

(1994) 11 NCDRC CK 0020

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Chandra Shekhar Singh

APPELLANT

Vs

NEW INDIA ASSURANCE
COMPANY

RESPONDENT

Date of Decision: Nov. 24, 1994

Citation: 1995 3 CPJ 378 : 1996 1 CPR 407

Hon'ble Judges: B.N.Sinha , K.P.Sinha , Kalpana Ashok J.

Final Decision: Complaint allowed

Judgement

1. THE complainant has filed this case claiming Rs. 3,55,000/- from the opposite party-Insurance Company which includes Rs. 1,05,000/- as his insurance claim in respect of the repair of his vehicle and Rs. 2,50,000/- as compensation for loss sustained by him due to delay in settlement of his insurance claim by the opposite party the Insurance Company.

2. THE facts of the case as put forth by the complainant may be briefly stated. THE complainant is the owner of Bus No. BHJ 5231 which was duly insured with the New India Insurance Company the opposite party No. 1 under Comprehensive Insurance Scheme. On 20.8.88 when the vehicle was coming after some repair from Bhagalpur without any passenger skidded on road which had become slippery due to rains and met with an accident near village Dogachhi within Nath Nagar Police Station for which Nath Nagar Police Case No. 154 dated 28.8.88 u/Secs. 279/ 337 IPC was instituted by the police. THE complainant informed the Insurance Company and the financier respectively. THE complainant also submitted his insurance claim to the Branch Office of the opposite party No. 1 at Bhagalpur. But the claim has not been

settled. Hence the complainant has no way out to file this case before this Commission.

On being noticed the opposite party-Insurance Company appeared and file written version controverting the claim of the complainant and alleging the facts hereinafter mentioned. The insured had given only verbal information three days after the accident and the Surveyor was appointed immediately thereafter without any delay though till then the complainant had not filed duly filled up claim form in respect of his claim. But the complainant did not come forward with bills and cash memos to enable the Insurance Company to arrange re-inspection. Mr. H.M. Walia was duly appointed by the Insurance Company as Surveyor to assess loss and as per norms required for the purpose he assessed loss of the complainant for Rs. 27,681.93 paise after applying 30% depreciation on metal parts and 50% depreciation on rubber items as the vehicle was more than two years old at the time of the accident. It has been further averred by the opposite party that as the complainant failed to produce the relevant papers required for settlement of his claim there was no negligence and deficiency in service on the part of the opposite party No. 1 and the amount claimed by the complainant is excessive, unfounded, imaginary and based on improbable assertion and therefore the complaint petition filed by the complainant is fit to be dismissed.

The opposite party also filed additional written statement supported by an affidavit stating inter alia that after completion of the survey and assessment of the loss Mr. Hari Mohan Walia, the Surveyor and Loss Assessor made certain queries from the complainant for the final assessment of loss through registered letter dated 8.12.88 and again sent a registered letter on 8.1.89 requesting the complainant to fix up sometime for discussion for the loss assessment and to produce tax token, R.C. Book, Driving Licence to enable him to come to a final conclusion regarding his claim. But there was no response by the complainant. Therefore, the Surveyor submitted his report on 1.2.89 on the basis of the materials available on the record.

3. THE rejoinder to the written statement filed on behalf of the Insurance Company was filed by the complainant submitting inter alia that the required papers had already been made available to the Surveyor and that there was no laches on the part of the complainant and the matter is pending in the office of the Insurance Company at Calcutta from 6.2.89 and that from the facts admitted by the opposite party No. 1 - Insurance Company in their written statement the opposite party cannot be absolved of the charge of negligence and deficiency in service in not making final settlement regarding the claim of the complainant.

The complainant filed his own sworn affidavit dated 1.3.93 in support of his case stating that the claim form was submitted by him on 8.12.88 but till today his claim has not been settled. The opposite party filed the affidavit of one Mr. S. Rai Chaudhary, Assistant Administrative Officer of New India Assurance Company, Regional Office at Patna in support of their case in their written statement and Surveyor's report.

4. THE opposite party No. 2 - the financier has filed written version through Mr. Narendra Kumar Sharma a partner stating inter alia that the policy of insurance is a contract between the complainant and the Insurance Company and there appears no reason for non-re-imbusement of the claim of the complainant.

It may be mentioned that the complainant has filed certain cash-memos to establish the cost involved in the repair of the vehicle as claimed by him. The complainant in his affidavit has not vouchsafed about the correctness and genuineness of those cash memos. No evidence either in the form of affidavit or examination of any witness has been produced to support the claim made by the complainant on the basis of the expenses said to have been incurred in the repair of the vehicle. Under the circumstances there is complete lack of reliable evidence to support the claim of the complainant.

The opposite party on the other hand has produced Surveyor's report from which it appears that the loss has been assessed by the Surveyor at Rs. 27,681.93. As no material is available before us to disbelieve the survey report we accept this assessment of the loss by the Surveyor. The complainant is entitled to get Rs. 27,681.93 towards his claim to re-imburse the loss sustained by him.

5. BUT it appears that the report was submitted on 1st February, 1989 by the Surveyor, but no final decision was taken thereafter by the Insurance Company-opposite party No. 1 with regard to the claim of the complainant and no intimation was ever sent to the complainant with regard to the settlement of his claim on the basis of the Surveyor's report. For the first time before this Commission in their written statement the Opp. Party No. 1 asserted about the settlement of the claim on the basis of Surveyor's Report. Hence there has been negligence and deficiency in service on the part of the opposite party with regard to

the settlement of the complainant's claim causing financial loss to the complainant in the form of loss of interest and loss in business and financial inconvenience. Hence the opposite party is directed to pay interest at the rate of fifteen percent from 1.3.89 i.e., one month after the date of the Surveyor's report, on the aforesaid amount till the payment thereof to the complainant. As the complainant has also suffered mental anguish due to this inordinate delay in settlement of the claim and therefore the opposite party is directed to pay Rs. 5,000/- as compensation in respect thereof and Rs. 2,000/- as cost of this case. Complaint allowed.