

(2004) 07 NCDRC CK 0029

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Oriental Insurance Co.
Ltd.

APPELLANT

Vs

SHATRUHAN
CHANDRAKAR

RESPONDENT

Date of Decision: July 31, 2004

Citation: 2004 3 CPR 324 : 2004 4 CPJ 88

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

Final Decision: Appeal dismissed

Judgement

1. THIS appeal, under Section 15 of the Consumer Protection Act, is directed against order dated 8.1.2004 in Complaint No. 389/2001 by District Consumer Disputes Redressal Forum, Durg, (hereinafter called the "District Forum" for short) directing the appellant/insurer to pay a sum of Rs. 43,586/- to the complainant/appellant as compensation.

2. UNDISPUTEDLY the complainant/respondent is the owner of Tractor No. MP-23-G.A.-4987. He had insured the said tractor with the appellant/insurer for the period from 16.3.2001 to 15.3.2002. The said tractor met with an accident on 13.4.2001.

According to the complainant, his tractor got damaged in the accident, as a result of which he had to incur expenditure in repairs of the tractor. The complainant, therefore, claimed compensation from the appellant/insurer. The insurer repudiated the claim by their letter dated 8.5.2001 on the ground that the damage to the tractor was consequential to the mechanical breakdown which is excluded from the

terms of policy, issued by the appellant, covering the risk of tractor. Feeling aggrieved by the repudiation as above, the complainant filed the complaint before the District Forum.

The appellant/insurer resisted the complaint mainly on the ground that the risk was not covered because the tractor suffered a mechanical breakdown. It was averred that Surveyor Mr. A.K. Sen appointed by the appellant/insurer had reported the damage to the tractor due to mechanical failure. It was, therefore, averred that the repudiation was justified.

3. THE District Forum in the impugned order held that the initial report by the Surveyor N.K. Garg, it was reported that he examined the tractor involved in the accident, and had also taken photographs. It was stated that the first-Surveyor Mr. N.K. Garg did not report that the accident occurred due to mechanical breakdown. It was, further observed there was no justification to call for and rely upon the report of the Second Surveyor A.K. Sen. Accordingly, it was held by the District Forum that the appellant by repudiating the complainant's claim, has committed deficiency in service. THE complaint was accordingly allowed and compensation of Rs. 43,586/- was directed to be paid to the complainant/respondent.

The learned Counsel for the parties were heard and the record was perused. The main contention of the learned Counsel for the appellant/insurer was that the Surveyor N.K. Garg had only inspected the spot and had not given any opinion regarding the cause of the accident. It was, further, submitted in the above context that on the request of the complainant/respondent, the second Surveyor A.K. Sen was appointed by the appellant who had got the tractor engine dismantled and has reported that the accident was due to mechanical breakdown. It was, therefore, submitted that in view of Clause 2(A) of Section (XV) of the policy issued to the complainant/respondent, risk consequential to mechanical breakdown was not covered. Hence, the complainant was not entitled to get any compensation. It was, therefore, submitted that the District Forum erred in not consideration the above vital aspect of the matter.

4. THE learned Counsel for the respondent/insurer, however, supported the impugned order. It was submitted that the tractor of the complainant had met with

an accident and fallen into the pit resulting in damage to it. THE District Forum, therefore, justified in awarding compensation to the complainant/respondent.

It is not disputed that Kisan Package Insurance policy was issued to the complainant/respondent. Clause 2(a) of Section XV of the said policy reads : The Company shall not be liable to make any payment in respect of consequential loss, depreciation, wear and tear, mechanical or electrical breakdown, failure of breaks or for damage caused by overloading or strain of the motor vehicle nor for loss of or damage to accessories by burglary, housebreaking or theft unless tractor is stolen at the same time.

It would thus appear that the risk was not covered under the policy in the case of accident "inter alia" due to mechanical breakdown.

5. IT is not in dispute that the tractor had met with an accident. The question for consideration is whether the accident was due to mechanical breakdown/failure or otherwise? In the above context, it may be noted that initially N.K. Garg was appointed as Surveyor who had inspected the spot and submitted his report. He had stated in Clause 10 of his report that-

"As stated by the driver the cause of accident is while the driver was coming from village road towards main connecting road to Tedesara, the tractor jumped over a heap of soil and its engine blocked and clutch housing cracked due to impact of jump and fall of front portion on ground after jumping causing leverage to engine portion. The cause stated seems to be satisfying and possible looking at the damages and condition of vehicle at the spot."

6. IT would thus appear from the said report of Surveyor N.K. Garg that his conclusion regarding the cause of accident was assumed by him on the basis of statement made to him by the driver. The statement of the driver recorded by N.K. Garg or his affidavit, however, has not been placed on record. IT may further be noticed that after the appellant/insurer repudiated the claim of the complainant/respondent by their letter dated 8.5.2001, the complainant, by his letter dated 8.6.2001, requested the appellant/insurer for further investigation by a second Surveyor. Accordingly, second Surveyor A.K. Sen was appointed as per the

request of the complainant/respondent. IT appears on perusal of the report of A.K. Sen, that he made a detailed examination of the damaged vehicle and also got the engine dismantled. He has concluded that the accident was on account of mechanical breakdown. Relevant portion of his report dated 28.4.2001 is as below:

"On inspection I found that the components were broken due to mechanical breakdown and not as above reason. Spot photographs also not related by the place of accident stated. The statement written in the claim form is false. After receiving instruction from the Divl. Manager of the Oriental Insurance Co. Ltd., Durg, for the final survey of the above Swaraj Tractor. I reached at the K.P. Industries, Durg, where the vehicle was kept for final survey and inspected the same. My observations are as under : The following components were found broken : (1) Crank Case (2) Flywheel housing and self housing. The above items are the part of the Power Unit : After dismantling I found that there was an old crack on the clutch housing where the self housing fixed along with crack case. This old crack gradually spread out and increased due to vehicle's movement and finally detached from the fixing bolt. Due to detachment of flywheel Housing complete load of the crank case shifted to one point which failed to withstand that pressure and broken (crank case) along with self housing. This is a clear case of mechanical break down and not an accidental breakdown as stated in the claim form. IT is not possible for a spot Surveyor to establish actual case of failure without dismantling the components. Moreover there was no external impact from the bottom side, front side as well as right and left sides of the tractor. The system collapsed on the plain road itself. As per claim form, the insured stated that this thing happened in the field divider. Whereas spot photograph indicates plain village road. Spot Surveyor written the vehicle was lifted from the spot because of road blockage which is not true as per the statement written in the claim form. This is a clear case of mechanical breakdown and not an accidental breakdown."

The above report of A.K. Sen discloses that on dismantling the engine and on inspection of the broken parts he had concluded that accident was on account of mechanical breakdown. The complainant does not appear to have controverted the above report nor did he place on record, report of any expert or technician to rebut the aforementioned findings and conclusions of the Surveyor A.K. Sen.

The learned Counsel during arguments drew our attention to the estimate dated 18.4.2001 given by K.P. Industries, and submitted that the said report nullifies the report of A.K. Sen. However, we do not find justification in the submission as above. The said document dated 18.4.2001 is not a report of any technician, but is merely an estimate of the prices of the parts probably required to be replaced during repairs. As noted above, after dismantling of the vehicle the same was examined by the Surveyor A.K. Sen who had found inherent defects in some parts of the engine and concluded that it was a case of mechanical breakdown. As observed above, there is nothing to discard the said opinion of Surveyor.

7. IN any case, it is clear that the repudiation based on the above report by the appellant/insurer could not be said to be unjustified. It is settled law that bona fide repudiation of the claim by the insurer after due application of mind does not amount to deficiency in service. IN foregoing circumstances, we find that the appellant/insurer could not be said to have committed any deficiency in service. The respondent, therefore, could not succeed in his complaint. The District Forum erred in allowing the same.

Accordingly, this appeal is allowed. The impugned order is set aside. The complaint is dismissed with the liberty to the complainant to resort to such legal remedy as may be available to him. Parties shall, bear their own cost. If any amount has been deposited by the appellant/insurer towards the compliance of the impugned order, he shall be entitled to get the refund thereof. Appeal dismissed.