

(2010) 02 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

United India Insurance Company Ltd

APPELLANT

Vs

Jayen C Shah

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Citation : 2011 1 CPJ 282

Hon'ble Judges : Anupam Dasgupta J.

Advocate : Kishore Rawat , Priyanka Raina

Judgement

1. MR. Anupam Dasgupta, Presiding Member-This appeal challenges the order dated 11th December, 2009 passed by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (in short, "the State Commission") in complaint case No. 242 of 2001. By this order, the State Commission found the appellant (opposite party-OP) guilty of deficiency in service in repudiating his claim for reimbursement of the loss suffered by him in respect of one of his medical diagnostic equipment on account of an insured peril and ordered as under: "The complainant was residing in America and had arrived in Ahmedabad on 11.3.2001 and at that time he came to know about damage to his house and that his instrument was broken and so he had informed the Agent Shri Vaishnav and during that period the Insurance Company had given advertisement in the newspaper and informed to settle the claims on 15.3.2001; but the complainant cannot file his claim within the time limit and has filed his claim thereafter and the Insurance Company has not accepted the said claim mainly on the ground of time limit and close the file of the complainant, which does not appear just and proper. As per our view the Insurance Company should have to pay the complainant, whatever amount payable, after assessing the value of the instrument and considering the submission of the complainant and accordingly, by not paying the claim of the complainant has shown deficiency in service and therefore, the complainant is entitled to get compensation from the Insurance Company for damage to his instrument useful in his profession as Doctor. Considering the aforesaid discussion, following order is passed: ORDER 1. The complaint No. 242/2001 is allowed. 2. The opponent Insurance Company is

hereby directed to assess the damages to the instrument on the basis of the documents produced by the complainant and pay the policy amount to the complainant within 3 months from the order of the Commission and the complainant should give all necessary cooperation with regard to his claim. 3. Considering the overall facts no order as to cost is passed." Aggrieved by this order, the OP/Insurance Company has come up in this appeal. 2. I have heard Mr. Kishore Rawat, learned Counsel for the appellant and Ms. Priyanka Raina, proxy Counsel for the respondent. 3. The short point raised by Mr. Rawat is that in respect of the alleged damage to the medical diagnostic equipment of the complainant/respondent (which formed the basis of his insurance claim), the State Commission had observed as under: "There is no dispute that the complainant had purchased Fibre Optic Colonoscope. It is also not in dispute that the said instrument was insured by the Insurance Company. It is also not in dispute that the instrument of the complainant was damaged in the earthquake which took place on 26.1.2001."

4. Thus, Mr. Rawat would submit that the entire basis of the State Commission's finding rests on holding that the damage to the insured medical diagnostic equipment being on account of the earthquake was an "undisputed" fact. In reality, however, this is far from so because the Insurance Company in its written version as well as the Surveyor in his report had clearly averred and concluded that the alleged damage to the medical diagnostic equipment (Colonoscope) was not on account of the earthquake but owing to the age of the equipment. In this connection, the report of the Surveyor dealing with the specific point states as under: "This only assessment of loss, insurers are not liable for loss as- (1) Insured could not prove his insurable interest of damaged equipment. (2) It is not convincing that building in which claimed equipment was put was not damaged and equipment had fallen down from top of cupboard and cupboard has not fallen down. Glasses of building were not broken. (3) The size of cupboard was 21" x 33" x 78". The cupboard has solid base. This is no rotating part of machine. Therefore, from the above base of cupboard, the equipment will not fall with intensity as vibrations were absorbed by building and not damaging building. Thus, it is concluded that the equipment was not damaged as claimed due to operation of peril of earthquake. (4) Insured has not shown any evidences of falling of colonoscope." Proxy Counsel for the complainant/respondent did not have anything to controvert this contention.

5. In view of the foregoing, it is abundantly clear that the State Commission has not appropriately considered the pleadings, evidence and documents brought on record by the parties, particularly the OP. The matter, therefore, deserves to be adjudicated after affording the parties fresh opportunity to be heard as well as due consideration of all material, evidence and documents on record, in accordance with law. 6. In conclusion, the appeal is allowed and the impugned order of the State Commission is set aside. The matter is remitted back to the State Commission to adjudicate it afresh after affording due opportunities to the parties. For this purpose, the parties shall present themselves before the Sate

Commission on 21.3.2011 to receive further directions.