(2010) 09 CAL CK 0066

In the Calcutta High Court

Case No : C.O. No. 1024 of 2010

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Biswajit Banik RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Consumer Protection Act, 1986 — Section 21

Citation : (2010) 09 CAL CK 0066

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharya, Sanjoy Paul and Avijit Pain, for the Appellant;Kalyan Kr. Chakraborty and Swagata Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is directed against the order dated December 29, 2009 passed by the State Consumer Disputes Redressal Commission, West Bengal in State Consumer Case No. FA/336 of 2009 arising out of an order dated July 24, 2009 passed by the District Consumer Redressal Forum, Uttar Dinajpur in Consumer Case No. 27 of 2008.

2. The short fact of the case is that the respondent is the owner of the vehicle bearing No. WB 59-7957. There was a head on collision between the vehicle of the respondent and another vehicle being numbered AP-05 V6199 at Chepani Choupathi on N.H.31 in Samuktala, under P.S. Jalpaiguri on May 20, 2007, and as a result of the accident, the vehicle of the respondent was damaged. The vehicle was taken to the Siliguri Motor body Builders for repairing after the vehicle was released from the police station pursuant to the order passed by the learned Additional Chief Judicial Magistrate on May 30, 2007.

3. Thereafter, the petitioner appointed one surveyor to survey the loss to the vehicle and the surveyor submitted his report on November 26, 2007. The surveyor recommended loss to the vehicle for Rs. 1,71,715/- after deduction of

the depreciation value in terms of the schedule of the policy.

4. Being aggrieved by the assessment of the loss as determined by the surveyor, the owner of the vehicle filed an application for compensation before the District Consumer Forum and after hearing both the sides, the consumer forum directed the petitioner to liquidate the entire claim amount of Rs. 5,49,144.60 paise plus litigation cost of Rs. 1,000/- and compensation of Rs. 10,000/-within one month from the date of the order.

5. Being aggrieved by the said order of the consumer forum, the petitioner preferred an appeal before the State Commission. Thereafter, the State Commission passed the impugned order holding that the forum has passed a well-reasoned order and there is nothing to interfere with the same. Accordingly, the Commission dismissed the appeal. Being aggrieved, this application has been preferred by the petitioner.

6. Now, the point for consideration is whether the impugned order can be sustained.

7. After hearing the learned Advocate for the parties and on perusal of the materials on record, I find that the base of the claim of the petitioner is that the surveyor appointed by them inspected the vehicle and after deduction of the depreciation value of the vehicle, the surveyor assessed the loss to the extent of Rs. 1,71,715/-. Such depreciation value was calculated item wise ranging from 10% to 50% and even 100% in some cases with regard to different part of the vehicle. The surveyor assessed the value of the damage ranging from 50% to 90% in respect of the damaged portions of the parts of the vehicle and in some cases, the damage was to the extent of 100% per cent.

8. What is more surprising is that the vehicle had been purchased six months prior to the date of the accident and within a short span of time, the surveyor calculated the depreciation value to a great extent as indicated earlier, which cannot be supported at all. The vehicle was insured for a sum of Rs. 7,25,000/- and the Tribunal assessed 5% as the depreciation value within a period of six months from the date of purchase of the vehicle. The vehicle was being used for commercial purpose and it was lying in damaged condition because the owner of the vehicle had no sufficient fund to pay up the dues for repairs and for that reason, the owner of the vehicle is suffering loss day after day and he was not in a position to repay the monthly instalments for the loan he had taken for purchase of the vehicle. Under the circumstances, after deduction of 5% of the depreciation value, the forum assessed compensation to the extent of Rs. 5,49,144.60 paisa, litigation cost of Rs. 1,000/- and compensation of Rs. 10,000/- only. Such views have been supported by the Appellate Forum upon reassessing the evidence on record, I find that the Forum and the State Commission have arrived at a concurrent findings relating to the amount of the award to be granted in favour of the owner of the vehicle.

9. It has been contended on behalf of the opposite party that remedy lies before

the National Commission as per Section 21 of the Consumer Protection Act, 1986 and for that reason, this application is not maintainable.

10. Thus, I find that the forum and the Tribunal has discussed the materials on record and thereafter they have come to a definite conclusion and it is not case that the forum as well as the State Commission have no jurisdiction to entertain the matter. This being the position, impugned orders cannot be assailed on the ground that they suffer from perversity or want of jurisdiction.

11. Mr. Bhattacharyya has referred the decision reported in Hoogly Co-operative Agriculture and Rural Development Bank Ltd. Vs. Nemai Chandra Ghosh, and he has submitted that the Hon''ble Single Judge of this Court Justice P.S. Banerjee (as His Lordship then was) observed that the revisional application is maintainable. With due respect to Mr. Bhattacharyya, I am of the view that the Hon''ble Single Judge has held that if the order under challenge suffers from perversity or jurisdiction then and then an application under Article 227 of the Constitution is maintainable. For the findings noted above, since the impugned order does not suffer from perversity or want of jurisdiction, I am of the view that this decision is not applicable in the instant case.

12. In support of his contention that the application is not maintainable, Mr. Kalyan Kr. Chakraborty, learned Advocate appearing on behalf of the opposite party, has referred to the decisions reported in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, (relevant paragraph 42), 1996 (11) CHN 542, ANZ Grindlays Bank and another Vs. President, District Consumer Disputes Redressal Forum and others, and Tulasi Enterprises Vs. Andhra Pradesh State Consumer Commission, Hyderabad and Another,

13. He has submitted that against the order of the State Commission, appropriate steps should have been taken by the petitioner before the National Commission under the provisions of Section 21 of the Consumer Protection Act. If that provision is not availed of, the present application is not maintainable in view of the aforesaid decisions. I fully agree with Mr. Chakraborty. I am of the view that the present application is not maintainable also for the reasons stated above.

14. In view of my above discussions, I hold that this application has no merit at all. It is also not maintainable. There is nothing to interfere with the impugned order.

15. Accordingly, this application is dismissed.

16. Considering the circumstances, there will be no order as to costs.

17. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.