
(1993) 12 NCDRC CK 0036

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Nitin

APPELLANT

Vs

New India Assurance Co. Ltd

RESPONDENT

Date of Decision: Dec. 24, 1993

Citation: 1995 1 CPJ 245

Hon'ble Judges: G.G.Loney , Elipe Dharma Rao J.

Judgement

1. THIS is a complaint in which the complainant alleged the deficiency in the service of the opposite party namely the New India Assurance Co. Ltd. The complainant alleged that his Maruti van bearing registration No. MTV7718 was insured with the opposite party on 11.4.1989. The complainant paid Rs. 1229/- towards premium and the insurance policy was valid from 11.4.89 to 10.4.1990. The insurance policy was for the sum of Rs. 80,000/-. On 16.11.1989 Maruti van met with an accident in Yevatmal Dist. and the accident was reported to nearest Police Station at Ladheda in Yevatmal Dist. The intimation of the accident was given to the Opposite Party and a claim was submitted in November 1989. Thereafter the complainant completed all the requirements as per the queries made by the opposite party upto the end of December, 1989. the complainant alleged that since there is no response from the opposite party, a notice dtd. 13.8.90 was issued to the Regional Officer at Pune including the head office at Bombay. The complainant alleged that the aforesaid taxi was being used as taxi out of loan and because of total loss of taxi he suffered very much. The complainant therefore filed the present complaint claiming the amount of policy of Rs. 80,000/-, interest, notice charges and Rs. 45,000/- towards loss of earning and compensation for suffering and penalty. Thus, the total claim of Rs.2 lakhs has been made by the complainant. In response to the notice sent to the opposite party under Sec. 13 of Consumer Protection Act. The opposite party filed its written version denying the complainant's claim. Inter-alia the opposite party alleged that the vehicle was purchased for commercial purpose with restricted seating capacity of 3+1 only, and also submitted that since there is an arbitration agreement, the complaint is not maintainable. The contention raised by the

opposite party is that the matter is pending for adjudication before the Motor Accident Claims Tribunal at Yavatmal and therefore this Commission has no jurisdiction. Another contention raised by the Opposite Party is that the complainant was carrying more passengers than the seating capacity of vehicle. Lastly, it is contented that the complainant has exaggerated his claim for compensation.

2. WE have given our anxious consideration to the allegations made in the complaint and the defence raised by the insurance company.

The vehicle in question was insured for the sum of Rs. 80,000/- and has been totally damaged in the accident is an admitted fact. Coming to the technical objection raised by the opposite party that the complainant has purchased the vehicle for commercial purpose and therefore the claim is not maintainable before this Commission is absolutely irrelevant and incorrect. Since this is the complainant alleging the deficiency in the service of the insurer, the "commercial purpose" is totally irrelevant. The legal bar to take out the consumer complaints out of purview of the Consumer Protection Act on the basis of "commercial purpose" is relevant only in respect of the goods purchased by the parties. So far as the deficiency in the service is concerned, the commercial purpose is totally irrelevant. Another contention raised by the opposite party is that there is arbitration agreement which provides the parties under the insurance policy to refer the dispute to arbitrator and therefore, this complaint is not maintainable is also not correct. The National Commission in number of cases has held that despite the agreed terms for reference to the arbitration between the parties, the consumer can approach the consumer for a for the redressal of his grievance if there is any in the service of an insurer.

Coming to the next contention raised by the opposite party is that it was a tourist taxi and the complainant was carrying the passengers more than the seating capacity of 3 + 1. There is no evidence before us tendered by the Insurance Company to prove the fact that at the time of accident the complainant was carrying the passengers more than the seating capacity of 3 + 1. Under these circumstances, in absence of the evidence from the opposite party, the bald statement of the complainant can not be accepted. Similarly, the contention raised by the opposite party, that the complainant was plying a vehicle in question contrary to the conditions of the Insurance policy also can not be accepted, in absence of the evidence. The last contention raised by the complainant is that the complainant has exaggerated his claim. It has some substance. The complainant has claimed Rs. 80,000/- towards full value of vehicle and Rs. 18,000/- towards the interest and Rs.

45,000/- towards the business loss and Rs. 50,000/- towards penalty for non-payment of the claim, miscellaneous, notice charges and typing charges. We find that there being total loss of vehicle. The complainant is entitled to claim the full value of vehicle minus the depreciation after working out by the opposite party. On perusal of the written version filed by the opposite party clearly shows that there is no challenge about the quantum of loss of the vehicle raised by the complainant although the compensation amount has been challenged by the opposite party. The survey report of the accident is made available so as to calculate the depreciation or wreckage value. Under these circumstances, in our view, the complainant is entitled to the full value of the policy amount of Rs. 80,000/- We do not agree with other claims made by the complainant and therefore, they are hereby rejected.

3. THE opposite party has alleged that the complainant has lodged a claim as regards the accident in question in the Motor Accident Claims Tribunal at Yevatmal and therefore, this complaint is not maintainable. We also do not agree with the submission made by the opposite party in as much as the remedy for the complainant to file the present complaint is in addition to the other remedies available and is not hit on the ground that the complainant has lodged his claim before the Motor Accident Claims Tribunal at Yevatmal. However, we make it clear that if the Motor Accident Claims Tribunal passes any award in favour of the complainant as regards the grant of compensation about the vehicle then that much amount will have to be deducted from the amount mentioned in this order, which is being passed in this complaint. Hence we pass the following order. Complaint is allowed. THE Opposite Party is directed to settle the complainant's claim for the amount of Rs. 80,000/- to be paid within 30 days from the receipt of this order failing which the amount shall carry interest @ 18% p.a. till realisation. If the Motor Accident Claims Tribunal at yevatmal passes any award and is paid to complainant for the loss of vehicle in question in favour of the complainant then that much amount will be deducted from the amount of Rs. 80,000/- Complainant is also awarded Rs. 500/- as costs. Complaint allowed.