(1991) 06 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

VINAY KUMAR ABAD RESPONDENT

Date of Decision : 07-06-1991

Acts Referred:

Citation : 1993 2 CPJ 1034

Hon'ble Judges : G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

Final Decision : Order modified

Judgement

1. BOTH the appeals are decided by this common order as arising out of the order of the District Forum, Jalana dated 1.12.1990 passed in Complaint No. 35/90.

2. THE short facts necessary for the just decision of these two appeals are as under : THE appellant-Vinay Kumar Abad purchased the motor vehicle from Secunderabad on 4.11.88 named as ''Padmini Car''. THE said car while coming to Aurangabad on 6.11.88 was involved in an accident. THE occupants of the car Shri Dharamchand Jain, Shri Anant Kulkarni and Shri Jitendra Abad sustained injuries and the motor car also was damaged. Admittedly, the motor car was insured with United India Insurance Company Ltd. at Jalana Office. As a consequence of the accident Shri Vinay Kumar A bad lodged the claim with the Insurance Company. THE damage of the car was surveyed through Shri Kannan, Surveyor who estimated the loss at about Rs. 63,960/-. However, actual expenses to repair the said car being incurrred at Rs. 42,788/-, the said amount was deposited in the complainant''s Bank on 22.8.1989. THE Insurance Company denied the claim of complainant for medical expenses etc. and hence the complainant presented the complaint in question before the District Forum, Jalana on 2.6.1990. THE Opposite Party, the United India Insurance Company opposed the claim of the complainant on the ground that the actual expenses paid for the repairs of the motor car involved in the accident are only payable to the complainant and not the estimated damage assessed by the Surveyor. Further, the Insurance Company opposed the claim of the complainant as regards

the reimbursement of the medical expenses incurred by the occupants of the car who were injured in the accident on the ground that under the agreement of insurance only Rs. 350/- are payable. As regards the claim of the complainant for interest, at the rate of 18%p.a. for the loss and harassment, according to the Insurance Company, it is not covered by the terms and conditions of the Insurance Policy. On consideration of the complaint and the say of the opposite party, the learned District Forum, Jalana granted Rs. 20,000/- towards the medical expenses of the injured persons in the motor car + Rs. 3725/- towards the compensation and Rs. 1275/- towards the transport of the damaged vehicle. From the site of accident to Aurangabad. THE District Forum, however, rejected the claim of the complainant as claimed by him for Rs. 63,960/- on the basis of the estimated report given by the Surveyor. Feeling aggrieved by the aforesaid order of the District Forum, both the complainant as well as the opposite party-United India Insurance Company preferred the aforesaid two different appeals.

We have heard Shri M.V. Maheshwari, the learned Advocate for the United India Insurance Company as well as Shri Vinay Kumar Abad in person.

3. IN Appeal No. 2/91, Shri Maheshwari, Advocate for the United INdia INsurance Company submitted that Rs. 63,960/- were the estimated value for the repairs of the damaged car, whereas, actual expenses required to repair the said car were only Rs. 42,788/-. According to Shri Maheshwari in order to settle the claim of an insurance in respect of the damage caused to him during the policy period, the insurer is entitled to receive actual expenses required to repair the vehicle and not the estimated value stated by the Surveyor. We find that the estimate arrived at by the Surveyor is on the basis of his visual observation and the value of the motor parts and the labour charges prevalent at the time of the survey. The repairs are carried out at a subsequent stage and they are bound to be different from the actual expenses incurred for the repairs of a car and the estimated value arrived at by the Surveyor. IN any case, the Surveyor gives the estimation and not the actual expenses. IN fact, he cannot be expected to give the estimation with precision. We, therefore, find that the claim of the complainant to claim the estimated value is absolutely unfounded and without any justification. IN our view, the learned District Forum, Jalana is correct in its view that the complainant is entitled to receive Rs. 42,788/- towards the actual expenses incurred for the repairs of the car in question. Shri Maheshwari, the learned Counsel for the United India Insurance Company very vehemently argued that the grant of Rs. 20,000/- towards the medical treatment of injured persons traveling in the said car is entirely out of the terms of contract of insurance and therefore, liable to be set aside. Our attention was drawn to Section III Medical Expenses appearing on the front page of the Insurance Policy. The Section is reproduced below : "The Company will pay to the Insured the reasonable medical expenses not exceeding Rs. 350/- in respect of any one accident incurred in connection with any bodily injury by violent accidental external and visible means sustained by the insured or any occupant of the motor car as the direct and immediate result of an accident to the motor car."

4. THE aforesaid condition of the Policy clearly stipulates the maximum amount of Rs. 350/- towards the medical expenses of the injured or any occupant of the motor car. In our view, therefore, Shri Maheshwari is right in his submission that the grant of Rs. 20,000/- towards the medical expenses of the injured is beyond the terms of the Insurance Policy. If the occupant of the car sustains injuries in an accident, the provision is made under the Motor Vehicles Act for claiming adequate compensation for the injuries suffered by the occupant of the car. In our view, when the specific provision is made under the Motor Vehicles Act, where the claim of an injured person can be examined in detail with reference to the nature of the injury and the medical expenses incurred, it will not be correct within our limited jurisdiction to assess the loss sustained by the occupants of the motor car. In the instant case, we find that the occupant of the car had incurred more expenses but we fail to understand how these injured persons can claim those expenses from the Insurance Company under the provisions of the Consumer Protection Act. THE service, which the Insurance Company was to render to the insured of the motor vehicle in terms of Section in, the maximum limit is fixed at Rs. 350/- each. Thus at the most, the three occupants of the car can claim Rs. 350/- each and not Rs. 20,000/- as ordered by the District Forum. THE finding about the grant of Rs. 20,000/- to the injured persons as compensation, therefore, is erroneous and required to be set aside. We, therefore, set aside the finding of the District Forum as regards the grant of Rs. 20,000/- towards the medical expenses and in its place, we order that the Insurance Company is liable to pay Rs. 350/- each to the three occupants injured in the accident amounting to Rs. 1050/- only. As regards the grant of Rs. 3725/- towards the compensation for the delay in settlement of the claim of the complainant, we do not agree with the arguments of Shri Maheshwari that in fact, there was no delay. The claim was lodged immediately and the claim of Rs. 42,788/- was settled after the period of about nine months from the date of the accident. In our view, the delay of nine months in settlement of the claim is unjustified and therefore, grant of Rs. 3,725/- is justified. The last submission of Shri Maheshwari is that the towing charges of the vehicle involved in an accident could not be more than Rs. 250/- as it was carried in a truck. We find that the grant of Rs. 1275/- towards the transport charges of damaged vehicle is justified as the car was required to be taken to a garage for repairs. Under these circumstances, we partly allow the Appeal No. 3/91 so far as the claim of the medical expenses of occupants of the car is concerned. We reduce the amount of Rs. 20,000/- to Rs. 1050/- only.

5. AS regards the Appeal No. 2/91 preferred by die complainant Shri Vinay Kumar Abad is concerned in view of our discussion made above, we do not find any substance in any of his submissions of the appellant and, therefore, the Appeal No. 2/91 is required to be dismissed.

6. SHRI Vinay Kumar A bad very strongly submitted before this Commission that the United India Insurance Company was not fair in its dealing in respect of the insurance policy in question. It has been demonstrated to us that the Policy No.

BRO/V- 5 of the P.C. is the Insurance Policy in respect of the vehicle in question. But according to the appellant no insurance policy in respect of the vehicle in question has been given to the complainant till the date of argument in this appeal. We have given our anxious considerations to the submissions made by the complainant in this appeal and examined the Insurance Policy in question. The Insurance Policy at page 65 of the record shows the policy signed by various persons with seal of the United India Insurance Company. This Policy was filed by the Insurance Company alongwith its written version. There is yet another zerox copy of the Insurance Policy bearing the same Policy No. 160207 dated 11.11.1988. This zerox copy is filed by the complainant alongwith the list of documents dated 22.9.90. According to the complainant, the zerox copy dated 18.11.88 was admitted as a genuine document by the learned Counsel of the Insurance Company. However, critical examination of the list shows that both the Insurance Policies dated 5.10.88 and 11.11.88 at Sr. Nos. 1 & 2 are admitted. But we are at a loss to find the signature of the Counsel for the Insurance Company who has signed that document in token of having admitted the aforesaid two policies. The contention of the complainant that the policy was tampered with by the Insurance Company by making over-writings to suit their convenience cannot be accepted, as the claim of the complainant has been granted on the basis of cover note issued on 5.10.88. In any case, where the Insurance Policy is tampered with or not, the claim of the complainant is founded on the basis of cover note dated 5.10.1988 and accordingly, the claim has been settled on the basis of that policy. Under these circumstances, we do not find any substance in the appeal of the appellant in Appeal No. 3/91 and, therefore, it stands dismissed. In the result, we pass the following order : ORDER The Appeal No. 2/91 filed by United India Insurance Company is allowed to the extent that the amount of compensation of Rs. 20,000/- is reduced to Rs. 1050/- only.

The Appeal No. 3/91 of Shri Vinay Kumar Abad is dismissed. Order modified.

