

SUPREME COURT OF INDIA

National Insurance Company Limited

Vs.

Ani Lamba

C.A.No.1466 of 2004

(S. N. Variava and H. K. Sema JJ.)

27.02.2004

ORDER

1. Leave granted.
2. Heard parties.
3. This Appeal is filed by the Insurance Company against the order dated 2nd December, 2002 passed by the National Consumer Disputes Redressal Commission.
4. Briefly stated the facts are as follows:

The Respondent had got his vehicle insured with the Appellant's company. It is an admitted position that in the Insurance Policy the estimated value of the car was shown as Rs. 6 lakhs. The car met with an accident on 12th January 1999. At that time it was admittedly insured. The workshop submitted an estimate of Rs. 7, 12, 5 II/- for repair of the car. The Surveyor, appointed by the Insurance Company, opined that it would be better to pay total loss. He opined the value of the car was Rs. 3, 50, 000/-. The Insurance Company paid sum of Rs. 3.50.000/-.
5. The Respondent filed a complaint before the State Commission claiming that he was entitled to the value as shown in the Insurance Policy, The State Commission, by its order dated 4th April, 2001 took into consideration depreciation at the rate of 10% and directed payment of Rs. 550000 /- with interest @ 12%. The Appeal filed by the Insurance Company before the National Commission has been disposed of by the impugned order. The National Commission has held that counting depreciation at 10% the amount comes to Rs. 5, 40, 000/- . It has directed payment of interest at 10% p.a.
6. It is urged before us that the award of the National Commission is contrary to the term of the policy. According to the Appellant, the relevant term of the policy reads as follows:

"The company may at its own option repair, reinstate or replace the motor car or part

thereof and/ or its accessories or may pay in cash the amount of the loss or damage and the liability of the company shall not exceed the actual value of the parts damaged or lost less depreciation plus the reasonable cost of fitting and shall in no case exceed the insured's estimate of the value of the motor car (including accessories thereon) as specified in the schedule or the value of motor car (including accessories thereon) at the time of the loss or damage whichever is the less." *

7. In support of this contention, a blank copy of a policy has been filed before this Court. However, it is to be seen that the policy which is filed is of the year 2000 whereas the car had been insured in 1998.

8. The respondent disputes that what has been reproduced is a correct copy of the policy which stood at the relevant time. According to them, in the policy at the relevant time the term was as under:-

"3. The Company may at its own option repair, reinstate or replace the Motor Car or part thereof and/ or its accessories or may pay in cash the amount of actual value of the part damaged or loss ' depreciation plus the reasonable costs of fitting and shall in no case exceed the insured's estimate of the value of the Motor Car (including accessories, thereof) at the time of the loss or damage - whichever is less." *

9. In support of this contention the Respondent has produced blank copies of the policies (of the Appellant's company), which were issued in the year 1998-1999. It is also pointed out that a copy of the policy was filed before the National Commission wherein also the term is as indicated by the Respondent.

10. It is clear that if the term of the policy is as indicated by the Respondent, then the Appellant would be bound to pay the insured estimated value of car less depreciation. The whole argument of the Appellant's Company is based on a clause which gives them an option either to pay the estimated value or the value of the motor car at the time of the loss, whichever is less. The words, which give such a choice to Insurance Company, are not there in the policies of the Appellant themselves for the years 1998 and 1999. We, therefore, refuse to reply upon a term in a policy printed in the year 2000. On the term in the policies, of Appellant themselves, for the years 1998 and 1999 they have to pay the estimated value less depreciation. The argument that they can only pay the market value on the date of the loss is not acceptable in view of the express term of the policy.

11. We thus see no infirmity in the impugned Judgment. Accordingly, the Appeal stands dismissed. There will be no order as to costs.

Appeal dismissed.