

(1998) 10 NCDRC CK 0008

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

VEENA BHATNAGAR

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision: Oct. 22, 1998

Citation: 2000 1 CPJ 137

Hon'ble Judges: K.C.Bhargava , Banarsi Das J.

Final Decision: Appeal allowed

Judgement

1. THIS is an appeal filed by the complainant Smt. Veena Bhatnagar against the order dated 22.1.1996 passed by District Forum, Lucknow in Complaint Case No. 994 of 1994 by which the complaint was disposed of being prematured and the Insurance Company-opposite party was directed to decide the claim within 45 days from the date of the order provided the complainant submitted required documents/papers within 20 days and if no documents are filed by the complainant in given time, the Insurance Company shall be at liberty to settle the claim on the merit as the case may be within the above given time.

2. THE complainant Smt. Veena Bhatnagar in her appeal has challenged the Distt. Forum's order dated 22.1.1996 on the grounds that it has not appreciated the evidence and material on record while she has already submitted required information demanded by the New India Assurance Company Ltd., and without giving any weight to her evidence the Distt. Forum had illegally dismissed the complaint directing her to submit the required information within 20 days to the New India Assurance Company who had also been directed to settle the claim within 45 days on receipt of the information given by her. It was further alleged that the

Distt. Forum has not given any specific finding as to what were the information required by the Assurance Company which were not given by her. She asserted in her appeal that there has been inordinate delay in settling the claim for a long time which compelled her to give a legal notice and file a complaint before the District Forum, Lucknow.

We have heard the learned Counsel of both the parties and perused the record and documents filed and Surveyor's report dated 13.5.1994 submitted by the respondent New India Assurance Company Ltd., before this Commission. The facts of the case in brief are that Mrs. Veena Bhatnagar purchased a Maruti Car in taxi quota No. U.P. 32 A4088 for Rs. 1,73,633.99 on 29.10.1991. The car was last insured on 10.1.1994 to 9.1.1995 for a sum of Rs. 1,40,000/- but the car was stolen from Butler Palace Colony on 12.1.1994 between 8.15 to 8.30 p.m. The F.I.R. was lodged with the Police Station Hazratganj, Lucknow at 9.20 p.m. on the same day and report was also sent to the New India Assurance Company-respondent immediately. The police submitted final report to the Judicial Magistrate who accepted the same. She had submitted her claim with Assurance Company and made available all required information but the Assurance Company did not settle the claim on one or the other pretext and she was harassed by it asking her information again and again which she had already furnished. She also sent a legal notice to the New Assurance Company Ltd., and when no action was taken to settle the claim by the New Assurance Company she filed the complaint before the District Forum for direction to it for payment of damages alongwith interest for the delay and compensation for the harrassment.

The New India Assurance Company contested the case before the District Forum, alleging that the appellant did not co-operate to furnish the required information with the result the claim could not be settled and thus, the complaint was premature and liable to be dismissed. After hearing both the parties the District Forum, Lucknow dismissed the complaint holding it premature and also the opposite party-New India Assurance Company was directed to settle the claim within 45 days provided the complainant-appellant submit the required information within 20 days of the order. This present appeal filed against this impugned order.

3. ON behalf of the New India Assurance Company it was contended that the appellant-complainant did not supply the required information, such letter of subrogation and other formalities and transfer deed of the stolen car addressed to the R.T.O. in favour of the New India Assurance Company Ltd. The claim could not be settled for want of the information and paper from the complainant inspite of

repeated letters and she is herself responsible for the delay. However, in compliance of the direction given by the order dated 17.3.1998 by the State Commission, the case of the claim was reopened on receipt of the complete required information and appellant was offered Rs. 1,09,000/- vide letter dated 20.4.1998 for settlement of her claim based on market value as assessed by the Surveyor and Assessor Sri Rajesh Bajaj vide his report dated 13.5.1994. It was further asserted by the New India Assurance Company there was no deficiency in service on the part of the New India Assurance Company and any delay if any caused it was because of non supply of the intimation required. The assessment of Rs. 1,09,000/- is on the basis of the market value prevalent at the time of cause of action which is the date of theft (being on 12.1.1994).

It is admitted fact that the car was stolen (in the theft), on 12.1.1994 between 8.15 to 8.30 p.m. about which F.I.R. was lodged with the Police Station and intimation was given to the New India Assurance Company in time immediately. The final report of the police was also accepted by the Judicial Magistrate concerned.

4. WE have looked into the Surveyor's report dated 13.5.1994 and examined it closely. The Surveyor report shows that he assessed the market value of the car on the date of the theft (12.1.1994), at Rs. 1,64,158/- and Rs. 20,623.70 were deducted as depreciation value @ 15% and also deducted Rs. 1,000/- as an excess clause making it to Rs. 1,38,534/- but he again repeated in his report that the market value of taxi quota to Rs. 1,10,000/- and after deducting Rs. 1,000/- on account of excess clause of Rs. 1,000/- he concluded the final total loss of the maruti car at Rs. 1,09,000/- (Rs. one lac nine thousand only), which was offered by the New India Assurance Company Ltd., and was paid under the directions of the Commission on 11.8.1998 subject to the final decision of this appeal.

It is admitted fact that the maruti car in question was purchased for Rs. 1,73,633.99 vide receipt dated 29.10.1991, provided and placed on record by the appellant during the hearing of arguments. It was purchased as taxi but was never used as such and it was being used for private use. According to the terms and conditions of the insurance policy @ 5% deduction per annum could be made as depreciation from the car price for which it was purchased. Since the car was purchased on 29.10.1991 for Rs. 1,73,633.99 and it was stolen on 12.1.1994 within three years. The total depreciation in value could be made @ 15% at the most and according to this 15% depreciation could be deducted from the original value of the car Rs. 1,73,633.93 and after deducting depreciation 15% which comes to Rs. 25,040/- the value of this car is thus arrived at Rs. 1,48,593/- and after deducting Rs. 1,000/- on

account of excess clause it comes to Rs. 1,47,593/-. Since, the car was insured for Rs. 1,40,000/- therefore, the New India Assurance Company is liable to indemnify the damages on account of the loss of the car to the extent of Rs. 1,40,000/- only. If we allow the deduction of excess clause of Rs. 1,000/- the complainant-appellant is entitled to get Rs. 1,39,000/- from the New India Assurance Company. Since, the complainant-appellant is also partly responsible to some extent for the delay in not furnishing the complete required information to the New India Assurance Company though the New India Assurance Company could settle the claim even without the letter of subrogation and R.T.O. certificate which could be obtained from the complainant at the time of actual payment of the damages and, therefore, the New India Assurance Company Ltd., cannot escape from the liability for the delay in settlement of the claim well in time and thus is held partly negligent and deficient in rendering of service to the complainant-appellant. Hence, we are of the view that token amount of Rs. 5,000/- as compensation for the delay and harrassment will meet the ends of justice. Consequently, the appeal is allowed and the New India Assurance Company Ltd. - respondent is directed to pay the appellant the balance of Rs. 30,000/- out of Rs. 1,39,000/- as Rs. 1,09,000/- has already been paid to her as damages on account of the total loss of the stolen car alongwith Rs. 5,000/- as compensation on account of delay and harassment within a period of 30 days of this order failing which the complainant shall further be entitled to an interest @ 18% per annum on the total of these amounts from the due date to the actual date of the payment. Let a copy of this judgment be made available to the parties as per rules. Appeal allowed.