(2015) 11 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Case No : 314 of 2014

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

SHREE SUNDER — RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Consumer Protection Act, 1986, Section 19 - Appeals

Citation : 2016 1 CPJ 483 : 2016 1 CPR 66

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : Mohan Babu Aggarwal, Hemant Tak

Judgement

1. The United India Insurance Company has filed the present appeal under section 19 of the Consumer Protection Act, 1986 against the order dated 29.01.2014 of the Rajasthan Consumer Disputes Redressal Commission at Jaipur, hereinafter referred as the "State Commission" passed in Complaint No. 01 of 2008 whereby the State Commission allowed the complaint of the complainant/respondent by giving direction to the appellant insurance company to pay a sum of Rs. 39 Lakhs (Rupees Thirty Nine Lakhs) as against the insurance claim to the complainant with interest @ 9% w.e.f. 1.1.2008 alongwith Rs.1 lakh as compensation for mental agony and other expenses.

2. The brief facts of the case are that the respondent/complainant purchased one hydraulic escavator, LZ&T PC-200-6 from the company M/s. Larsen & Toubro Ltd. at the price of Rs.47,42,000/-. The above machine was duly insured by the appellant insurance company to the extent of Rs.47 lakhs. The above hydraulic machine while working at the mines met with an accident on 21.08.2007 loosing grip underneath on the rock slipped and toppled to one side and got totally damaged. The respondent/complainant submitted two quotations of M/s. J.E. Enterprises, Udaipur one for Rs.30,47,450/- and the other for Rs.7,10,845/- for repair of the above machine. Appellant Insurance Company appointed one Shri Vishnu Dutt Sharma as Preliminary Surveyor in the present matter who submitted his report dated 30.08.2007. The appellant/insurance company

appointed United Technical Services, Udaipur as Final Surveyor for the assessment of loss. United Technical Services, Udaipur are ''Approved Valuers, Charted Engineer, Surveyor & Loss Assessor and Mr. M.S. Sainani being its Chief Executive / Principal Surveyor conducted the Final Survey. Mr. M.S. Sainani vide letter dated 27.09.2007 asked the complainant to have the engine dismantled so that the verification of damaged parts could be ascertained. The complainant refused to dismantle the engine vide his letter dated 06.10.2007. The said Surveyor sent three reminders to the complainant to get engine dismantled, but the complainant did not comply with this request. The surveyor then submitted his report dated 05.11.2007 before the insurance company. The surveyor - M/s. United Technical Services have assessed the loss at Rs.9,27,055/-.

3. The respondent filed a complaint No. 01/2008 before the Rajasthan Consumer Disputes Redressal Commission at Jaipur which vide its order dated 29.01.2014 allowed the complaint of the complainant/respondent and directed the appellant Insurance Co. to pay to the complainant a sum of Rs.39 lakhs (thirty nine lakhs) as against the insurance claim with interest @ 9% w.e.f. 01.01.2008 along with Rs. 1 lakh as compensation for mental agony and other expenses. The present appeal has been filed against this order of the State Commission.

4. We have heard the learned counsels for both the parties and perused the documents carefully.

5. Learned counsel for the appellant argued that the State Commission has allowed a claim based on the estimate submitted by the respondent from a private garage and has rejected the report of the surveyor without any proper reasoning. The law is that the survey report of the licensed surveyor cannot be brushed aside until there are cogent reasons. The Survey Report carries great value and should prevail over the report of any other opinion. There are numerous judgments of the Hon''ble Apex Court underlying the principle that the report of the surveyor/loss assessor is an important document and cannot be rejected without any proper finding. In fact, the appointment of surveyor is as per the Insurance Act, and the insurance claim has to be based on the report of the surveyor. The private garages which give estimates of repair on the request of the claimant, are always inflated and they do not consider the other principles of finalising the claim such as depreciation, salvage value etc. The learned counsel mentioned that the order of the State Commission was patently illegal, perverse and wrong as it has been passed overlooking material available on record and was based on surmises and conjectures. It is pertinent to mention that quotation/estimates never can be termed as final assessment of loss and cannot be equivalent with the invoice. In the present case, the respondent insisted upon the replacement of the engine and the counterweight whereas the surveyor has allowed only repairs of these items because that was only necessary and not the replacement. The assertion of the respondent that the technical Engineer of the Manufacturing Company Larson & Tubro Ltd. informed the appellant that the engine could not be repaired and it was required to be

replaced, does not, found support from the affidavit submitted by Mr. Manish Chhajed, Service Engineer Larson & Tubro Ltd. Udaipur. In his affidavit, the Service Engineer has clearly given two options for the engine. The first being the replacement costing Rs.14,72,000/- and the second for repairs including replacing damaged component of the engine for Rs.8 lakh. The Insurance Company has itself submitted in its reply that in similar two cases the engines were repaired and not replaced. Therefore, it was possible that the engine could have been repaired and it was not necessary to replace it.

6. Learned counsel for the appellant also pointed out that the replacement of counterweight was not at all necessary as the surveyor has allowed only Rs.10,000/- for its repair as it was not heavily damaged. Learned counsel also drew our attention to the fact that the respondent did not allow opening of the engine inspite of the technical advice and request from the surveyor. The question of extent of damage to the engine, therefore, could not be clearly known. When the opening of the engine was not done and the complainant was pressing for an early settlement, the surveyor did not have any other option but to submit his report which he submitted taking into account the earlier two cases where the engine was opened and repaired. The surveyor had allowed Rs.4 lakhs for the engine assembly in the insurance claim. The surveyor report, thus, covers all the components of the machine. The claim should have been allowed only on the basis of this report.

7. Learned counsel for the respondent stated that the respondent had taken the estimate from their authorised garage. L&T technical people had clearly told that the engine could not be repaired and it was required to be replaced. In such situation, there was no point in getting the engine opened. Otherwise also, this was a brand new machine and no purpose would have been served, if the engine was opened and repaired because then this machine would not have served for its full life. The engine assembly is the most important part of the machine and no compromise can be made on this component. Similarly, counterweight is also another important part of the machine, which is required for balancing the machine and any defective counterweight would compromise the functioning of the machine. The counterweight was also completely damaged and it was also beyond repairs, but the surveyor has only allowed Rs.10,000/- for its repairs, which cannot be accepted. The State Commission has rightly allowed the full claim as even this claim is below the insurance amount under the policy. Hence, there is no illegality or material irregularity in the order of the State Commission and is therefore, required to be upheld.

8. We have gone through the complaint and it is seen that the major demand of the complainant was for allowing the replacement of engine assembly and counterweight. Theoretically, we agree with the assertion of the appellant''s learned counsel that insurance claim should mainly be settled on the basis of surveyor''s report. Hon''ble Supreme Court in its judgment ["Sri Venkateswara Syndicate vs. Oriental Insurance Company Limited & Anr", (2009) 8 SCC 507] ,

has observed that: "31. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by insured, a loss adjuster, popularly known as loss surveyor, is deputed who assesses the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured.

32. There is no disputing the fact that the surveyor/surveyors are appointed by the insurance company under the provisions of the Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing surveyors one after another so as to get a tailor-made report to the satisfaction of the officer concerned of the insurance company; if for any reason, the report of the surveyors is not acceptable, the insurer has to give valid reason for not accepting the report."

9. We are of the opinion that the surveyor report cannot be accepted in respect of the engine as the engine was not opened and the surveyor has given his finding on the basis of two earlier cases where the engine was opened and repaired. We have perused the affidavit filed by Mr. Manish Chhajed, Service Engineer Larson & Tubro Ltd., Udaipur, wherein he has stated the following:- " Engine assembly part no.6735-03-NL00iand hydraulic pump During the accident, engine and hydraulic pump were dislocated from its position, damaging mountings (anti Vibration Mountins). The machine, engine assembly along with hydraulic pump got inverted. The engine and hydraulic pump kept running for 15-20 minutes in inverted position.

Based on information given by the customer, our opining is as under:-

The engine housing casting found cracked near mounting location. Being case Iron casting it is beyond repair, hence need to be replaced. The hydraulic pump suspected to have undergone

starvation and cavitations damages due to indle running. This need to be tested on test bench at our service centre, New Delhi. Due to combination of dynamic/ impact loading & static loading along with combined weight of engine & pump assembly, the partes & sub-assemblies are suspected to have developed snags.

There are two options with regard to engine and hydraulic pump assembly.

Option-1 : Replacement of Engine assembly: Against order we will supply new engine assembly. The engine can be assembled on machine by Replacement of plastic, rubber and hardware parts. The approximate cost in this option is 14.72 L. The average expected life of engine and hydraulic pump (as per our field reports) is 20000 hrs subject to customer using genuine parts and follows recommended maintenance practices.

Option-2 : Repair of damaged parts & replacement of unusable parts: The dimensions of creifically machine and heat-treated internal engine parts like crank shaft, connecting rods, bigened bearing, main bearing and sintered parts etc. need to be revalidated. Since internal parts of these sub-assemblies have unique design parameters, which are attained though SPMs/CNCs and inspection/ testing carried out in tool rooms with specitla instuments/tools/gages, it is not possible to assess exact nature and extent of damage without part of part inspection and actual testing of the final asseblies on test bench.

This exercise will help us in segregating all the parts into usable parts, suspected parts and damaged parts.

The usable parts to be used as it is after general servicing. The suspected parts need to be revalidated or fitness to use through further inspection in tool room at plant.

The damaged parts to be replaced completely. The approximate cost for this option is Rs.8 Lakh. The average life is expected after repair of the engine is less than the life of a new engine subject to customer using genuine parts and follows recommended maintenance practices."

10. From the above, it is clear that even the L &T Service Engineer had not closed the option of repairs. However, from the averments in option-2 of the above affidavit, it is clear that the average life after repair of the engine is less than the life of a new engine. As this was a new machine and met with an accident early in its life, it is implied from the affidavit of Service Engineer that the repaired engine will not sustain the machine for its full life and therefore, we are of the view that for such a new machine, Insurance Company should have agreed for replacement of the engine. The cost of the new engine has been given by the Service Engineer as R.s.14,72,000/- only and taking the salvage value of the existing engine as 20% of the cost, we allow Rs.11,77,600/- as insurance payment for the engine assembly.

11. So far as the counterweight is concerned, the surveyor has allowed only Rs.10,000/-, which seems very very meagre looking at the importance of this component. Mr. Manish Chhajed, Service Engineer Larson & Tubro Ltd. in his affidavit has stated the following:- "3. Counter Weight On inspection I found that counter weight of machine has got badly damaged because The counter weight is made by filing hematite concrete in steel fabricated box to ensure proper CG, which has got shifted due to massive impact while machine toppled. Due to toppling/massive impact hematite concrete have cracked. There is no mechanism available for repairing the counter weight. The damaged counter weight will generate vibrations, which will affect performance of the machine during operation. The aesthetics of the machine are affected, counter weight being externally visible part. The Center of Gravity has got shifted, which is likely to

create imbalance in the machine while swinging. Apart from operational problems it will affect aesthetics and resale value. Since it is not repairable, it needs to be replaced."

12. From the above, it is clear that Service Engineer has categorically indicated that on inspection he found that counter weight of machine had got badly damaged and there was no mechanism available for repairing the counter weight. He has also mentioned in the affidavit that since it was not repairable, it needed to be replaced. The Service Engineer has not indicated any cost of counterweight, however, the same is given in the estimate submitted by the garage as Rs.4,25,550/-. Looking at the importance and non-repairability of this component as corroborated by the affidavit of the Service Engineer L & T Ltd Udaipur, we are of the view that, the Insurance Company should have agreed for replacement of this component as well. Taking salvage value as 20% of the existing component, we thus, allow Rs.3,40,440/- for the replacement of counterweight.

13. We are of the view that the surveyor report being an important document under the Insurance Act, should be the main point of consideration for assessing the loss and deciding the insurance claim. In this case, the main dispute has arisen because of the engine assembly. The engine was not got opened by the respondent even on the technical advice of the surveyor and therefore, we cannot take the report of the surveyor in respect of the engine as correct as it has been given without technically examine various parts of the engine assembly. The complainant, in his complaint has mainly requested for allowing the claim for replacement of the engine assembly and the counterweight. Based on the examination in the preceding paragraphs, we allow the replacement of engine assembly and the counter-weight subject to salvage value of existing component. For all the other components, the report of the surveyor is quite reasonable and justified. The surveyor has allowed the claim of Rs.9,27,055/-, which includes the claim for engine assembly as Rs.4,00,000/- and for counterweight as Rs.10,000/- Thus, we have to deduct Rs.4,10,000/- from this amount to allow the insurance amount for engine assembly and counterweight as arrived at in the preceding paras. Thus, we allow the total claim of Rs.20,35,095/- against the insurance policy.

14. Accordingly, based on the above discussions, the appeal is partly allowed and the order dated 29.01.2014 of the State Commission is modified to the extent that the appellant Insurance Company is directed to pay Rs.20,35,095/- (Rupees Twenty lakhs thirty five thousand ninety five only) to the respondent/complainant instead of Rs.39 lakhs as ordered by the State Commission. As the Insurance Company was liable to pay the amount assessed by the surveyor right from the very beginning itself, it would be liable to pay interest @ 9% on the amount of Rs.9,27,055/- (Rupees Nine lakh twenty seven thousand fifty five only) from the date of filing complaint i.e. 10.12.2007. The Insurance Company is also liable now to pay interest on the remaining amount of Rs.11,08,040/- (Rupees Eleven

lakh eight thousand forty only) from the date of the order of the State Commission i.e. 29.01.2014 till realisation. Rest of the order of the State Commission remains unchanged.

15. No order as to costs.

