

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO. 1408 OF 2011

(Against the judgment/order dated 04-05-2011 in Complaint
Case No.46/2011 of the District Consumer Forum-I, Agra)

National Insurance Company Limited
Branch Manager, Branch Office 3,
Shivendra Bhawan (Maruti Business Hub)
Delhi Gate, Agra-282002
through its Manager, Regional Office,
National Insurance Company Limited
4th Floor, LIC Building, Hazratganj,
Lucknow

...Appellant/Opposite Party

Vs.

01. Dr. Subhash Chandra Gupta
S/o Shri R B Gupta, Adult,
R/o 86 Old Vijay Nagar Colony, Agra.
02. M/s. Prime Motors 8B/7D, Dev Nagar
Bye Pass Road, Agra

...Respondents/Complainant

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT

HON'BLE MR. RAMPAL SINGH, MEMBER

For the Appellant : Sri Rajesh Nath, Advocate.

For the Respondent : Sri Sunil Sharma, Advocate.

Dated : 01-16-2013

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

The appellant/opposite party National Insurance Company Limited preferred this appeal against the judgment and order dated 04-05-2011 passed by the District Consumer Forum-I, Agra in Complaint Case No.

46/2011 Dr. Subhash Chandra Gupta V/s National Insurance Company Limited, by which the learned District Consumer Forum directed the opposite party to pay a sum of Rs.35,667/- as damages to the complainant Subhash Chandra Gupta and a further sum of Rs.3,000/- as litigation expenses to the complainant.

Briefly stated the facts in dispute are that the complainant filed a complaint before the District Consumer Forum stating therein that he is the owner of vehicle Maruti Wagon-R which was insured by the opposite party under a package policy and as per policy as and when the car is damaged due to any of the reason, the same shall be repaired by the authorized service station of the opposite party vide cashless scheme and the entire amount shall be paid by the opposite party. The opposite party no. 5/respondent no.2 M/s. Prime Motors is the authorized service and repairing centre under the aforesaid package policy. On 04-07-2010 due to heavy rains the said vehicle was met with an accident on road and it was badly damaged due to ditch on the road. The complainant got the vehicle repaired by M/s. Prime Motors the authorized service station and information of the accident was duly given to the appellant. The opposite party no.5 M/s. Prime Motors informed the complainant that the total expenses of repairing of the vehicle remained to the tune of Rs.39,629/- out of which the Insurance Company i.e. appellant merely assessed the loss to the tune of Rs.7,979/- and the balance amount of repairs is to be payable by the complainant. Despite the protest of the complainant, no attention was paid by the appellant and due to got stationed the car for a long period in the garage, the complainant left with no option to pay a sum of Rs.39,629/- to the repairing centre and to get the vehicle from the



garage. Subsequently the opposite party/appellant informed to the complainant pertaining to the loss of the vehicle merely to the tune of Rs.6,217/- while previously he was informed the loss to the tune of Rs.7,979/-. Even after taking the delivery of the vehicle by the complainant, the vehicle was not found properly in working order. The battery and the central locking system of the vehicle was not functioning properly. The complainant is the renowned and eminent professional doctor who suffered a lot due to non availability of his vehicle. Due to six months stationed the vehicle of the complainant in the garage, the vehicle was continuously deteriorated thereby causing a loss atleast Rs.1,00,000/- to the complainant. The complainant is entitled for a sum of Rs.39,629/- as repair charges, a sum of Rs.1,00,000/- as professional loss and a further sum of Rs.1,00,000/- towards deteriorated condition of the vehicle and a sum of Rs.1,00,000/- towards mental tension and agony. It is prayed by the complainant that the opposite parties, being deficient in service towards the complainant, be ordered to pay a sum of Rs.3,39,629/- alongwith 1% per month interest and they be also directed to replace the said vehicle or to remove the defects still in existence in the vehicle.

The opposite party's case remained before the District Consumer Forum pertaining to the aforesaid facts that the vehicle was insured as is stated by the complainant but the repairing expenses were to be paid as per assessment made by the surveyor. Sri S K Mittal, the surveyor had assessed the net loss of Rs.6,217.91. The complainant himself delayed to collect his vehicle despite the reminder issued to collect the vehicle to the complainant on 26-10-2010 after waiting for a long time. The surveyor is



independent profession, approved by IRDA who submitted a detailed report alleging that the vehicle had come in the workshop after six days of the accident for getting it repaired. The job card was not having any particulars pertaining to the damage of the engine which is said to have been repaired. The surveyor has inspected the vehicle on 13-07-2010. The service centre had submitted the estimate of control assembly. The vehicle was found cleaned and washed having fresh engine oil and it was found that this work was got done in some local workshop. When the vehicle was started the defect in the control unit was found for which the surveyor had permitted to change the control unit. The engine never ceases in the water No opportunity has been given to the surveyor to inspect the engine and no loss of the engine was reported by the surveyor. The supplement estimate in this regard after 19 days i.e. 02-08-2010 is the malafide demand of the complainant and thus the complainant is not entitled to get a sum more than Rs.6,217/-.

The learned District Consumer Forum has come to a conclusion that the report pertaining to no damage by the water in the engine of the vehicle given by the surveyor is not acceptable, as the surveyor is not competent to say it being not a mechanic or engineer and, therefore, the learned District Consumer Forum allowed a sum of Rs.35,667/- towards the repair of the alleged vehicle.

Feeling aggrieved by the order of the learned District Consumer Forum, the opposite party National Insurance Company Limited came before this Commission by way of aforesaid appeal.

It is submitted on behalf of the appellant that the impugned order is arbitrary, perverse and one sided. The alleged accident is said to have




been occurred on 04-07-2010 while the intimation to the insurer in this regard is given on 13-07-2010 due to which the appellant's surveyor could not get opportunity to survey the vehicle in respect of damage to the engine as is claimed by the complainant subsequently. The learned District Consumer Forum did not take notice of this fact that the vehicle was got repaired by some local workshop by the complainant first and thereafter it was sent to Prime Motors on 07-10-2010. Despite the surveyor's assessment of loss to the tune of Rs.6,217.91, the insured had got additional work done in the vehicle by way of repairing of the engine amounting to Rs.31,560/- without informing to the Company or without any assessment of the surveyor. The surveyor has specifically mentioned that engine work was not mentioned in the job card.

The learned Counsel for the respondent contended that the vehicle of the complainant was badly damaged to the ditch on the road and the rain water flooded the vehicle making it completely immobile and the respondent/complainant had to leave his vehicle on spot in order to save his life and on the next day when the water receded the complainant informed the authorized service centre i.e. the respondent no.2 regarding the accident and damaged condition of the vehicle and the vehicle was taken directly to the workshop by the employees of the respondent the Prime Motors for repairs. The insurer was duly informed. Though the complainant was under the impression that the authorized workshop was taking time in repairing the vehicle due to severe damage to the vehicle but there was no confusion regarding the extent of the damage and the liability of the Insurance Company to pay to the authorized workshop for its repair. Even after the extensive repair carried out by the workshop, the



vehicle was not in a satisfactory condition and it was apparent that the vehicle had suffered much more damages than the repairs carried out by the workshop probably due to the fact that the Insurance Company was not keen to pay the cost of the entire repairs which persuaded the workshop to carry out the minimum repairs. The responsibility of the complainant was confined to inform the Insurance Company about the accident and taking the vehicle to the authorized workshop and if the Insurance Company failed to appoint any surveyor/loss assessor for examining the vehicle within reasonable time or the surveyor himself did not take any interest to inspect the vehicle at the workshop at the earliest then neither the complainant; nor the authorized workshop is responsible for the delay in the inspection of the vehicle. There is no cogent reason to dispute the repairs done by the repairer and the estimate of the surveyor in this regard is not acceptable which has rightly been rejected by the District Consumer Forum.

In the light of the aforesaid contentions, facts and circumstances on record, we have gone through the entire record and we are of this view that since there is no dispute pertaining to the accident, cashless policy, the repairs carried out by the authorized garage, we are not convinced with the contention of the learned Counsel for the appellant that the cost of the repairs carried out by the authorized repairer is to be limited to the tune of the sum assessed by the surveyor. Had there been the surveyor inspected the vehicle earlier, the position would have been otherwise. Since the accident was timely informed to the insurer, it was the duty of the insurer to get the vehicle inspected by the surveyor for assessing the loss in the vehicle. In this regard, the report of the surveyor has to be



perused. The surveyor himself stated in his report that the chances of accident and extent of damages appeared to be quite probable under such circumstances. The surveyor has estimated the repair amounting to Rs.1,103/- and four replacement of damaged parts to the tune of Rs.16,518.28.

The dispute mainly relates to the repair of engine of the vehicle which is done by the authorized workshop but not endorsed by the surveyor saying thereby that it was not mentioned in the job card prepared at the time of inspection of the vehicle by the surveyor. The significant fact on record is that surveyor has reported that the vehicle was not in a position to start due to fault in control unit which was permitted by him to be changed but there is no mention in the report that after replacement of the control unit the vehicle ever was found started by him. In such circumstances, how the subsequent estimate/job card pertaining to repair of the engine could be rejected by the appellant on this pretext that it was not permitted by the surveyor especially in such circumstance that the work is done by authorized workshop of the appellant. Had there been the vehicle in position of running after getting changed the control unit, the position would have been otherwise. After all the authorized workshop had to work on the vehicle till it gets ready to run, therefore none of the subsequent job card could be challenged as neither the surveyor is technical person to say as to what type of work is to be done or not to be done to get the vehicle in working order nor the surveyor found the vehicle in working order at any point of time. Even the authorized workshop have not found or certified that the engine repair work was not warranted in the given circumstances of the accident. How




a surveyor can say without any expert's report that the engine cannot cease in the water since he is not the expert of motor mechanism field and the authorized workshop repaired the engine. Had there been no necessity to repair the engine, it would have not been repaired by the said workshop.


We may like to mention here that surveyor's report is not the last and final word, it may be basis for settlement of claim but not binding upon insurer nor insured. It cannot be a gospel truth. When here in this case before us the material is on record that the engine of the vehicle was repaired and the authorized workshop has not certified it un-necessary, therefore the learned Forum committed no error thereby allowing it and we do not find any substance in this appeal which is liable to be dismissed.

ORDER

The aforesaid appeal is hereby dismissed. Parties shall bear their on cost for this appeal.

Let copy of this order be made available to the parties as per rules.


1.10.13
(JUSTICE VIRENDRA SINGH)
PRESIDENT


(RAMPAL SINGH)
MEMBER