

ORIENTAL INSURANCE CO. NEW DELHI Vs SH.LEKH RAJ DANG

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Feb. 25, 1991

Citation: 1991 0 CPC 165 : 1991 1 CPJ 307

Hon'ble Judges: R.N.Mittal , B.L.Anand , Avtar Pennathur J.

Final Decision: Appeal partly allowed

Judgement

1. THIS appeal has been filed by M/s Oriental Insurance Company, defendant against the order of the District Forum dated 25th May, 1990.

They were directed by that order to pay Rs. 49,400/- with interest at the rate of 15% per annum from 1. 3. 84 till the date of payment within one

month from the date of the order.

2. BRIEFLY, the facts are that Sh. Lekh Raj Dang complainant financed the Micro-Mini Bus No. DEP-3740. The bus burnt resulting in total loss.

The complainant claimed the amount from the Insurance Company but it was not paid by the Insurance Company on the ground that he did not

have insurable interest in the vehicle. He filed a suit for declaration in the Civil Court which was decreed against the Insurance Company. It is

alleged that in spite of that decree the Insurance Company did not make the payment of the claim. Consequently, he filed the present complaint.

The complaint was opposed by the Insurance Company. It was inter alia pleaded by them that the complainant was not entitled to any amount as

he had no insurable interest in the vehicle, that he filed a suit for mere declaration whereas he could have filed a suit for the value of the vehicle and

therefore, the present complaint was barred, and that there was no privity of contract between the complainant and the respondent. The learned

District Forum accepted the complaint and directed the Insurance Company to pay an amount of Rs. 49,400/- with interest as stated above. The

Insurance Company has come up in appeal to this Commission.

During the pendency of the appeal, the complainant/respondent in appeal died and his legal representatives were brought on record.

3. IT is contended by the learned Counsel for the appellant that the present complaint is barred under Order 2 Rule 2 of the Code of Civil

Procedure as the complainant could claim this relief in the Civil Court in the earlier suit but he failed to do so.

We have given our thoughtful consideration to the matter but regret our inability to accept the same. In Section 13(4) of the Consumer Protection

Act the provisions of Civil Procedure Code which have been made applicable to the complaints have been given. Order 2 Rule 2 has not been

made applicable to such proceedings. It is thus clear that the legislature in its wisdom did not make applicable the provisions of Order 2 Rule 2 to

the proceedings under the Consumer Protection Act. Consequently, the Counsel for the appellant cannot derive any benefit from the said rule.

4. THE next contention of the learned Counsel for the appellant is that the complainant had no insurable interest in the truck and therefore, he was

not entitled to the amount claimed by him. We have duly considered the argument but do not find any substance therein. THE matter has already

been decided by the Civil Court and the appellant cannot be allowed to raise the same now. We therefore, reject this submission of the learned

Counsel as well.

The last contention of the learned Counsel is that the respondent was not entitled to any interest. He further submits that the rate of interest was

also excessive. We have considered the matter but do not agree that the complainant is not entitled to interest on the amount. The Insurance

Company illegally denied the claim of the complainant and utilized the amount for the benefit of the company. Therefore, the company is liable to pay

interest to the complainant. We however, reduce the rate of interest from 15% per annum to 12% per annum.

Before parting with the order, it may be mentioned that the appellant had filed an application for condonation of delay in filing the appeal. After

going through the application and hearing the parties we are of the opinion that there are good & sufficient grounds for condoning the delay in filing

the appeal. Consequently, we allow the application and condone the delay.

5. FOR the aforesaid reasons, we partly accept the appeal and direct the appellant to pay the amount of Rs. 49,400/- with interest @ 12% per

annum, w. e. f. 1st March, 1984 till the date of payment within two months from the date of the order, to the complainant. No order as to costs.

Appeal partly allowed.