

(2014) 09 NCDRC CK 0116

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NARESH KUMAR

APPELLANT

Vs

ORIENTAL
INSURANCE
COMPANY LTD.

RESPONDENT

Date of Decision: Sept. 10, 2014

Citation: 2014 0 NCDRC 579 : 2014 4 CPJ 203

Hon'ble Judges: AJIT BHARIHOKE , Rekha Gupta J.

Advocate: RITESH KHATRI , RAJESH K.GUPTA

Judgement

1. THIS revision is directed against the order of the State Consumer Disputes Redressal Commission Haryana, Panchkula (in short, "the State

Commission ") whereby the State Commission partly accepted the appeal preferred by the respondent / insurance company against the order of

the District Forum and modified the same as under:

""As a sequel to our above discussion in this appeal is partly accepted and impugned order is modified to the extent that complainant would be

entitled to the claims amount Rs.1,30,220/- on repair basis, along with interest at the rate of 9% per annum from the date of filing of the complaint

till realisation. The statutory amount of Rs.25,000/- deposited by the appellant at the time of filing of the appeal as well as the amount of

Rs.85,447/- deposited by the appellant in compliance of the order dated 12.07.2011 are ordered to be released to the appellant after proper

receipt identification and verification "".

2. BRIEFLY stated facts relevant for the disposal of the revision petition are that the petitioner / complainant insured his car Ford Ikon bearing registration no. HR -26 -AH -9935 with the respondent / insurance company. The insurance was valid from 18.02.2008 to 17.02.2009. The car met with an accident on 16.01.2009 and got damaged. The accident was reported to the insurance company and claim was filed. It is the case of the complainant that respondent company failed to settle the insurance claim and this led to filing of consumer complaint before the District Forum.

3. RESPONDENT company in its written statement denied its deficiency on its part. It pleaded that immediately after the receipt of intimation of accident Mr.R.S.Gill and Ashok Chawla Surveyors were appointed. The surveyors after inspecting the vehicle assessed the loss to the tune of Rs.1,30,220.60 vide their report dated 30.3.2009 which included salvage value and deduction of Rs.1000/- in terms of excess clause. The offer in this regard was made to the complainant but he refused to accept the amount and sign settlement voucher.

The District Forum on consideration of evidence and pleadings, allowed the complaint and ordered thus:

""1. To pay a sum of Rs.1,90,000/- as compensation to the complainant on account of loss of his vehicle in the accident on 16.01.2009 along with interest at the rate of 9% per annum thereon w.e.f. the date of filing of the claim with the company till its actual payment.

II. Further to pay a sum of Rs.10,000/- to the complainant towards lump sum compensation on account of mental agony , harassment and cost of litigation.

III. The OP No.1 is at liberty to collect the car / salvage from M/s AB Motor Pvt. Ltd. Ludhiana at their cost, if any. In this regard the complainant is also directed to execute any document / power of attorney in favour of Op no.1 and further directed to transfer the vehicle in the name of the OP company and also to execute necessary documents in this regard, if so required by the company "".

Let the order be complied with within the period of 30 days. A copy of this order be communicated to both the parties free of costs and file be consigned to the record room after due compliance "".

4. BEING aggrieved of the order of the District Forum, the respondent approached the State Commission in appeal and the State Commission modified the order of the District Forum as detailed above.

5. MR . Ritesh Khatri, Advocate for the petitioner has argued that order of State Commission is not sustainable because State Commission has failed to address whether or not the claim of the petitioner was required to be settled on total loss basis. It is further contended that State Commission has committed a grave error in reducing the amount of compensation without passing a speaking order. It is contended that compensation should have been awarded from the date of the claim and not from the date of filing of consumer complaint. It is also contended that there is no justification for rejecting the compensation of Rs.10,000/- awarded by the District Forum on account of mental agony, harassment and cost of litigation.

6. MR . Rajesh K Gupta, Advocate for the respondent insurance company has argued in support of the impugned order. He has argued that there is no deficiency in service on the part of the respondent for the reason that amount of damage caused to the car as assessed by surveyor was promptly offered to the petitioner but he refused to accept the same and declined to sign the settlement receipt.

7. WE have considered the rival contentions and perused the record.

8. IT is undisputed that said car met with an accident and suffered damage during the subsistence of insurance policy. On perusal of order of District Forum, we find that two surveyor reports, one appointed by the insurance company and other surveyor appointed by the petitioner were filed before the District Forum. The District Forum instead of going into the question of correctness of surveyor reports opted to take a short cut by averaging the quantum of damages assessed by both the surveyors and awarded a sum of Rs. 1,90,000/- as compensation to the complainant on account of loss caused to the car in the accident. The relevant observations of the District Forum are reproduced thus:

""Now turning to the relief clause we find that Surveyor Sh.Ashok Chawla appointed by the Insurance Company had assessed the total loss on

repair basis of the car at Rs.1,30,220.29 p. The learned counsel for the OP contended and as per settled law the complainant is only entitled to the

loss as assessed by the Surveyor. On the other hand the complainant also appointed Sh.J.K.Sharma as Surveyor, who finally assessed the loss of

the vehicle on market rate basis to the tune of Rs.2,50,000/- . In case titled as United India Insurance Company Ltd. Vs. Parmod Kumar Grower

F.A.No.336 of 2002 decided on 20.9.2002, our own Hon "ble State Commission in a similar matter pertaining to two reports of the surveyor has

held thus: Having considered the submissions of the counsel for the parties, we are of the view that some times in survey reports some time are left

and the reports are even not complete and are varying with each other. The Commission is of the view that ends of justice will be met if the

compensation is reduced to Rs.1,60,000/- with interest. We are, therefore, of the view that besides factor replacement of body shall some times

in both survey reports some items are left and the reports are even not complete and are varying with each other. Having considered arguments

advanced by both sides, this Forum is of the view that ends of justice will be fully met that by taking the average value of both the reports the total

loss is assessed at the rate of Rs.1,90,000/- with interest at the rate of 9% per annum thereon w.e.f. the date of filing of the claim with the

company till payment. Besides the complainant also claimed huge compensation on account of mental agony, harassment and cost of litigation to

meet end of justice we allowed Rs.10,000/- on account of mental agony, harassment suffered by the complainant during the period of non

settlement of his claim and cost of litigation "".

9. FROM the above, it is clear that the District Forum did not award compensation to the respondent on total loss basis. The respondent has not

challenged the above noted finding of the District Forum in part. Therefore, it can be safely inferred that the order of the District Forum awarding

compensation on the basis of quantum of damages has been accepted by the respondent.

10. THE State Commission vide impugned order took exception to the order of the District Forum granting compensation on the basis of average

of two surveyor reports without going into the correctness of either of the report and relied upon the surveyor of Sh. R.S.Gill, Surveyor appointed

by the insurance company. The relevant reasoning of the State Commission is reproduced thus:

""We find force in the contention of the latter counsel for the appellant that it has been specifically observed by Mr.R.S.Gill surveyor that vehicle of

the complainant can be repaired and in this regard, expenses were assessed to Rs.1,30,200/- . It is not disputed that vehicle of the complainant

was of 2004 model and met with an accident on 16.01.2009 that is after a period of more than 5 years. Therefore, the depreciation to the vehicle

cannot be denied. No doubt in the reports submitted by the surveyors of the company, there was deductions on account of depreciation value of

the vehicle, whereas surveyors appointed by the complainant had submitted his report on the basis of the market value of the vehicle. In this view

of the matter, report submitted by the surveyor of the company cannot be denied. In this regard, we may take reliance from the case ""National

Insurance Co. Ltd. Versus Sardar Gurmeet Singh "" reported in 2004 (III) CPJ (NC), wherein it has been held that the surveyors are appointed

by the insurance company and the reports are to be given due importance and that one should have sufficient to disagree with the assessment made

by them. In the case in hand, surveyor has assessed the damages to the vehicle to the tune of Rs.1,30,220/. Therefore, taking strength of the above

case Sardar Gurmeet Singh we feel that it will be more appropriate that if the amount of Rs.1,30,220/- as assessed by the surveyor is allowed to

the complainant "".

11. WE do not find any fault in the rationale behind the above conclusion of the State Commission which may call for interference by this

Commission in exercise of revision jurisdiction under section 21 (b) of the Act. Revision petition is, therefore, dismissed with no order as to costs.