(2004) 04 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

AHIMSA ARMY MANAV KALYAN JEEVDAYA CHARITABLE TRUST RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Citation : 2004 3 CPJ 449

Hon'ble Judges : M.S.Parikh , M.K.Joshi , Leenaben P.Desai J.

Final Decision : Appeal partly allowed

Judgement

1. SINCE Civil Misc. Application No. 20 of 2004 has been granted, this appeal has been given number and has been heard today. It arises from order dated 16.12.2003 rendered by the learned Consumer Disputes Redressal Forum, Ahmedabad City, Ahmedabad, in Complaint No. 306 of 2003 directing the opponent Insurance Company to pay to the complainant the indemnity insurance amount of Rs. 5,50,000/- with interest @ 10% p.a. from 1.4.2003 till payment and cost and compensation respectively in the sum of Rs. 2,000/- and Rs. 5,000/-.

2. IT would appear from the impugned order that complainant No. 1 Charitable Trust purchased a Toyota Qualis as per the particulars set out in the complaint under hypothecation advance from complainant No. 2 Bank with cover of insurance from opponent Insurance Company. During the period of insurance it met with an accident on 26.12.2002. The quotations for repair of the vehicle received from repairer Infinium Toyota gave out the estimate of Rs. 5,26,800/-. Surveyor of the opponent Insurance Company verified the fact with regard to accident and the quotation given by the aforesaid concern. He was also of the opinion that insurance would have to be paid on the basis of total loss. In spite of claim having been lodged with the opponent Insurance Company and in spite of the survey as aforesaid, the opponent Insurance Company did not respond resulting in the complainants issuing notice dated 31.3.2003. As the opponent Insurance Company gave evasive reply dated 6.4.2003, complainant approached

the learned Forum after entering into correspondence with the opponent Insurance Company. In spite of the fact that summons was served on the opponent Insurance Company and in spite of the fact that appearance was filed before the learned Forum on 22.7.2003 and finally in spite of the fact that sufficient time was taken for filing reply/written statement, no written statement was filed. Hence, the learned Forum closed the right of opponent Insurance Company for filing of written statement on 15.10.2003. The complainants also made grievance with regard to salvage lying with the aforesaid repairer alleging that Rs. 500/- per day were required to be paid as parking charges. Under such circumstances, the matter was heard and the learned Forum came to the conclusion that the complainants were entitled to total loss in the sum of Rs. 5,50,000/- as aforesaid. From the submissions made on behalf of both the parties, it is not in dispute that the opponent Insurance Company did not respond to the claim well in time and it also displayed inadvertence in not filing its reply before the learned Forum. This is so in spite of the fact that the opponent Insurance Company was well in time informed about the fact that parking charges were required to be paid @ Rs. 500/- per day. The opponent Insurance Company was also informed to take the salvage. With this background, a few further facts might be mentioned. It is not in dispute that the vehicle in question was purchased on or around 4.5.2001 for the consideration of Rs. 6,00,000/-. It met with accident in or around September, 2002 and the loss was compensated by the opponent Insurance Company. The renewal policy was for the sum of Rs. 5,50,000/- being the insured''s estimated value. During the period of first such renewal of the insurance, the vehicle met with an accident again on 24.12.2002. According to the opponent Insurance Company, Surveyor assessed the amount of loss at Rs. 4,20,000/- with a rider that the claimant would have to hand over the salvage. According to the complainants the insured''s estimated value was stated after considering the passage of one year as also repair and replacement pursuant to the first accident. Thus, the opponent Insurance Company might at best deduct depreciation @ 5% p.a. as per the decision of the Honourable National Commission in the case of M/s. National Insurance Co. Ltd. v. Ani Lamba, reported I (2003) CPJ 229 (NC)=2003 NCJ 286 (NC). There does not appear to be any answer to this submission.

It has, however, been submitted on behalf of the opponent Insurance Company that the vehicle in question is hypothecated with the Bank and the learned Forum has not made any provision with regard to payment of the amount to the Bank. The learned Advocate for the complainant has no objection if appropriate direction is issued for payment into complainant No. 1''s account with complainant No. 2 Bank.

3. DEDUCTION of depreciation @ 5% would come to Rs. 27,500/-. Thus, the complainants would be entitled to Rs. 5,22,500/-. Award of compensation on the head of mental agony and harassment would not be available to the complainant Trust. However, in order to compensate the complainant, we propose to award cost of appeal while maintaining the cost of complaint awarded by the learned

Forum. In view of the above facts and circumstances of the case and what is stated above, we pass following order: ORDER Impugned order dated 16.12.2003 rendered by the learned Consumer Disputes Redressal Forum, Ahmedabad City, Ahmedabad, in Complaint No. 306 of 2003 is hereby modified as under : [a] The opponent Insurance Company is directed to pay Rs. 5,22,500/- with interest @ 10% p.a. from 1.4.2003 till payment and cost of the complaint quantified at Rs. 2,000/- as well as cost of appeal quantified at Rs. 2,000/- by issuing cheque in the name of complainant No. 2 Bank and handing it over to complainant No. 1 for crediting it in complainant No. 1''s account with the said Bank. Opponent Insurance Company will collect the salvage from the aforesaid concern Infinium Toyota for which the complainant will give written consent by addressing an appropriate letter to the said party, i.e., Infinium Toyota endorsing a copy thereof to the opponent Insurance Company. This order shall be complied within six weeks from today. Appeal partly allowed.

