

BABU PAUL Vs MANAGER, NATIONAL INSURANCE CO. LTD.

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Jan. 24, 2017

Acts Referred: [Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation: 2017 1 CPR 487

Hon'ble Judges: B.C. Gupta, Prem Narain

Advocate: C.N. Sreekumar, Philomina Thomas

Judgement

1. This revision petition has been filed u/s 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 30.11.2013, passed by

the State Consumer Disputes Redressal Commission, UT Chandigarh (hereinafter referred to as the State Commission) in appeal No. 388/2012,

Babu Paul vs. Manager, National Insurance Company Ltd. ,"" vide which, the order dated 03.03.2012, passed by the District Forum Thrissur, in

consumer complaint No. 663/2003, allowing a sum of 1,89,877/- to the complainant for the loss caused to his car in an accident, as per report of

the surveyor, was upheld and the said appeal was ordered to be dismissed.

2. The facts of the case are that the petitioner/complainant Babu Paul is the owner of a Mercedes Benz Car bearing reg. No. KL8J 0250, which

was insured with the respondent/OP National Insurance Company, vide policy No. 2000/6107863 for the period 09.03.2001 to 08.03.2002 for

a sum assured of 15 lakh. The said car met with an accident on 08.06.2001, while being used for personal purpose. As per the complainant, he

got the car repaired and made a claim for 8,30,625/- with the OP Insurance Company. However, alleging failure on their part to settle the claim,

he filed the consumer complaint in question before the District Forum Thrissur, seeking directions to the OP Insurance Company to pay the

claimed amount of 8,30,625/- alongwith interest and a compensation of 1 lakh with cost.

3. In their reply filed before the District Forum, the insurance company admitted that the car had met with an accident, but they denied that the car

had been repaired as per the directions given by the insurance company. It was stated in the reply that the vehicle was got repaired at OTYS

Automobiles Engineers Thrissur, while the spare parts for the repairs were purchased from Kakkassery Auto Agencies, Thrissur, worth

7,68,625.25/-. Since Kakkassery Auto Agencies, Thrissur were not the authorised dealers of the spares of the Mercedes Benz vehicles, the OP

Insurance Company got suspicious about the genuineness of the bills and appointed an investigator to verify the claim made by the complainant.

The investigator obtained copies of the bills from Kakkassery Auto Agencies, Thrissur from where, it was revealed that the said Firm had

purchased the spare parts from M/s. Sangam Automobiles, M/s. R.K. Autoparts and M/s. National Auto Corporation etc. The investigator

reported that there were no firms in existence with the above mentioned names. Accordingly, the insurance company refused to entertain the claim,

saying that the factum of purchase of spare parts through Kakkassery Auto Agencies, Thrissur had not been proved by valid bills of purchase. The

OP Insurance Company stated in their reply that the complaint should be dismissed.

4. From the material on record, it is made out that the insurance company had appointed a spot surveyor Mr. Jose N. Mathew and another

surveyor M/s. Team Surveyors to give the final survey report. In their survey report dated 30.03.2002, the Team Surveyors worked out the net

assessment of loss as 4,71,635/-, after accounting for the salvage value. The said surveyor observed that they obtained quotations from M/s. Raja

Sree Motors, Kochi, the authorised service point of Mercedes, based on which, they had worked out the cost of the spare parts, stated to have

been used. However, the Insurance Company appointed another surveyor M/s. S.P. Engineers and Surveyors, who submitted their report dated

30.07.2004, in which the said surveyor discussed the investigation report as well as the surveyor report given by the spot surveyor and M/s. Team

Surveyors. The said surveyor carried out a joint inspection of the repaired vehicle alongwith M/s. Raja Sree Motors Private Limited, Kochi at the

premises of OTYS Automobile Engineers, Thrissur where the vehicle is stated to have been repaired. It was observed by M/s. S.P. Surveyors and

Engineers as follows:-

Our joint inspection reveals no quality repairs of vehicle and the entire parts were not replaced as per survey report and final bills submitted.

Instead certain parts were repaired and few parts were replaced with spurious parts. Moreover the price of parts quoted in survey report and bills

is not in line with the authorised dealers list price.

5. In their closing remarks, the said surveyor stated that the final bills of parts submitted were not genuine and hence, these bills could not be

considered in settling the claim on repair basis. Under the circumstances, the cash loss basis settlement was the remedy to sort out the matter. The

surveyor worked out the admissible claim as 1,89,877/-. The surveyor also mentioned that at the time of their inspection, the complainant Babu

Paul, the proprietor of Otys Automobile Engineers, Mr. Luvis Otys, the Service Advisor, Mr. Harish and Spare Parts Manager Mr. Benedict from

Raja Sree Motors, were present.

6. The District Forum after taking into account the averments of the parties, allowed the complaint vide their order dated 03.03.2012 and directed

the OP to pay 1,89,877/- to the complainant as per the report of the surveyor alongwith cost of 1,000/-. Being aggrieved against the order of the

District Forum, the complainant challenged the same by way of an appeal before the State Commission and the said appeal having been dismissed

vide impugned order dated 30.11.2013, the complainant is before this Commission by way of the present revision petition.

7. The Ld. Counsel for the petitioner/complainant argued that the OP Insurance Company should have allowed the complaint in accordance with

the report of the previous surveyor M/s. Team Surveyors which had assessed the net amount payable as 4,71,635/-. The vehicle had suffered

extensive damage during the accident as was clear from the facts on record and he should have been adequately compensated by the Insurance

Company.

8. The Ld. Counsel for the OP Insurance Company, however, stated that the concurrent findings of the consumer fora below were in accordance

with law and should be upheld. The surveyor, S.P. Engineers and Surveyors had made their report after carrying out a detailed analysis into all

aspects of the case, including the reports given during the previous survey and the report of the investigators etc. There was no reason to disbelieve

the said report.

9. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

10. It has been abundantly made clear from the material on record that the complainant submitted claim based on the bills issued by M/s.

Kakkassery Auto Agencies, from where the spare parts were allegedly purchased. Based on the investigations done by the insurance company, it

was revealed that the said firm had provided fake bills to the complainant. The firms from which the spare parts were stated to have been procured

for selling the same to the complainant, were reported to be non-existent. No attempt has been made by the complainant to explain that such bills

were genuine, or the said firms were in existence. In the light of these facts, it is clear that both the consumer fora below rightly refused to believe

the version given by the complainant.

11. A perusal of the report given by S.P. Engineers and Surveyors reveals that they had given their opinion after examining the two investigation

reports, spot surveyor's report, final survey report given by the Team Surveyors and further, based on spot inspection in the company alongwith

the complainant as well as the representatives of the repairer firm and the representative of M/s. Raja Sree Motors Private Limited, who are the

authorised dealers of spare parts for Mercedes company. It has been made clear in the report of joint inspection that a few parts of the vehicle

were replaced with spurious parts. Moreover, the price of the parts quoted in the bills was not in tune with the authorised dealer's list price. The

said surveyors carried out assessment on cash loss basis and found the admissible claim amount to be 1,89,877/-. The District Forum as well as

the State Commission have rightly relied upon the report given by this surveyor and gave their concurrent findings that the complainant was entitled

to get compensation of 1,89,877/- only.

12. Further, it is a settled legal proposition that the powers of this Commission in the exercise of revisional jurisdiction can be used only, if there is a

patent error of jurisdiction or any miscarriage of justice due to the orders passed by the Consumer Fora below. This view has been expressed in a

judgment passed by the Hon"ble Apex Court in "" Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. (2011) 11 SCC 269 "".

13. Based on the foregoing discussion, it is held that there is no irregularity, illegality or jurisdictional error in the orders passed by the consumer

fora below which may merit any interference at the revisional stage. The present revision petition is, therefore, ordered to be dismissed. The orders

passed by the fora below are upheld. There shall be no order as to costs.