

(1994) 03 NCDRC CK 0024

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

BIKRAM PRASAD

APPELLANT

Vs

National Insurance Co. Ltd

RESPONDENT

Date of Decision: March 5, 1994

Citation: 1994 3 CPJ 289 : 1995 1 CPR 822

Hon'ble Judges: S.N.Phukan , A.C.Bora J.

Advocate: N.Dhur , M.Sarma , J.P.Bora

Judgement

1. THIS petition is filed by one Bikram Prasad, who is the owner of Omni Super Delux Passenger Bus bearing Registration No. AS-01-6919, which was insured with the Respondents-Company. The Bus met with an accident on 21.12.92 at about 3.30 a.m. near Bagari on the National High Way. The Bus fell down into the river and was badly damaged. The fact of accident was immediately informed to the Police at Bagari Out Post and Police also made a G.D. Entry being No. GDE 351 dated 21.12.92. The Opposite Parties i.e., the Insurance Company was also informed. The Bus was brought to Jorhat Town and a sum of Rs. 18,000/- had to be paid for carrying charges. The Insurance Company appointed a Surveyor and the Bus was surveyed on 29.12.92, 4.1.93 and 5.1.93 and the damage was assessed at Rs. 6,16,527.00 Report of Surveyor is available at Annexure-VIII. It may be stated that the owner of the Bus was an unemployed educated youth and he purchased the Bus by taking a loan from the Bank. As the Insurance Company did not settle the claim of the complainant, the present petition has been filed claiming damage of Rs. 8,54,345.00 and interest at the rate of Rs. 18% per annum.

2. THE Opposite Parties have filed a joint written statement. THE fact that the vehicle was insured with the Opposite Parties and the insurance was valid on the date of occurrence of the accident are not disputed. According to the opposite parties and Surveyor was appointed only to assess the damage caused to the vehicle, but an agreement was entered into between the complainant and the Surveyor. THE report of the Surveyor has been annexed at Annexure-A to the written objection. It has been alleged that as the Opposite Parties found some anomalous, a second Surveyor, namely, Sri G.L. Kaulwas appointed to survey the Vehicle. THE second surveyor submitted his report dated 30.9.93 and assessed and recommended the loss at Rs. 3,48,500/- on "Cash Loss Basis". THE Report is available at Annexure "B" to the written objection. THE Opposite Parties have stated that they are agreeable to settle the claim as per the above amount recommended by the Second Surveyor and accordingly a letter was sent to the complainant on 1.11.93 vide Annexure "C. It has also been stated that as per the policy, a sum of Rs. 1000/- is payable by the Opposite Parties and not Rs. 18,000/- as claimed for towing and recovery charges of the Vehicle.

Heard Mr. N. Dhar, learned Counsel for the complainant and Mr. J.P. Bora, learned Counsel for the Opposite Parties.

We have perused both the reports of the Surveyors and also considered the arguments advanced on behalf of the Insurance Company. We are unable to accept that merely because there was an agreement between the complainant and the Surveyor, the First Survey Report cannot be accepted.

3. THE First Survey Report is a very exhaustive one and we do not find any reason to discard it. From the Second Survey Report at Annexure "B" we find that while inspecting the Vehicle some of the parts from the Vehicle were removed. In the report it has also stated that in case the Vehicle would have been retained in "as its condition after lifting the Insurance Company could bargain for more salvage value". It has also been noted that in view of the above condition, it was difficult to calculate actual loss of the Vehicle. We are unable to accept that merely because some parts were removed, the actual assessment could not be made. In fact the value of the parts could have been ascertained from the market.

The first assessment by the Surveyor was also on "Total Loss Basis" but in the second report it was done on "Cash Loss Basis". In the first report the cost of a new vehicle was assessed at Rs. 3,98,927.00 and the costs of construction of a Super Delux Body was assessed at Rs. 3,94,600/- and thus total amount was Rs. 7,93,526.00. A sum of Rs. 1,19,029.05P was deducted on account of depreciation and

therefore the total amount assessed was Rs. 6,74,497.95P. Of course in the first survey report assessment was also based on "Cash Loss Basis" and the amount arrived at, was Rs. 6,16,028.66P. In the second survey report, the market value assessed at was Rs. 5,50,000/- and after deducting a sum of Rs. 1,500/- as per condition of the policy the sum arrived at was Rs. 5,48,500/- and from this amount the salvages value as recommended at Rs. 2,00,000/- was deducted and therefore, the amount assessed was Rs. 3,48,500/-.

4. AFTER we compare both the reports, we find that there was not much difference between the two reports regarding assessment on "Cash Loss Basis", but after looking into the report of the Surveyors we find that in view of the damage caused to the Vehicle, the fair principle would be to pay on the assessment made by the First Survey on "Total Loss Basis". We may add here that the salvage value was only guess work and actually this amount may not be recovered. We, therefore, held that the rejection of the First Survey Report by the opposite parties was not fair and proper.

As the Second Surveyor found some parts missing, the complainant is bound either to replace the parts with new parts or the value of the said parts has to be deducted from the amount claimed. Though the complainant claimed interest at the rate of 18% per annum, we hold that he should get the amount of interest to be paid by the complainant on the loan taken for purchasing the vehicle. In the result the petition is allowed as follows:

(1) The complainant-petitioner shall be entitled to get a sum of Rs. 6,74,497.95P and from this amount, the value of the parts which were not found by the Second Surveyor shall be deducted or in the alternative, the complainant-petitioner shall replace the parts with new parts by obtaining it from the market. The Insurance Company shall make a list of such parts within a period of one month showing the value and if the complainant-petitioner is not willing to replace the parts within 15 days, the amount as calculated by the Insurance Company on the basis of market rate shall be deducted.

(2) On the above amount, the complainant-petitioner shall be entitled to get interest at the Banks rate and for that purpose a certificate shall be produced by the complainant to the Insurance Company.

With the above observation and direction the petition is disposed of. Complaint allowed.