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STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
UTTAR PRADESH, LUCKNOW

APPEAL NO.2247 OF 2007

(Against the judgment/order dated 09-08-2007 in Complaint  
Case No.28/2006 of the District Consumer Forum, Maharajganj)

National Insurance Company Limited  
Branch Office No.2, Bank Road  
Gorakhpur  
Through its Branch Manager

...Appellant/Opposite Party

Vs.

Santosh Singh  
S/o Sri Shiv Shanker Singh  
R/o Mauza Gopi, Post Pakdi Naunia  
Thana Kothwali, District Maharajganj

...Respondent/Complainant

**BEFORE:**

**HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT**  
**HON'BLE MR. RAMPAL SINGH, MEMBER**

For the Appellant : Sri Prashant Kumar, Advocate.

For the Respondent : Sri T H Naqvi, Advocate.

Dated :

**JUDGMENT**

**PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT**

This appeal has been preferred by the opposite party/appellant against the judgment and order dated 09-08-2007 passed by the District Consumer Forum, Maharajganj in Complaint Case No. 28/2006 Santosh Singh V/s National Insurance Company Limited wherein the District Consumer Forum allowed the complaint of the complainant thereby direction to pay by the opposite party/appellant a sum of Rs.8,05,500/- to the complainant/respondent in respect to the damages of the truck of the

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complainant in accident with a further sum of Rs.2,000/- as cost of the litigation and an interest of 6% per annum to the complainant.

We have heard Sri Prashant Kumar, learned Counsel for the appellant and Sri T H Naqvi, learned Counsel for the respondent and we have gone through the entire facts and circumstances on record as well as the written arguments filed by both the parties.

The admitted facts on record are that the truck of the complainant was insured by the opposite party at the time of its accident. The first surveyor was appointed by the opposite party, who had assessed the damage to the tune of Rs.2,35,875/-. On the request of the complainant, the second surveyor was appointed who had assessed the damage to the tune of Rs.1,95,000/-. The complainant dissatisfied with the surveyor's report, filed a complaint before the District Consumer Forum thereby seeking an amount of Rs.8,05,506/- as per estimate of the damage. The learned District Consumer Forum thereby finding on record that the first surveyor had not inspected the damaged vehicle and, therefore, the second surveyor was deputed but the second surveyor had also not inspected and estimated the damage in the engine of the truck and, therefore, the entire estimate of damage estimated by the complainant is to be paid by the opposite party and, therefore, the impugned order has been passed by the District Consumer Forum.

Feeling aggrieved by the impugned order, the appellant filed this appeal and contended that the impugned order passed is without proper application of mind by the District Consumer Forum. After receipt of the information of accident on 27-11-2005 the opposite party had appointed the surveyor on the very same day, who after spot inspection, assessed

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the damages to vehicle to the extent of Rs.2,35,875/-. The appellant had changed the surveyor at the specific request of the respondent and the new surveyor had assessed the extent of damages to the tune of Rs.1,95,000/- only, therefore, the complainant is bound to accept the amount subsequently assessed by the surveyor. The District Consumer Forum utterly failed to consider the factual surveyor's report on record. The assessment of the spurious claim by the learned District Consumer Forum is certainly without any basis, bereft of any cogent/convincing and justifiable reasons and that too, when the respondent had already received the full and final payment of the claim from the appellant to his satisfaction, therefore, the appeal is liable to be allowed.

The learned Counsel for the respondent/complainant contended that the complainant/respondent is a handicapped person and, therefore, he is entitled for a good amount of damages and mental agony. The District Consumer Forum has not awarded Rs.1,05,000/- which is the rent of the garage taken by the company from the complainant and a sum of Rs.75,000/- for permit and taxes which were worth refundable to the complainant. The judgment and order passed by the District Consumer Forum on 09-08-2007, while the appeal is filed by the appellant with two months delay which is liable to be dismissed.

First of all we will like to deal with the application for condonation of delay moved by the appellant. The prayer for getting the delay condoned is supported by the affidavit of Sri V L Chaturvedi, Deputy Manager of the Insurance Company for the facts that the impugned judgment was passed on 09-08-2007, the copy of which was received by the opposite party on 22-08-2007, which was sent to the Divisional

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Office on 28-08-2007 with the legal opinion dated 24-08-2007 of the appellant. The Divisional Office had studied and processed the matter at length and sent it to the Regional Office on 05-09-2007 from where the matter is entrusted to Sri Prashant Kumar the learned Counsel for the appellant for contesting the case on 17-09-2007, who filed this appeal before this Commission on 15-10-2007. There is no affidavit to rebut the facts mentioned in the affidavit of the appellant filed by the respondent on record. Hence, we do find it the sufficient grounds on record to condone the delay in filing this appeal.

So far as the question of surveyor is concerned, there is no dispute that the first surveyor has assessed the damages to the tune of Rs.2,35,875/- and the subsequent surveyor assessed the damages to the tune of Rs.1,95,000/-. There is no reason on record as to under what circumstances the survey report has not been given effect by the District Consumer Forum. Both the surveyors have assessed the damage on their own while the Green Field Auto Private Limited had assessed the expenses of repair to the tune of Rs.8,05,500/- but since the report of surveyor is binding on the parties unless any cogent reason is shown for not to accept the report and since the estimate of repair by Green Field Auto Private Limited has not been shown that the repair concerned was essential and was having nexus with the alleged accident, therefore, the report of the surveyor could have not been ignored. It seems on record that the complainant was asked as per letters dated 17-01-2006 and 08-02-2006 that the survey has to be done in his presence for the vehicle stationed for repair in the workshop of Green Field Auto Private Limited, Gorakhpur but since the complainant could not get it surveyed in his



presence, therefore, any subsequent estimate of repair by the repairing company cannot be said to be the cogent estimate having nexus with the accident. What was inspected by the surveyors, that cannot be ignored because the surveyor is an independent agency. The estimate of any private company having the work of repair, may contain so much repair which cannot be said that the concerned repair was essential due to accident concerned. The surveyor always will see the facts and circumstances on spot pertaining to accident as well as the relevant repair of the particular parts and its necessity and to see that the particular part was replaceable or repairable due to accident. Therefore, the survey report cannot be discarded in comparison to the estimate made by the company of a particular vehicle. The learned District Consumer Forum committed error thereby allowing the estimate of repair to the tune of Rs.8,05,500/- thereby ignoring the estimate of two surveyors to the tune of Rs.2,35,578/- and to the tune of Rs.1,95,000/- respectively thereby saying that both the surveyors have themselves no parity in their estimate. The first surveyor no doubt estimated to the damage to the tune of Rs.2,35,578/- and the subsequent surveyor estimated it to the tune of Rs.1,95,000/-. What was advisable and what may be said rationale is that the survey report to the higher side should have been accepted in this matter and, therefore, we do find it expedient that this appeal may be allowed thereby accepting the first survey report for assessing the damages in the truck due to accident to be paid by the insurer.

ORDER

The aforesaid appeal is partly allowed. The impugned judgment and order is liable to be modified for the damages to be allowed to the

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tune of Rs.2,35,578/- instead of the damages allowed by the District Consumer Forum to the tune of Rs.8,05,500/-. Hence, the impugned order is modified accordingly.

  
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**(JUSTICE VIRENDRA SINGH)**  
**PRESIDENT**

  
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**(RAMPAL SINGH)** ✓  
**MEMBER**

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