(2006) 04 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

VIJAY GUPTA — APPELLANT

Vs

Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Citation : 2006 2 CPR 146 : 2006 4 CPJ 21 : 2007 1 CLT 172

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal has been preferred under Section 15 of the Consumer Protection Act, 1986, against the order dated 8.12.2000, passed in Complaint No. 67/99 by the District Consumer Disputes Redressal Forum, Bilaspur (hereinafter referred to as the "District Forum" for short) whereby the complaint was allowed (sic. dismissed) by the District Forum.

2. ACCORDING to the facts narrated in the complaint, Maruti Van, bearing registration No. MP-26-T-0575, in the name of the partnership firm, was insured with the opposite party/respondent, under policy No. 4202/1998, for a sum of Rs. 1,92,928 for the period from 10.11.1997 to 9.11.1998. While coming from Raipur to Bilaspur on 24.4.1998, the vehicle was suddenly burnt near Nandghat and was thereby extensively damaged. The complainant had laid the claim with the opposite party/respondent and had completed all the formalities. However, the claim was not decided for a long time and the complainant had to file complaint before the District Forum. It is further averred that the complainant-partnership firm had purchased the aforesaid vehicle under the Pradhan Mantri Yojna and the partners were earning their livelihood by running the vehicle as taxi and had also employed a driver to assist them for going to distant places. The opposite party insurer informed the complainant vide letter dated 24.3.1999 that claim for his Van was allowed for Rs. 1,24,000. It is averred in the complaint that the complainant was ready and willing to accept the aforesaid sum under protest but the insurer did not agree to it. The complainant has alleged that the attitude of the insurer amounted to deficiency in service and unfair trade practice

and prayed for the relief (s) as claimed in the complaint. The opposite party/ respondent resisted the complaint and denied the allegations of deficiency in service and averred that though the vehicle was comprehensively insured but the said insurance was subject to the terms of policy. Complainant''s obstinancy and non-co-operation has resulted in non-disbursement to the complainant. It was averred that the complainant firm used vehicle as taxi i.e., for commercial purpose and hence, the complainant is not a consumer of the opposite party. It was further averred that the complaint was not properly filed as it bore signature of only one of the partners and was liable to be dismissed.

The learned District Forum held that the vehicle was in the name of the firm and was being used for commercial purpose, hence the complainant was not a consumer. It was further held that in view of the fact that the insurer had agreed to make payment of Rs. 1,24,000 the fact that the vehicle was being run for commercial purpose would not have much effect on the claim of the complainant. It was further held that as the insurer is ready and willing to make payment to the complainant since 24.3.1997 and due to non-fulfilment of necessary formalities, the amount could not be disbursed to the complainant, it cannot be said that the insurer has committed any deficiency in service. It was further observed by the learned District Forum that the vehicle was of 1996 model and had met with an accident earlier on 31.3.1997 also. The said vehicle was repaired and it again met with an accident on 24.4.1998, hence the claim amount assessed by the insurer was properly assessed.

3. AGGRIEVED by the aforesaid order the complainant has preferred this appeal. The appellant has also filed an application for taking documents on record as additional evidence. Arguments on the said application as well as final arguments heard. The documents sought to be produced, appear to be necessary for judicious disposal of this appeal hence the same are taken on record. During the course of final arguments, the learned Counsel for the appellant assailed the impugned order and urged that the learned District Forum erred in not appreciating the fact that the vehicle was purchased under the Pradhan Mantri Rojgar Yojna for earning livelihood. He submitted that the District Forum erred in holding that the complainant is not a consumer of the insurer within the meaning of the Consumer Protection Act. He further submitted that considerint for a moment that the vehicle was purchased for commercial purpose it would not have any adverse effect because there was no bar for hiring or availing of services for commercial purpose. The learned counsel further submitted that in the facts and circumstances of the case, the learned Forum has further erred in not awarding the sum insured together with interest and costs etc. and prayed that the appeal be allowed in the interest of justice.

4. AS against this, the learned Counsel for respondent reiterated the stand taken before the District Forum, supported the impugned order and submitted that there is no reason for interference with the same. The first question to be decided is : Whether the complainant is a ''Consumer'' of the opposite party/

respondent? Indisputably, the van of the complainant was being run as taxi. However, the claim does not relate to any defect in goods but relates to alleged deficiency in service by the Insurer. Prior to the amendment inthe year, 2002 even if services were availed for commercial purpose the person availing service was to be considered as a consumer because there was no such bar of commercial purpose with regard to services as there was for the goods purchased for commercial purpose. Even after the amendment the service of providing insurance cover would not be barred on the ground of commercial purpose because such service is hired to obtain security against any loss that may occur but the same is not for furtherance of business or commercial activity. Hence, we are of considered opinion that the complainant is a ''Consumer'' of the insurer. The next question to be decided is as to whether the complaint was competent though the same was filed on behalf of the firm and was signed and verified by only one of the two partners? In view of ver clear and unambiguous definition of ''Person'' provided under Section 2(1)(m)(i) there remains no doubt that ''a firm whether registered or not'' is a person and such could file a complaint. So far as the question of the complaint being signed by only one partner is concerned, we find no irregularity in it because the provisions of CPC are not applicable to the proceedings before the Consumer Fora.

5. THE next question to be decided is: whether the opposite party insurer committed any deficiency in service? It is undisputed that vide letter dated 24.3.1999 the insurer had proposed to make payment of Rs. 1,24,000 in case the complainant executed the Discharge Voucher and deposited the salvage and original policy with the office of the insurer. It is noted that the accident had taken place on 24.4.1998 and it was after 11 months that the insurer had intimated regarding settling the claim in full and final settlement for Rs. 1,24,000. It is also noticed that prior to this Shri Prakash Jain was appointed as the Surveyor and had conducted the survey. THE said Surveyor had issued instructions to the complainant vide his letter dated 3.7.1998 to safeguard the salvage by covering it with tarpaulin sheets and had also asked Shri Vijay Gupta to contact him personally at Rajpur regarding settlement of claim. In response to this the complainant had vide his letter dated 23.7.1998, made it clear that his financial condition was very bad and it was not possible for him to purchase tarpaulin and had expressed his clear intention that he wishes to deposit the salvage with the insurer. He had requested the insurer to deposit the salvage and further to decide the claim soon. This letter was addressed to the insurer with a copy of the same being forwarded to the Surveyor Shri Prakash Jain. THE Surveyor had again sent reminders dated 30.7.1998 and 18.8.1998 though the complainant had replied to his earlier letters. THE insurer vide its letter dated 11.9.1998 required the complainant to deposit Original R.C. Book, Original Vehicle Key and Form Nos. 29 and 30. It appears from record that the complainant had fulfilled the requirements on 23.9.1998. Subsequent letter by the complainant dated 27.11.1998 shows that the claim was not yet decided. It appears that for the first time the insurer communicated its intention to settle

the claim for a sum of Rs. 1,24,000 on the condition that the complainant deposited the original policy with the insurer and signed the discharge voucher. However, as the complainant did not agree on the aforesaid sum, he was not paid the amount. THE insurer had sent a letter to the complainant by Regd. A.D. Post and had informed about their intention that in case the complainant signs the Discharge Voucher and deposits salvage within seven days, cheque for a sum of Rs. 1,24,000 would soon be handed over to him. We are of the considered opinion that the delay in deciding the claim itself amounts to deficiency in service on part of the insurer. Further the insistence of the insurer to sign the discharge voucher also shows their arbitrariness. In our opinion proper course would have been to hand over the aforesaid amount to the complainant with permission to file appeal before the higher authority instead of harassing the poor consumer. Such an attitude on part of the insurer is deplorable. If the aggrieved person is not ready to accept the amount in full and final satisfaction, they do not make payment to him. On the other hand, if the person accepts the amount as he faces great financial crisis and subsequently files complaint, the insurer takes the plea that the money was accepted in full and final satisfaction of the claim. This arbitrariness of the insurer and the delay on its part to decide the claim definitely amounts to deficiency in service. In view of the aforesaid discussion the order passed by the learned District Forum cannot be sustained.

6. NOW we have to consider the question as to how much amount should be paid by the insurer to the complainant. It is noted that the vehicle was insured for Rs. 1,92,928 and the Insurance Company had charged premium for the aforesaid insured sum, their objection that the vehicle had met with an accient in the previous year has no relevance. It is clearly mentioned in the schedule of premium that Bonus/Melus is 10% and premium charged under the said head is Rs. 417.98. So it is clear that since the vehicle had met with an accident in the previous year of insurance an additional sum of Rs. 417.98 was charged towards premium. This clearly shows that the insurer accepted the value of the vehicle together with accessories as Rs. 1,92,928 and had charged the premium accordingly. We would like to refer to New India Assurance Co. Ltd. v. G.P. Malhotra, III (2002) CPJ 264 (NC), wherein the National Commission refused to interfere in the order where the District Forum and the State Commission had held the view that no evidence was led by the petitioner that the market value of the vehicle is Rs. 25,000 particularly when the Insurance Company itself insured the car for Rs. 1,17,500 and was charging premium on that basis. We would further like to refer to Vishan Narain v. Oriental Insurance Co. Ltd., 97 (2002) DLT 225 (DB)=AIR 2002 Del. 336, wherein it was held ''''it is an admitted case that the vehicle in question was stolen, thus it is a case of total loss. Hence, the question of assessing the market value of the vehicle in question did not arise as it was a case of total loss case. Therefore, we are left with only the contractual value i.e., Rs. 1,00,000 for which amount the vehicle was insured. On this amount the respondent No. 1 charged premium. NOW the respondent No. 1 cannot be allowed to say that the appellant would be paid on the basis of market

value of the vehicle, particularly when the vehicle was not available for assessment. If at all the market value was to be assessed, it was at the time of insurance of the vehicle. Insurance Company must have noted that the vehicle was 7 years 7 months old and was 1989 model still insured it for Rs. 1,00,000. Inspite of this information when the Insurance Company insured the vehicle for Rs. 1,00,000 it means the Insurance Company knew that in case of total loss it would have to reimburse the amount for which the vehicle was insured''''. In the appeal in hand the terms and conditions of the policy have not been filed and in absence thereof there is nothing to justify payment on any other basis than the sum insured in case of total loss. However, the complainant had also filed Quotation obtained from Maruti Automobiles, Raipur for new Maruti Van and as per the quotation price of new Maruti Van was Rs. 2,05,641 in the year 1998. The vehicle of the complainant was indisputably 1996 model and had met with accident in the month of April, 1998. Keeping the above facts in view, we consider that the market value of the vehicle deserves to be assessed as 10% less of new model available in the market and thus the market value of the vehicle at the time of incident is assessed at Rs. 1,85,077 rounded to Rs. 1,85,000.

Hence, the appeal is allowed. The impugned order is set aside and instead it is directed that the respondent/insurer shall pay a sum of Rs. 1,85,000 (one lac eighty five thousand) to the complainant/appellant with interest @ 9% p.a. payable on the above amount from the date of complaint. The aforesaid amount shall be payable by the insuer within a period of two months failing which, interest @ 12% p.a. shall be payable from the date of default. The respondent/ insurer shall also pay cost of this litigation to the complainant, which is quantified at Rs. 2,000 (Rupees two thousand) only. Appeal allowed.

