(2012) 08 NCDRC CK 0093

In the National Consumer Disputes Redressal Commission

VIJAY RAJ APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD , Branch Manager , SATHISH RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 430 : 2012 3 CPJ 726 : 2012 3 CPR 577

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : K.R.Keshav Murthy , Pramod Dayal

Judgement

1. THIS revision petition challenges the order dated 01.08.2007 and that dated 05.09.2007 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, ''the State Commission'') in First Appeals no. 181 and 647 of 2007 and an application filed by the New India Assurance Co. Ltd. (hereafter, ''the insurance company'') seeking clarification of the order dated 01.08.2007 passed in FA no. 181 of 2007.

2. THE dispute was essentially in respect of the insurance claim of a motor car owned and insured by one Dr. Vijaya Raj for Rs.5,49,282/- as the Insured''s Declared Value (IDV) for the period 25.03.2005 to 24.03.2006. The car met with an accident on 18.10.2005 which was intimated to the insurance company. The surveyor appointed by the insurance company submitted the report. On consideration of the report, the insurance company offered settlement of the claim at Rs.5,49,282/- , i.e., IDV of the vehicle. This was accepted by the complainant on 21.12.2005. However, for various reasons the claim was not paid which led to filing of a consumer complaint by Dr. Vijay Raj through his power of attorney holder Mr. K. R. Keshavamurthy before the District Consumer Disputes Redressal Forum, Mandya (in short, ''the District Forum'').

3. ON consideration of the pleadings and evidence brought on record by the parties, the District Forum partly allowed the complaint and directed the insurance company (opposite party 1 - OP 1) to pay to the complainant Rs.6,25,782/- and take back the damaged car from the show-room concerned by paying the ground rent and intimation charge within one month from the date of

the order, subject to the complainant surrendering the RC book, insurance policy and original keys of the car and certificate of closure of the car loan. Failing this, OP 1 was directed to pay interest @ 9% per annum on Rs.5,49,000/- and also cost of Rs.5,000/- to the complainant.

4. AGGRIEVED by this order, both the insurance company and the complainant filed appeals before the State Commission. By its order dated 01.08.2007, the State Commission directed as under: "The OP/insurance company is directed to pay Rs.5,49,282/- to the complainant with interest at 9% per annum from 21.12.2005 (that is the date on which the offer was made by the insurance company and accepted by the complainant) till realisation. The insurance company is also directed to pay Rs.5000/- towards the costs of the proceedings to the complainant. The OP/insurance company has deposited a sum of Rs.5,49,282/- in this appeal before this Commission. If the complainant files a memo for payment, the office is directed to pay the same to the complainant. So far as the remaining amount is concerned, the insurance company is directed to pay the amount within two months from today."

5. SUBSEQUENTLY, the insurance company filed an application seeking clarification of the State Commission''s order on which the State Commission passed the following order on 05.09.2007: " 3. The learned counsel for the complainant submitted that the vehicle in question, i.e., the wreck of the damaged car, is in the Advaith Hyundai Showroom at Mysore and certain ground rent is payable to the showroom because the wreck of the damaged car is in the showroom for the last several months. The case of the complainant is that the ground rent is to be paid by the insurance company before taking possession of the wreck from the showroom. 4. Since we have awarded interest on the amount payable by the insurance company to the complainant, it is for the complainant to pay the ground rent and thereafter to surrender the salvage to the insurance company, as the compensation awarded is on the basis of ''total loss.'' 5. Therefore, we hold that the direction issued by our earlier order directing the insurance company to pay Rs.5,49,282/- to the complainant with interest at 9% per annum is subject to the surrendering of the salvage by the complainant to the insurance company. 6. With this observation, the application filed by the insurance company is disposed of."

6. IT is against these two orders that the original complainant has filed this revision petition through the holder of his power attorney, Mr. K. R. Keshavamurthy.

7. WE have heard the learned counsel for the parties and considered the documents and evidence. The short point involved in this case relates to jurisdictional competence of the State Commission to clarify/modify its first order dated 01.08.207 by its subsequent order dated 05.09.2007 under the powers conferred on a State Commission by the provisions of the Consumer Protection Act, 1986. This issue has been settled by the Apex Court by its judgment in the case of Rajeev Hitendra Pathak and Others v Achyut Kashinath Karekar and

Another [(2011) 9 SCC 541]. In this case, a three - Judge Bench of the Apex Court held inter alia as under: " 34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised. 35. The legislature chose to give the National Commission power to review its ex parte orders. Before amendment, against dismissal of any case by the Commission, the consumer had to rush to this court. The amendment in Section 22 and introduction of Section 22A were done for the convenience of the consumers. We have carefully ascertained the legislative intention and interpreted the law accordingly. "

8. THUS, the order dated 05.09.2007 of the State Commission which amounted to review of its earlier order dated 01.08.2007 cannot be sustained.

9. AS a result, we allow the revision petition partly and set aside the order dated 05.09.2007 of the State Commission. However, in slight clarification of the State Commission''s order of 01.08.2007, we direct the insurance company to pay to the petitioner/complainant the IDV of Rs. 5,49,282/- with interest @ 9 % per annum from 21.12.2005 till actual payment, within 30 days of the date of this order. The insurance company shall also pay the dues, if any, of the garage where the damaged car is stated to have been kept and get it released on the petitioner surrendering the registration certificate, loan closure certificate and other statutory documents and the original keys of the car, within 1 week of realisation of the payment as directed above. We may observe that interest on the IDV is akin to the ''cost'' that the insurance company must pay for withholding the money due to the insured. This cannot be offset, even in part, against the garage dues for storage of the damaged vehicle which have arisen because the insurance company chose to resile from its commitment to settle the claim in good time. The parties shall, however, bear their own costs throughout.

