(2003) 11 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Y.S.SENGAR APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

Citation : 2003 4 CPJ 723 : 2004 1 UC 536 : 2004 2 JCLR 720 : 2005 3 AWC 480

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Claim allowed

Judgement

1. THIS is a complaint by Mr. Y.S. Sengar against United India Insurance Co. Ltd. for repair charges of the printer amounting to Rs. 1,60,157/- (Rupees one lac sixty thousand one hundred fifty seven only) and compensation of Rs. 5,00,000/- (Rupees Five lacs only) (at one place in relief written as Rs. 50,000/- (Rupees Fifty thousand only) and Rs. 5,000/- (Rupees Five thousand only) as expenses of litigation.

2. THE complaint was filed before the District Forum, Haridwar on 21.11.2000 and the Forum calculated the valuation of the case as Rs. 6,65,157/-. When the jurisdiction of the Forum was only up to Rs. 5,00,000/-. By a detailed order dated 21.5.2003 the learned Forum requested this Commission to entertain and decide the complaint because the new Act shall not apply to the cases instituted before 15.3.2003 and on the date of institution the Forum has got no jurisdiction to decide the complaint. Both the parties appeared in this Commission on 1.8.2003 and requested to proceed with the complaint as a regular complaint. The brief facts of the case are that Sh. Y.S. Sengar, the complainant had purchased a Laser dot Printer with computer at Haridwar. The computer and the printer were insured with the opposite party from 9.4.1999 to 8.4.2000 for a sum of Rs. 2,48,000/-. The premium was paid. The printer stopped working due to technical defect. The information was given to the opposite party and the opposite party was requested to appoint a Surveyor to assess the loss. The opposite party called for estimate of repairs. The complainant submitted the estimate on 1.10.1999 issued by Hewlett Packard Co. India Ltd. After receiving

the estimate on 24.11.1999 Sh. D.K. Taneja, the Surveyor, informed that the printer should be brought to New Delhi for survey. The complainant informed that it is not possible for him to bring the printer to Delhi again. It was requested that survey be bone in Haridwar but no reply of this letter was received. The complainant again wrote a letter dated 17.5.2000 but again it was not replied. It is specifically alleged that the exhaustive insurance policy has not been given to the complainant in spite of repeated requests. The letter was also sent on 18.2.2000 but still the policy was not issued. The claim of the complainant was rejected on 1.6.2000 without any survey. It was alleged that this is deficiency in service of the opposite party and hence the complaint was filed.

The opposite party filed the written statement and admitted the insurance. It is said that the contents of Para 3 of the complaint are partly admitted but the technical defect was not allowed by the complainant to be inspected by M/s. Hewlett Packard Repairing Centre. In Para 4 of the complaint it is admitted that the complainant got the estimate of the repairs from Hewlett Packard India Co. Ltd. and sent the copy to the Insurance Company. The appointment of Sh. D.K. Taneja, the Surveyor is admitted and it is also admitted that the printer was called for at Delhi for survey but the complainant himself did not produce the printer at Delhi for survey and assessment. It was necessary to be brought to Delhi records. The loss can be assessed at manufacturer''s workshop by the engineer of the manufacturing company. It is alleged that the claim was rejected on 22.5.2000 on the reluctance of the complainant to bring the printer at Delhi, and there is no deficiency in service of the Insurance Company.

3. IN support of his case the complainant produced the letter dated 18.8.2000 to show that he has called for the exhaustive policy but it was not given to him. The letter of the INsurance Department dated 1.6.2000 has also been produced to show that the claim of the complainant has been rejected by the INsurance Company. The cover note of the insurance has been filed to show that the printer was insured. The various letters issued by both the parties have been filed including the estimate of repairs dated 24.11.1999 showing that the printer could have been repaired in Rs. 1,59,620/-. The complainant also filed his affidavit dated 3.4.2003 in support of his allegations. The opposite party has admitted the insurance. It did not say that the claim was rejected on merits because the claim did not lie or the stoppage of working was not due to technical defect or it was not insured. The claim has been rejected merely on the ground that trhe printer was not brought to Delhi to manufacturer''s workship so that the damages in the printer could be examined under discussion with the manufacturer''s engineer. The respondent filed the affidavit of Sh. R.K. Arora, Branch Manager, United India Insurance Co. Ltd. and the exhaustive policy which shows that the printer was insured for a sum of Rs. 2,48,000/- (Rupees Two lacs forty eight thousand only).

4. WE have heard the learned Counsel for the parties and gone through the records. It is not specifically disputed that the printer has gone out of working because of technical defect. It is also not said that there was no liability of the

Insurance Company to get the printer repaired. The claim was rejected solely on the ground that the printer was not brought to Delhi. The moot question is, whether the complainant was under any legal or contractual obligation to take the printer to Delhi ? From the letter dated 24.11.1999 by the complainant to the Insurance Company, it is clear that once printer was taken to Delhi to get the estimate which was desired by the Insurance Company, the complainant has out of his own taken the printer to the Hewlett Packard Repair Centre, Delhi to obtain the estimate and got the estimate and submitted it to the Insurance Company. The Insurance Company should not have outright rejected the estimate. There is nothing in the record to show that the damage could not have been seen at Haridwar. The case of the Insurance Company is that it was necessary to bring the printer to Delhi to assess the loss in the presence of the manufacturer''s engineer. If the presence of the manufacturer''s engineer alone was necessary, he could have come to Haridwar also. If Sh. D.K. Taneja, the Surveyor could not have assessed the loss himself then he was not an expert Surveyor and his appointment, therefore, itself was without any merit. The printer is a sophisticated machine. Perhaps it was imported from Japan and it''s daily carrying to Delhi might have caused further damage to the printer and for that the Insurance Company could have very easily told that since the complainant himself has caused the damage in transporting the printer, therefore, the Insurance Company is not liable to make good any loss. The Insurance Company only told that for the assessment of estimate of loss and repairs it was necessary to bring the printer to Delhi. No other reason whatsoever has been told why it''s taking to Delhi was necessary. Such a taking to Delhi could have been obligatory and necessary only when no estimate could have been prepared at Haridwar. We find no reason that the Surveyor and the engineer of the manufacturer could not have come to Haridwar and could not have assessed the loss after its proper survey. Therefore, taking of the machine to Delhi was not at all necessary rather such a condition has been unnecessarily imposed on the complainant to defeat the claim. It is not open to the Insurance Company to say to the insured to bring the insused article to the place of its choice, today they are telling that bring it to Delhi, on the other day they may tell bring it to Mumbai and on the third day they may tell that we shall assess the loss at Japan or U.K. bring the machine there. No such condition can be imposed on the insured. Even otherwise we have gone through the cover note. It is the definite case of the complainant that exhaustive policy was never given to him. There is nothing in the cover note that in the case of claim or damage the machine had to be brought at the manufacturer''s place to assess the loss. If the proposal is silent, then the Insurance Company cannot impose the condition like this to defeat the claim. Nothing was argued by the learned Counsel for the Insurance Company that there was any such condition in the proposal form, cover note or even in the exhaustive policy.

5. EVEN otherwise the case of the Insurance Company was that estimate could not have been prepared at Haridwar. Still the estimate has been prepared at

Hewlett Packard India Co. Ltd. at Haridwar. It is not said at all that the estimate is incorrect. It was said that there was no arrangement at all for the repairing of the printer at Haridwar, therefore, the estimate could also have not been prepared at Haridwar. But the tragedy is that the manufacturer itself has given the certificate dated 1.7.2000 which reads : "This is to certify that Bhalla Business & Education Centre, Haridwar our service provider, is authorized to carry out hardware repairs as per warranty guidelines. This arrangement is valid for one year from the date of issue of this letter and can be renewed after review." The complainant himself has filed the affidavit dated 10.2.2003 that the machine in question was H.P. Laser Jet Printer which is not manufactured in India. M/s. Bhalla Business & Education Centre, Haridwar have informed them that they are service providers, authorized to carry out hardware repairs of H.P. Laser Jet Printer Series along with other H.P. products. This is perhaps the contention of the complainant that the only service centre was not at Kalkaji, Delhi, it was in Haridwar as well. Thus it is clear that the repairs could have been done at Haridwar as well and since the repairs could have been done at Haridwar, estimate could also have been prepared at Haridwar and there was absolutely no necessity to take the machine to Delhi.

6. THERE was neither any requirement of the policy, nor of the Insurance Company to take the printer to Delhi except the whimsical desire of the Insurance Company to which the complainant was not at all bound to satisfy. We have also said that the claim has been rejected merely on this ground that it was not brought to Delhi which was absolutely no ground to reject the claim. Now the question is, to what compensation the complainant is entitled. He has given an estimate of Rs. 1,60,157/- (Rupees One lac sixty thousand one hundred fifty seven only) for the repairs of the printer to which he is entitled to get. We have nothing to differ from that estimate, nor the Insurance Company has produced anything to show that this estimate is not correct. The complainant is entitled to get it.

He has been put to unnecessary harassment. Once he has taken the printer to Delhi and spent a sum of Rs. 3,000/-. Again he was called for. His printer is not at all working. He is been put to financial loss besides mental harassment. The claimant has claimed Rs. 5,00,000/- (Rupees Five lacs only) as compensation. In para 7 of the complaint he has written Rs. 50,000/- (Rupees Fifty thousand only) in handwriting in the relief portion. However, in the circumstances of the case he is entitled to get a compensation of Rs. 20,000/- (Rupees Twenty thousand only) to compensate his actual loss, expenses already incurred as well as expenses met towards the litigation, cost of journey and payment of Lawyer''s fees, etc. ORDER The claim is to be allowed to the extent that the claimant shall get a sum of Rs. 1,60,157/- (Rupees One lac sixty thousand one hundred fifty seven only) as costs of repair of the printer. This amount should be paid within 2 months from today failing which the complainant shall be entitled to get interest on the actual amount of Rs. 1,60,157/- (Rupees One lac sixty thousand one hundred fifty seven only) @ 10% from the date of the complaint, i.e., 21.12.2000 till the actual date of payment. Besides this he shall also get a sum of Rs. 20,000/- (Rupees Twenty thousand only) as compensation and costs from the opposite party. Claim allowed.

