(1991) 02 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

VINOD KUMAR MATHURBHAIPATEL — APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY — RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Citation : 1991 2 CPJ 6

Hon'ble Judges : S.A.Shah , Leelaben Trivedi , R.K.Shah J.

Final Decision : Complaint allowed with cost

Judgement

1. THE Complainant is carrying on the transport business and for that purpose, he purchased on June 30,1987, a truck for transporting the public goods on hire. THE complainant had purchased Swaraj Mazda Truck at the total cost of Rs. 1,94,000/-.

2. IN order to purchase the truck, the complainant had obtained a loan of Rs. 1,48,000/- from the Himatnagar Branch of Dena Bank. The complainant had to pay interest on the said loan amount at 18 per cent per annum. The loan was repayable by instalments spread over three years'' period. The Opposite Party is the United India Insurance Company with whom the complainant had got the truck insured under the comprehensive policy covering the risk upto the limit of rupees two lakhs. The policy with which we are concerned and which is the subject matter of this dispute, has been produced at Annexure-2. Policy was valid for the period between August 4, 1988, upto August 3,1989. The complainant had already paid full premium of Rs. 2,839/- and the estimated value of the motor truck as shown in the policy issued by the insurer is Rs. 2,00,000/-. The Policy also states in terms that the vehicle is of 1987 make.

As the complaint shows, the Motor truck so insured with the opposite party, met with an accident on October 3,1988. The Opposite Party on inspection treated the truck as total loss and took possession thereof.

3. IT is the case of the complainant that even though the opposite party was informed about the happening of the accident, and even though the Insurance

Company treated the truck as total loss, the opposite party took very long time in settling the claim and, ultimately, on October 3,1989, that is to say, after one full year, the opposite party directly remitted an amount of Rs. 1,34,500/- to Dena Bank Himatnagar Branch, without informing the complainant Since the loan was outstanding, on account of undue delay in settling the claim, the complainant had to pay more interest and the complainant has claimed that amount of interest on account of defective service and non-payment of full amount of rupees two lakhs being the risk covered under the policy in question. The complainant has thus claimed the total amount of Rs. 1,13,500/- by way of damages. In pursuance to the notice issued by the Commission, the Insurance Company appeared and has filed its version by way of written statement. The opposite party, while denying the claim made by the complainant has also raised some preliminary points challenging the jurisdiction of the Commission. On merit, the opposite party has admitted that the truck was insured with them ; that the truck met with the accident, resulting into total loss of the vehicle. However, it has denied the claim made by the complainant mainly on the ground that the delay in making payment was due to the complainant''s fault, and that the payment of Rs. 1,34,500/- was made in full and final satisfaction of the claim. It is further contended that it was false to say that the complainant was kept in the dark. According to the opposite party, it was the complainant who has signed the receipt voucher for the amount in question. The opposite party has admitted that the amount of Rs. 1,34,500/- was transmitted to Himatnagar Branch of Dena Bank, directly. Having regard to the pleadings of the parties as also the evidence adduced before us, the following points arise for our determination : - (1) What is the market value of the Truck as on date of the accident? (2) Whether the value assessed by the Insurance Company is legal and proper? (3) Whether there was any delay ; if yes, who was at fault for such delay? (4) Whether the Insurance Company proves that the receipt is signed by the complainant? If yes, what would be its effect? (5) Whether the complainant is entitled to any interest for the delayed payment as well as the interest on the additional amount, if proved? (6) What should be the final order?

4. ADMITTEDLY, the policy is signed by the authorised representative of the opposite party and the same is admitted by the Insurance Company. This policy records the estimated insured value of the vehicle (motor truck) at rupees two lakhs and on that basis, the premiums have also been assessed and recovered by the opposite party. Now, the motor truck was hypothecated by the complainant with the Himatnagar Branch of Dena Bank. The risk under the policy covered the period between August 4,1988 to August 3,1989. Admittedly, the truck met with an accident on October 3,1988, that is, while the policy was in force. According to the opposite party, the motor truck was reduced to an irreparable condition and, therefore, the Insurance Company took it as total loss. The opposite party has examined one Gordhanbhai Bhogilal Shah, Divisional Manager of the Insurance Company, serving at present at Mehsana. He has stated in his deposition that they take the present market value or the estimated

value, whichever is less. He has further stated that if the Company does not get full and final settlement receipt, the Insurance Company will not pay the claim sanctioned by it. He has categorically stated that"in no case, they would release the sanctioned amount without getting the full and final settlement receipt.....". The average time taken by his Branch in settling the claim is three to four months. However, if the claim exceeds rupees one lakh, it takes six months. The witness has admitted that his Branch has taken average time of three months only.

5. MOST important admission which has been made by this witness Gordhanbhai is that neither he nor his office had informed the claimant (assured) that they had recommended an amount of Rs. 1,34,500/- to the Regional Office. In answer to the question put by the Commission, the witness admitted that it was true that they had not sent any information to the insured that the Head Office had sanctioned the claim at Rs. 1,34,500/-. He further admitted that he had also not informed orally about the sanction though it was the duty of the Insurance Company to inform the claimant when any claim is sanctioned by the Regional/ Head Office. He further admitted that he had also, not informed orally about the sanction of the claim by the Regional office though it was the duty of the Insurance Company so to inform when any claim is sanctioned by the Head Office. He further admitted that he had not informed any insured as and when the claims made by such insured were sanctioned. In the present case, the approval of the Head Office was conveyed to the Branch on February 16,1989. On the question as to why he did not inform even the Bank when the claim was sanctioned, Mr. Gordhanbhai Shah stated that he did not inform because he had to observe certain formalities under their internal procedure. Finally, he admitted that he had informed the Bank with the discharge voucher sent on August 23,1989. 10. From the evidence of this witness, who is of the rank of a Divisional Manager of the Insurance Company, following facts are established : - (a) the claim of the claimant was sanctioned within three months by the local office. Therefore, there is no question of any non-co-operation or delay as alleged by the complainant; (b) the opposite party had never cared to inform as to what was the recommendation when the claim was sanctioned, and has neither informed in writing or even orally to the complainant about the sanction of the insurance claim ; (c) even on receipt of the final sanction from the head office in February, 1989, six months had elapsed and there is no logical explanation forthcoming on record for the said in-action ; (d) a categorical statement is made that unless full and final settlement receipt is given, the claim will not be passed. This means that the claimant is pressed and/ or forced to give such full and final payment receipt.

6. THE Opposite Party has vehemently sought to rely upon the full and final payment receipt alleged to have been passed by the claimant. THE original receipt has been produced by the Insurance Company on record and in order to prove the said receipt, the Insurance Company has examined the concerned Branch Manager of Dena Bank, who was the person concerned at the relevant

time. This witness is not in a position to say that the receipt was signed by the claimant He says that when the receipt was sent to him by some one, he countersigned the same. He has further stated that he had never informed the claimant insured regarding this amount at any time, since they do not follow any such practice. THE cheque was issued in the name of Dena Bank and the same was given to his Branch. He admitted that even after receipt of the cheque, he had not informed the borrower (complainant) about the same. In cross examination, this witness has stated that he did not remember as to whether the discharge voucher was sent to them by the Insurance Company. THE voucher bears the date 23.8.1989. Now this date 23.8.1989 corresponds with the date when the Insurance Company had sent the discharge voucher to Dena Bank as can be seen from the Affidavit filed by said Gordhanbhai Shah. This, therefore, leaves no doubt that this discharge voucher had been sent by the Insurance Company to Dena Bank and the same was returned by Dena Bank duly signed by the Bank Manager. Again, the Bank Manager has in terms admitted that Mr. V.M. Patel (the complainant) had not signed the discharge voucher either in his presence or in the presence of any other person. He also admitted that he had not compared the signature of V.M. Patel with the true signature on the record of the Bank. He is also not in a position to say as to who delivered the discharge voucher. He stated that they do not maintain any Inward Register. In short, the Insurance Company is not in a position to prove that the claimantcomplainant had passed the full and final settlement receipt or that the signature on the receipt is that of the complainant V.M. Patel. Considering the circumstances and from the manner in which the evidence has been given by both the witnesses, we are not convinced to hold that the receipt bears the signature of the complainant Vinod bhai M. Patel.

The claimant has contended that neither the opposite party, nor the Bank who had advanced money against the hypothecation of the truck had informed the complainant as to what was going on between them. Apparently, there is a great delay in processing and sanctioning the claim; and, after the claim was sanctioned, as the evidence shows, every thing remained with the Insurance Company and the Bank and the claimant has been totally excluded.

7. NOW, it is not in dispute that the truck was purchased by Mr. Patel one year before the truck met with the accident, resulting into total loss. The estimated price as shown in the policy is Rs. 2 lakhs. NOW, the claimant has produced the proforma invoice from Shaikh & Company who are the authorised agents of Swaraj Mazda Vans and the market price of the said Truck as on October 8, 1988, that is, five days after the accident, is shown at Rs. 2,11,955/-. The terms and conditions printed in the proforma invoice also show that the Central Government and State Government taxes will be extra and the registration be arranged by the purchaser. This means that the purchaser of Swaraj Mazda Truck has to bear the further expenses by way of taxes, octroi, registration fees and insurance premia. The claimant has stated that the market value of the new truck for plying on road at present will be around Rs. 2,25,000/-. Now, if we take

out the depreciation value of the truck which had been used for atleast one year, the market value of rupees two lakhs on the date of the policy cannot be said to be an over estimated value. We may not forget the fact that the estimated value had not been denied or disputed by the Opposite Party when the proposal was submitted and the Divisional Manager Mr. Shah has admitted in his evidence that generally they are not getting inflating proposals and rightly so, because, the insured has to pay premium on the estimated value of the truck as shown in the proposal form. In these circumstances, when the premium has been paid on the basis of the valuation of rupees two lakhs, and when the same had not been disputed by the Insurance Company at the time of issuing the policy ; and when the Insurance Company had assessed, charged and collected the premium on that basis; and when the circumstances suggest that Rs. 2 lakh might be the probable value, it is for the Insurance Company to prove that the value is excessive or that the market value is less than Rs. 2 lakh. Mere opinion of the departmental surveyor who is a regular employee of the opposite party and who is not able to produce any transaction when such trucks of 1987 Model are sold at lesser price, we have no hesitation in accepting the value as shown in the policy on the basis of the proforma invoice and to hold the market value of the truck at Rs. 2 lakhs on the date of the accident. The advantage of inflation in price should always go to the consumer and not to the Insurance Company who has accepted the premiums on the basis of the estimated value shown in the proposal form.

8. THERE is no dispute that the claimant-complainant had taken the loan of Rs. 1,48,000/- from the Dena Bank for purchasing the truck. It is also not in dispute that the complainant had paid interest at 18% on the said amount to the Bank. Since there was no dispute regarding the accident, or the legality of the insurance and when it was a total loss, we do not understand as to why the Insurance Company took three months'' time to settle and recommend the claim to Head Office. The Insurance Company was in know of the fact that interest at 18 per cent was mounting on the claimant. The claimant was a poor person and was plying the truck to earn his livelihood. The Insurance Company is enjoined with the duty to investigate the claim of the claimant with utmost honesty and integrity and when the Divisional Manager says that he would not part with the claim unless the full and final settlement receipt is given, does not speak well of the Insurance Company. This means that the company wants to pressurise the poor customers to accept the right or wrong assessment of their claims. The company plays upon the weak financial position of the poor claimants. The company, in this case, has not even cared to inform the claimant. The company has not explained as to why the claim sanctioned in February 1989 by the Head Office was kept pending and unattended in the local office and as to why the amount so sanctioned, was not paid either to the claimant insured, or to the Bank. In these circumstances, we have no other alternative except to compensate the claimant for all the losses which he has suffered only on account of negligent, indifferent and unsympathetic attitude on the part of the Insurance

Company. In view of the aforesaid discussion, we hold that market price of Swaraj Mazda truck plying on road as on the date of accident was rupees two lacs; the value assessed by the departmental surveyor is too less and is not supported by proper evidence; the opposite party has not proved that the discharge voucher was signed by the complainant. The said voucher is, therefore, not binding to the complainant; even otherwise, the opposite party by its conduct and delaying tactics has tried to pressurize the complainant to accept the amount sanctioned by them ; without informing the complainant, the company made payment directly to the Bank. The Insurance Company is thus liable to pay interest to the claimant for the delay that has taken place in settling the claim. Further, as observed by us, there is no reason to reduce the market-value than the estimated value. We, therefore, hold the market value of the truck at Rs. 2,00,000/- (two lakhs.) Admittedly, the Insurance Company has remitted only Rs. 1,34,500/- to the Bank. The Insurance Company, is, therefore, liable to pay the balance of Rs. 65,500/- to the complainant. In the result, therefore, we pass the following order. ORDER (A) The Opposite Party, United India Insurance Company, at Himatnagar Branch, shall pay to the complainant, an amount of Rs. 65,500/- (Sixty Five thousand Five hundred) being the difference amount as shown hereinabove, together with 18 per cent running interest on the said sum from the date of accident till payment actually made them ; (b) The Opposite Party will also pay to the complainant, 18 per cent running interest amount on the total amount of Rs. 1,34,500/-, from the date of the accident till the date of payment to Dena Bank, in Account of the Complainant, for unlawful retention of the claim money and use of the insurance amount without any authority ; (C) The Opposite Party will also pay to the complainant, the costs of this complaint, which we quantify at Rs. 1,000/- and bear its own costs. (D) The Opposite Party shall pay in the first instance, the decretal amount to Dena Bank in the hypothecation account of the complainant, under intimation to the complainant (D-1) Balance amount after clearance of hypothecation Account, will be paid over to the complainant within two months, or to deposit the same before this Commission for payment to the complainant Complaint allowed with cost.

