

# SUPREME COURT OF INDIA

New India Assurance Company Limited

Vs.

Pradeep Kumar

C.A.No.3253 of 2002

(D.K.Jain and R.M. Lodha JJ.)

09.04.2009

## JUDGEMENT

### **R.M. Lodha, J.**

1. In this appeal, by special leave, the appellant, New India Assurance Company Ltd. (for short, 'insurance company') has challenged the order dated September 14, 2001, passed by the National Consumer Disputes Redressal Commission (for short 'National Commission'). By its order the National Commission dismissed the revision petition filed by the insurance company under Section 21(b) of The Consumer Protection Act, 1986 (for short, 'Act 1986') and affirmed the concurrent orders of State Commission for Redressal of Consumer Disputes, Uttar Pradesh, Lucknow (for short, 'State Commission') and Resident Consumer Disputes Redressal Forum, Uttarkashi, (for short 'District Forum') whereby the insurance company has been directed to pay a sum of Rs. 1,58,409/- along with interest at the rate of 12&percent; per annum to the respondent Pradeep Kumar (for short 'complainant').

2. The complainant is the owner of a heavy motor vehicle (open body truck) bearing registration no. UP-07 F- 9095. The vehicle was registered on January 2, 1997 and was insured vide Policy No. 31/04825 effective for the period from November 8, 1997 to November 7, 1998. The said vehicle loaded with potatoes met with an accident on September 29, 1998, at Suman Kayari, near Nain Bagh, District Tehri (Garhwal). The vehicle fell down into khud 300 feet deep below the road. As a result of the accident, Murari Rawat, driver of the truck, died. The accident was reported at Police Station Patwar, Kharsot on September 30, 1998.

3. The complainant claimed the expenses incurred by him for repair of the truck from the insurance company and the interest paid by him to the State Bank of India, Uttarkashi as he obtained loan from that bank for repair of the truck. A legal notice is also said to have been sent by the complainant to the insurance company but of no avail. The complainant then approached the District Forum alleging deficiency in service by the insurance company and claimed an amount of Rs.1,58,409/- along with interest at rate of 18&percent; per annum.

4. The insurance company in its reply to the complaint, stated that after receipt of intimation regarding the accident, vehicle was surveyed by Surveyor, Manoj Kumar Aggarwal and was taken to Himalaya Motor Workshop, Dehradun by the owner. The vehicle was again surveyed by approved surveyor Vivek Arora as the complainant had complained that earlier Surveyor, Manoj Kumar Aggarwal, had not made thorough investigation. The survey was then conducted by Vivek Arora. As the insurance company was not satisfied with the survey report submitted by Vivek Arora, it got the vehicle surveyed again by another approved surveyor, B.B. Garg. B.B. Garg had estimated the damages to the vehicle to the extent of Rs.63,771/-. The insurance company, then, approached the complainant for payment of this amount but he refused to accept the same.

5. It appears that before the District Forum, the complainant had filed the affidavits of the persons from whom the spare parts were purchased, repair work was got done and charges paid to them. The complainant also submitted the vouchers and bills of various spare parts and the payment made towards labour charges. On the other hand, on behalf of the insurance company, affidavit of one Pradeep Ghai was filed along with survey reports of Vivek Arora and B.B. Garg.

6. The District Forum, upon consideration of the matter, held that there was deficiency in service on the part of the insurance company and ordered them to pay a sum of Rs.1,58,409/- along with interest at the rate of 12% per annum with cost of Rs.1,000/-. The District Forum also gave an option to the insurance company that it may pay the insured amount of Rs.6 lakhs to the complainant after transferring the vehicle in its name, if it so desired.

7. The insurance company carried the order of the District Forum in appeal to the State Commission but without any success. The concurrent orders of the consumer fora were challenged by the insurance company, as noticed above, to the National Commission but there also they failed.

8. We heard Mr. P.K. Seth, learned counsel for the insurance company and Mr. N.S. Jain, learned counsel for the complainant.

9. Mr. P.K. Seth, learned counsel for the insurance company heavily relied upon Section 64-UM(2) of The *Insurance Act, 1938* (for short, 'the Act 1938') and submitted that the loss assessed by the approved surveyors appointed in view of the provisions of Section 64-UM was binding, more so, in the absence of any evidence on record to establish that the loss assessed by the approved surveyors was not correct and justified. He would submit that as per the scheme of the insurance, the loss caused to the vehicle has to be first assessed by approved surveyor and only thereafter the vehicle could have been repaired by the owner. He submitted that the complainant failed to make out any case as to why the survey reports of the Approved Surveyors Vivek Arora and B.B. Garg should be rejected. The learned counsel for the insurance company would also urge that the insurance company was not liable to indemnify for new parts.

10. We are unable to accept the contentions of the learned counsel for the insurance company. That the vehicle that was insured with the insurance company met with an accident and fell down into the khud 300 feet deep below the road is not in dispute. The survey reports of Vivek Arora as well as B.B. Garg, upon which reliance has been placed by the insurance company show that the vehicle got extensively damaged in this accident. Its Assembly, Bonnet, Cabin, Tool Box, Body, Chasis, Diesel Tank, Pressure Regulator, Pressure Pipe, Brake Booster, Steering Wheel, Head Lights, Main Leaf LHS Front, Front shockers, Steering Worm, Air Cleaner, Cross Member Rear 2nd, Propeller Shafts, Front Axle, Silencer, Engine Chamber etc. had sustained major damage. The approved surveyors in their reports have recorded their satisfaction that the aforementioned damages to the said vehicle would have occurred in that mishap. Vivek Arora in his survey report also noted that the damages noticed to the said vehicle were in conformity with the description of the accident mentioned in the claim form and details of damages noted by the spot surveyor. Curiously, the spot survey report conducted by Manoj Kumar Aggarwal has been withheld by the insurance company. At Item No.11, under the Head "summary of assessment" in the survey report by Vivek Arora, original estimate is recorded thus:

“Original Estimate Total Labour Charges Rs.1,30,440/- Total cost of spare parts Rs.0,36,090/- ----- Total Rs.1,66,580/-”

----- The enclosures with the survey report at item No.2 records:

"Estimate: Original and Suppl. 3 pages"

But this enclosure has been suppressed by the insurance company. The vehicle was removed by the complainant to the workshop only after the survey was conducted by Manoj Kumar Aggarwal (approved surveyor nominated by the insurance company for spot survey).”

11. However, Vivek Arora in his survey report made the following assessment for the reasons best known to him:

“Total Labour Charges: Rs.52,000.00 Total cost of spare parts Rs.11,874.37  
Less:Depreciation No.10&percent; & 50&percent; Rs. 3,669.58 Excess if any - Salvage value (Appx.) Rs. 1,000.00 Appx. Net Loss Rs.59,304.82”

12. The insurance company got the survey done again through B.B. Garg (Approved Surveyor) who made an additional assessment of Rs.3,512.72 to the assessment made by Vivek Arora.

13. On the face of the vouchers and bills for parts as well as labour charges submitted by the complainant, all the three consumer fora accepted the complainant's claim and did not accept these survey reports. Pertinently, the vehicle was not even 2 year old at the time of accident.

14. Section 64-UM(2) of the Act 1938 reads:

“No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessor") Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.”

15. The object of the aforesaid provision is that where the claim in respect of loss required to be paid by the insurer is Rs.20,000/- or more, the loss must first be assessed by an approved surveyor ( or loss assessor) before it is admitted for payment or settlement by the insurer. Proviso appended thereto, however, makes it clear that insurer may settle the claim for the loss suffered by insured at any amount or pay to the insured any amount different from the amount assessed by the approved surveyor (or loss assessor). In other words although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured.

16. So far as the case in hand is concerned, the claim of the complainant has been accepted by the consumer fora as it was duly supported by original vouchers, bills and receipts. It has been held that the actual expenses incurred by the complainant comes to Rs.1,39,438/- in getting the truck repaired apart from the expenses on account of haulage of truck and carrying it to the workshop. Taking into account actual expenses incurred and the interest that the complainant had to pay to the bank from which the loan was obtained for that amount, the District Forum awarded a sum of Rs.1,58,409/- to the complainant and insurance company was directed to make that payment along with interest at the rate of 12&percent; per annum. At the first blush, we had some doubt whether the interest paid by the complainant to the bank could have been awarded, but on deeper scrutiny we found that no such ground has been set up in the appeal. As a matter of fact, this aspect was not even raised before the National Commission.

17. The appeal is devoid of any substance. The insurance company would have been well advised in not spending public money unnecessarily on avoidable and wholly frivolous litigation such as this.

18. The appeal has no merit and is liable to be dismissed and is dismissed with costs which we quantify at Rs.15,000/-.