the ground that the Complainant had violated Condition No. 1 of the Policy which reads as under: "Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require".

3. WITH respect to the second claim, after a long period of one year, the Insurance Company had asked the Complainant to get it repaired and then submit the relevant bills. Vexed with the attitude of the Opposite Party/Insurance Company, the Complainant approached the District Forum seeking direction to the Opposite Party to pay the claim amounts with interest, demurrage charges, compensation and costs.

4. THE Insurance Company filed their written version and pleaded that the matter was referred to the Ombudsman and that the decision of the Ombudsman was final as stipulated under the Arbitration Act.

5. THE Appellant/Insurance Company averred that the Complainant did not inform them about the first accident, its loss or damage and that they were not aware of the payment made by the insured to the workshop for repairing the vehicle. They averred that they had come to know of the accident only after they received the survey report. The surveyor, Mr. Anshu Misra assessed the loss of the first accident at 1,24,250/ - vide his final report dated 7.7.2004. It was pleaded that this report lacks in professional acumen as the surveyor did not give the details of the parts which he had allowed. Mr. Ashwani Beri, the surveyor who assessed the loss of the second accident filed his report on 30.12.2004 for an amount of 2,01,204/ -.

6. THE Petitioner -Insurance Company appointed two Investigators to enquire into the details of both the accidents. The first Investigator reported that after the first accident, the car was repaired by the Complainant through his own sources. The Petitioner/Insurance Company based on the Surveyor Reports and the Investigation Reports, pleaded that the external damages to the Engine Block do not tally with the cause as mentioned by the Complainant and that the Engine Block was broken due to impact of the connecting rod against the inner wall of the engine block and as such it was the result of a mechanical failure and is not of an accidental nature.

7. THE Insurance Company denied that a surveyor was appointed by them with respect to the first claim. With respect to the second claim, the Insurance Company averred that they had requested the Complainant to get the vehicle repaired and submit the bills to enable them to settle the claim, but the Complainant did not choose to do so.

8. AS per the directions of the Hon''ble Ombudsman, 50% of the amount was to be paid by the Opposite Party/Insurance Company in respect of the second claim

of the Complainant, which is 1,00,062/ - but the Complainant did not agree with the order of the Hon''ble Ombudsman nor did he give any consent to the letter dated 3.10.2006. They averred that there was no deficiency of service on their behalf and that their repudiation was justified.

9. THE District Forum based on the evidence adduced, allowed the complaint, directing the Opposite Party to pay the assured amount of 4 lakhs together with compensation of One lakh and costs of 1,000/ -.

10. AGGRIEVED by the said order, the Insurance Company preferred an Appeal before the State Commission. The State Commission concurred with the findings of the District Forum and dismissed the Appeal.

11. BEING aggrieved by the order of the State Commission, the Insurance Company preferred this Revision Petition.

12. THE first contention of the Revision Petitioner is that an Ombudsman Award has been passed and that this Commission does not have jurisdiction to entertain the issue.

13. WE rely on the judgment of the Hon''ble Supreme Court in National Insurance Company Limited vs. Kamleshwari Prasad Singh in Special Leave Petition (Civil) No. 6087 of 2005 dated 11.3.2005, in which the Hon''ble Apex Court had affirmed the judgment of this Commission. A brief perusal of this judgment with respect to Award of the Ombudsman and its Compliance, reads as follows: "The learned Counsel for the Insurance Company submitted that:

(a) award passed by the Ombudsman is not subject to challenge and cannot be challenged before the Forums constituted under the Consumer Protection Act and therefore complaint is not maintainable;

(b) complainant has not disclosed that the order was passed by the Ombudsman and therefore he has approached the Forum with unclean hands;

(c) in any case if the complainant was aggrieved by order passed by the Ombudsman then he ought to have challenged before the competitive Court.

In our view, the aforesaid submissions are without any substance. As stated above the whole purpose of appointing Ombudsman is to have control over misuse of the power by statutory bodies and to see that disputes are settled. Further, Ombudsman is not discharging judicial or quasi -judicial functions. This is apparent from the Redressal of Public Grievances Rules, 1998.

SHORT title -These rules may be called the Redressal of Public Grievances Rules, 1998. Application -These rules shall apply to all the Insurance Companies operating in general insurance business and in life insurance business.

THE objects of these rules are to resolve all complaints relating to settlement of claim on the part of Insurance Companies in cost -effective, efficient and impartial manner.

16. Award:

(1) Where the complaint is not settled by agreement under Rule 15, the Ombudsman shall pass an award which he thinks fair in the facts and circumstances of a claim.

(2) An award shall be in writing and shall state the amount awarded to the complainant.

(3) The Ombudsman shall pass an award within a period of three months from the receipt of the complaint.

A copy of the award shall be sent to the complainant and the insurer named in the complaint. The complainant shall furnish to the insurer within a period of one month from the date of receipt of the award, a letter of acceptance that the award is in full and final settlement of his claim.

THE insurer shall comply with the award within 15 days of the receipt of the acceptance letter under Sub -rule (5) and it shall intimate the compliance to the Ombudsman.

17. Consequences of non -acceptance of award - If the complainant does not intimate the acceptance under Sub -rule (5) of Rule 16, the award may not be implemented by the insurance Company.

From the above quoted Rules it can be stated thus:

- - Firstly, Ombudsman is to act as a counselor and mediator in matters.

- - Secondly, on the basis of the mediation, recommendations are required to be sent to the complainant and to the Insurance Company. If the complainant accepts the recommendation, he has to send a communication in writing confirming his acceptance to the Ombudsman wherein he should state clearly that the settlement reached was acceptable to him in totality and on receiving such acceptance from the complainant, Ombudsman would inform the Insurance Company to act on the basis of the recommendation.

- - Thirdly, if the complaint is not settled by agreement as provided, the Ombudsman can pass award which he thinks fair in the facts and circumstances of the claim. That award is required to be sent to the insurer and if it is accepted by the unsurer, by writing letter of acceptance that the award is in full and final settlement of his claim, the insurer is required to comply with the said award.

In case, if the award is not accepted by the complainant, then the Insurance Company may not implement the said award

The Rules quoted above are clear and do not require any further consideration.

In view of the above discussion, it is held that the decision of the Ombudsman is not binding on the complainant and the decision of the Insurance Company to repudiate the claim is subject to adjudication by the Fora Constituted under the

Consumer Protection Act".

14. IN the instant case, it is an admitted fact that the Complainant did not accept the Award of the Ombudsman and did not give his consent to the letter dated 3.10.2006. Hence, it can be concluded that once the Complainant did not give his consent to the Ombudsman Award under sub -rule (5) of Rule -16 of the Redressal of Public Grievances Rules 1998, the Award may not be implemented by the Insurance Company. Also, Section 3 of the Consumer Protection Act, 1986 reads as follows: "3. Act not in derogation of any other law. - -The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force".

15. IN view of the afore -mentioned Judgment and also Section 3 of the Consumer Protection Act, 1986, it is clear that the Ombudsman Award is not a bar for the Consumer Fora to adjudicate the matter.

16. NOW , we address ourselves to the repudiation of the first claim made by the Respondent/Complainant. The repudiation letter dated 21.5.2005, pertaining to the first accident, reads as follows: "Without Prejudice

Mr. Sandeep Joshi,S/o Mr. B.L. Joshi,#2735, Kucha Challan,Darya Ganj, Delhi -110002.

Re: Claim No. VPC -37957, Date of Loss: 08.06.04, Policy No. "VPC -18821 Date of Transfer of R.C.: 19.05.04, Policy Period: 05.05.04 to 04.05.05

Vehicle No. DL -3 CS -0257 (Mitshubishi Lancer''2000)

Dear Sir,

We regret to inform you that the above claim has been REPUDIATED on the following grounds:

1. As per the Technical Expert Report, the type of damages sustained to the Engine Block in the said claim do not tally with the cause of loss mentioned by you. Further, the photographs taken by the Surveyor and the estimate submitted by the Repairer also do not substantiate the said damages.

1. Our Technical Experts Report confirms that the external damages to the Engine Block are superfluous in nature and that the Block has broken from inside -out due to impact of Connecting Rod against the inner wall of the Engine Block. This establishes the loss to Engine due to mechanical failure instead of any external impact and such losses do not come under the purview of the Insurance Policy.

3. Last but not the least, the claim was not intimated to us at all and we came to know about the same only after receipt of Survey report on 15.07.04 i.e., after more than a month of the date of loss, i.e., 08.06.04. This is a clear violation of the Condition 1 of the Policy, whereby Notice of any claim shall be given immediately and thereafter the Insured shall give all such information and

assistance as the Company shall require.

We are sure that you would appreciate our stand that payment of any claim has to be in accordance with the conditions and provision of the policy issued. While expressing our inability to pay this claim due to the above -mentioned reasons, we reiterate our commitment to pay all admissible claims fairly and promptly.

Thanking you,

Yours faithfully,Sd/ -Regional Manager -Claims".

17. IT is pertinent to note that the Petitioner/Insurance Company did not file the Technical Expert Report, which they have relied upon in the first and second paras of their repudiation letter.

18. THE learned counsel for the Revision Petitioner submitted that they were not informed about the first accident on 8.6.2004 till they had received the survey report by the Surveyor, Mr. Anshu Misra on 7.7.2004. We hold that this contention of non -receipt of information by the Insurance Company is unsustainable, in the light of the Comments, made in the final Survey report by Mr. Anshu Misra, which reads as follows: "Comments:

Undersigned receiving the instructions from your Jaipur Office, 204A, Shyam Anukampa, Jaipur, I surveyed the damaged vehicle at M/s. Western India State Motors, Jaipur and found that vehicle impacted from front near silencer badly, block piece broken at the place where silencer bolted, Front bumper broken from lower side, Oil pan bent etc.

I assessed the loss in like circumstances of accident and assessed for 1,24,250/ - subject to terms and conditions of insurance policy and acceptance of my report.

Mileage: 37211 Kms."

19. IN view of the afore -mentioned Comments, we observe that Mr. Anshu Misra, the licensed Surveyor had surveyed the damaged vehicle only after receiving instructions from the Jaipur Branch of the Insurance Company. Therefore, the repudiation on the ground that there was violation of Condition -1 of the Policy, which stipulates that the insured should immediately inform the Insurance Company of the accident, is totally unjustified.

20. THE learned counsel for the Revision Petitioner further drew our attention to the Survey Reports pertaining to the first accident and also to the second accident and submitted that the following items appeared in the Schedule of Assessment in both the Reports: "ANSHU MISRA(Vehicle No. DL 3CS 0257)

21. THE contention of the Petitioner/Insurance Company that there were common items which were damaged in both the accidents and therefore, it ought to be concluded that the first accident is not a genuine one, is totally unsustainable. The damage is also evidenced in the photographs filed by the Complainant. Merely because items like exhaust pipe, front bumper, engine

assembly, gasket engine appear in both the Surveyors'' assessments of two separate accidents, it cannot be construed that the first one did not take place at all. It is pertinent to note that both the Investigators appointed by the Insurance Company, namely Mr. G.B. Mathur and Mr. Vikram Arora, in their Investigation Reports dated 1.3.2005 and 19.4.2005 respectively had reported that both the accidents are of genuine nature and that the said car was damaged.

22. THE assessment of loss by the first surveyor is 1,24,250/ - (for the first accident) and the assessment of loss by the second surveyor is 2,01,204/ - (for the second accident). The State Commission, while concurring with the findings of the District Forum, observed that if the cost of repairs exceeds 75% of the insured value, it has to be treated as ''total loss''. We observe that the quantum of amount awarded by the Fora below i.e. 4 lakhs is based on the observation that the combined loss assessed is more than 75% of the IDV of the vehicle. While we agree with the findings of the Fora below with respect to deficiency of service on behalf of the Revision Petitioner herein, we note that the total IDV amount awarded by the Fora below is not justified.

23. WE find force in the contention of the learned counsel for the Revision Petitioner that each accident gives rise to a fresh cause of action and that both the claims cannot be combined and treated as one cause of action. Admittedly, the Complainant had made two separate claims for each accident. Therefore, the assessment amounts of two separate accidents cannot be totalled together and treated as 75% of total IDV value and termed as ''Total Loss''. The loss assessment of each claim has to be dealt with separately and, therefore, we are of the considered view that the insured is entitled to 3,25,454/ -, the sum total of the amount which both the Surveyors have assessed. Hence, this Revision Petition is allowed in part modifying the order of the State Commission with respect to the assured amount only. We reduce the awarded amount of 4 lakhs to 3,25,454/ - and confirm the rest of the order of the State Commission with respect to compensation and costs. Time for compliance four weeks from the date of receipt of this order, failing which the amount would attract interest @ 9% p.a. No order as to costs.

