

RESERVED

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW
COMPLAINT NO. 34 OF 2002**

Smt. Tanveer Sultana
W/o Sri Shahid Hussain Naqvi
R/o. 450/128/33A
Friends Colony, Napier Road,
Lucknow

...Complainant

Vs.

The New India Assurance Company Limited
Registered Office –
The New India Assurance Building
87, Mahatma Gandhi Road, Fort
Bombay-400023
Through its Branch Manager
New India Assurance Company Limited
Opposite Basant Cinema, Lalbagh
Lucknow-226001.

... Opposite Party

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. JITENDRA NATH SINHA, MEMBER
HON'BLE MR. SANJAI KUMAR, MEMBER

For the Complainant : Sri V P Sharma, Advocate.

For the Opposite Party : Sri B P Dubey, Advocate.

Dated : 30-07-2015

JUDGMENTPER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

This complaint under Section 17 of the Consumer Protection Act, 1986 has been filed by Smt. Tanveer Sultana against The New India Assurance Company Limited with the following prayers :-

That the opposite party is liable to pay the following compensation to the complainant after deducting a sum of Rs.2,50,000/-, received by the complainant under protest:-

Insured amount ... Rs.5,00,000/-

Interest for the period from 19-12-1999 to 19-02-2002 Rs.1,95,000 /-





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Compensation on account of deficient services and loss of business @
Rs.10,000/- per month ... Rs.2,60,000/-.

For cost of litigation and related expenses ... Rs.15,000/-

Total -----
Rs. 9,70,000/-

Future and pendentalite interest @ 18% till the date of actual payment.

The facts of the complaint case stated in brief are that the complainant had purchased a Tata Telco Ten Wheeled Truck Model LPT-2213/56 on 01-06-1995 from Kailash Motors, Kanpur and got constructed the body of the said truck upon the chassis. After construction of the body of the said truck, the value of the truck was more than Rs.7,50,000/-. The complainant got the said truck financed from Rohilkhand Finance Company, Badaun. The loan of the said truck was cleared by the complainant in the year 1997. The truck was registered with the registration department of U.P. Government and was having registration No. UP-78 N-0481. The truck was insured with the Oriental Insurance Company Limited from 06-07-1996 to 05-07-1997 through cover note no. 188957 for a sum of Rs.7,00,000/-. Again the said truck was insured with the United India Insurance Company Limited for the period from 8-8-1997 to 7-8-1998 for a sum of Rs.6,50,000/-. Thereafter the complainant got the truck insured with the opposite party The New India Assurance Company Limited for the period from 07-08-1998 to 06-08-1999 for a sum of rs.5,50,000/-. Further the said truck was re-insured with the opposite party The New India Assurance Company Limited for a period from 11-08-1999 to 10-08-2000 for a sum of Rs.5,00,000/-. The complainant submitted that the above truck was stolen on 19-12-1999 within the jurisdiction of Police Station Ghatampur, District Kanpur Nagar. The F.I.R. was lodged with the concerned police station on 19-12-1999. The opposite party was also informed about the loss. Thereafter all the required formalities have been completed by the complainant but the opposite party has not settled the claim of the complainant in spite of repeated requests of the complainant. It is further submitted that the complainant has written



several letters, such as the letters dated 20-09-2000, 19-12-2000, 6-2-2001 but the opposite party neither settled the claim nor bothered to furnish any reply of the letters issued by the complainant. Thereafter the complainant served the notice through Advocate dated 07-03-2001. The opposite party issued a letter dated 16-03-2001 to the complainant intimating therein that they had settled the claim of the complainant for Rs.2,25,000/- on the basis of survey report of Sri L. S. Chauhan. Thereafter the complainant informed the opposite party about the letter of his Counsel dated 28-04-2001 stating therein that the claim has been settled by the opposite party after an unexplained delay is insufficient and the complainant is ready to accept the said claim under protest. The complainant had also served notice dated 29-03-2001 and 12-05-2001 to the opposite party regarding their deficient services in settling the claim of the complainant. It is further submitted that the complainant finally received a sum of Rs.2,50,000/- from the opposite party under protest, after executing the letter of subrogation and the indemnity bond on 25-06-2001. The complainant has suffered great hardship and loss of business on account of deficient services rendered by the opposite party. The opposite party whimsically reduced the insured value of the truck in question, even after ignoring the sum assured which was continuously reduced from Rs.7,00,000/- to Rs.5,00,000/-. Truck in question was about 4 years old and as per policy conditions of the policy of insurance, the value of the truck in question was not less than Rs.5,00,000/- on the date of loss. The opposite party malafidely appointed a surveyor to assess the loss on the basis of hearsay evidence. surveyor appointed by the opposite party neither had seen the truck of the complainant before the loss nor he has any parameter to assess the loss of the The truck which was not available for inspection. The surveyor appointed by the opposite party was not in a position to value a well maintained vehicle having new tyres and tubes. The value of the chassis of the vehicle in question on the date of loss was of Rs.7,36,080/- and after construction of the body the said value comes to Rs.10,00,000/-. The complainant suffered great financial loss and mental agony on account of delayed



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settlement of the claim that too after reducing the claim from Rs.5,00,000/- to Rs.2,50,000/-. It is further submitted that on account of partial settlement of the claim the complainant was not in a position to buy a truck and her means of livelihood are still paralysed.

The opposite party The New India Assurance Company Limited has filed written statement thereby stating that the claim of the complainant was settled for Rs.2,50,000/- with her consent. It is submitted that the claim of the complainant was earlier settled for Rs.2,25,000/- vide letter dated 16-03-2001 on the basis of the valuation report of the surveyor Sri L S Chauhan dated 25-08-2000 which sum when was not accepted by her then on her representation the matter was got resurveyed and re-examined and vide report dated 06-06-2001 of Sri L S Chauhan also based on the consent letter of the complainant was offered Rs.2,50,000/- which she accepted in full and final settlement of her claim vide receipt after submitting letter of subrogation and indemnity bond to the opposite party. The opposite party further pleaded that the complainant has falsely stated that she received the sum of Rs.2,50,000/- under protest. The appointment of the surveyor was genuinely made who assessed the value of the said truck on the basis of the then market value and as the same was less than the I.E.V. of the said truck, hence the same was offered as per policy conditions and the said sum was accepted by the complainant in full and final satisfaction. The opposite party further submitted that the complaint of the complainant deserves to be dismissed with costs.

Evidence by the complainant

An affidavit, in support of the complaint case has been filed by Smt. Tanveer Sultana, W/o Sri Shahid Hussain Naqvi the complainant. The following documents have also been filed on behalf of the complainant as annexure with the complaint.

Photocopy of the insurance cover notes and policies.

Photocopy of F.I.R. dated 19-12-1999.

Photocopy of Indemnity Bond dated 25-06-2001 and the letter of subrogation dated 25-06-2001.

Photocopy of clauses relating to loss and damage.

Evidence by Opposite Party

An affidavit on behalf of the opposite party sworn by Sri Sumit Kumar Sirkar S/o Late Sri Sanat Kumar Sirkar duly constituted Attorney of the New India Assurance Company Limited has been filed. The following documents have also been filed on behalf of the Opposite Party as annexure with the affidavit.

Photocopy of the receipt of Rs.2,50,000/- received by the complainant in full satisfaction.

Photocopy of Indemnity Bond dated 25-06-2001.

Photocopy of Letter of Subrogation.

Photocopy of consent letter of complainant.

We have heard Sri V P Sharma, learned Counsel for the complainant and Sri BP Dubey, learned Counsel for the opposite party and perused the entire record including the evidence and written arguments of both the parties.

Learned Counsel for the complainant argued that the complainant was the beneficiary of the comprehensive insurance policy taken for a truck No. UP-78/N-0481 for Rs.5,00,000/-. The said truck was stolen on 19-12-1999 and the FIR was lodged and the insurance company was informed. The claim was settled for a paltry sum of Rs.2,50,000/- which the complainant was forced to take under protest which is borne out from the Letter of Subrogation and Indemnity Bond. It is further pleaded that opposite party has submitted forged Letter of Subrogation and Indemnity Bond in which the word under protest was erased and the name of the complainant was interpolated. The report of the forensic and handwriting expert was produced as evidence which clearly states that the document is forged and fabricated. The valuation report of an independent surveyor who assessed the value of the truck to be Rs.4,40,000/- has also been filed by the complainant. It is further submitted that the Hon'ble Supreme Court in the case of **Dharmendra Goel V/s Oriental Insurance as reported in III (2008) CPJ 63(SC)** clearly lays down that depreciation of the value of the vehicle cannot be more than 10,000/-



from the insured amount when the incident took place between 7 months of the insurance and in the present case the insured value was 5 lakhs and the depreciated value could be at the minimum Rs.4,90,000/-. The claim was settled by the opposite party after a delay of more than 1 year and 8 months which again is a deficiency as per a catena of judgment of the Hon'ble Supreme Court and the National Commission. It is further argued by the learned Counsel for the complainant that the Hon'ble Supreme Court in the case of **United India Insurance Company Limited V/s MKJ Corporation reported in 1997 CCJ 9** has laid down that the rate of interest to be awarded should be 12% in insurance cases which bolsters the case of the complainant. It is submitted that the grounds taken by the Insurance Company mainly based on a forged and fabricated document which cannot be countenance by this Commission in view of the catena of rulings commencing from **Indian Bank V/s Satyam Fibbers as reported in (1996) 5 SCC 550** which lays down an Act of fraud shall vitiate all acts as fraud and justice never dwell together. Learned Counsel further submitted that the complaint deserves to be allowed in full and the interest and compensation be awarded and exemplary costs be imposed on the opposite party for filing false and forged documents on oath.

Learned Counsel for the opposite party submitted that as per the report of surveyor Sri L S Chauhan a sum of Rs.2,25,000/- has been recommended, but it was the complainant who has made a representation to get the amount of compensation may be increased to the tune of Rs.2,50,000/- for which she has given her consent. Learned Counsel further argued that this Commission has no pecuniary jurisdiction to entertain the instant case and the proper remedy available with the District Consumer Forum. The complainant has without any pressure and coercion has signed the discharge voucher and received the cheque of Rs.2,50,000/-. Learned Counsel further pleaded that as the moment the complainant has subrogated the right, the relationship between insured and the insurer comes to an end then and there. The law laid down by the Hon'ble Supreme Court in the case of Dharmendra Goel

V/s Oriental Insurance Company Limited decided on 30-07-2008 which has been cited on behalf of the complainant is not at all application in this case. Also the law laid down by the Hon'ble Supreme Court in the case of United India Insurance Company Limited V/s M.K.J. Corporation decided on 21-08-1996 which has been placed on behalf of the complainant does not have any bearing over the given set of circumstances as the facts of the case were not similar, identical and the same and since the opposite party was not having any authority and right after getting Indemnity Bond and Letter of Subrogation and after finally receiving the amount, the complainant was not even having right to file the complaint and the complaint is destined to be dismissed as it devoid of merits with the exemplary costs.

After hearing of both the parties and perusal of the entire facts and circumstances on record as have been submitted and evidenced, we have found that there is no much dispute on this point that the complainant's truck was insured by the opposite party for a sum of Rs.5,00,000/-. The only dispute arisen in between the parties is for the facts that the surveyor assessed the value of the truck on the date of occurrence to the tune of Rs.2,25,000/- and the opposite party offered an amount of Rs.2,50,000/- as full and final settlement to the complainant and which is said to have been accepted by the complainant but the complainant disputed it that any such amount was accepted by her as full and final settlement.

In this regard so far as the question of letter of subrogation, indemnity bond and the final settlement alleged to have been accepted by the complainant is concerned and is vehemently contended by the learned Counsel for the opposite party, we are of this view that without giving any finding on this fact that whether any fraud has been committed on behalf of the opposite party for preparing the papers pertaining to final settlement alleged to have been accepted by the complainant, we find after overall assessment of those papers that there had been no intention of the complainant to accept a sum of Rs.2,50,000/- as full and final payment thereby settling the dispute in



between the parties because the indemnity bond which is brought on record clearly discloses a condition mentioned in it that 'AND WHEREAS the above said vehicle was reported to be stolen on 19-12-1999 and the obligor's claim (**under protest**) Rs.2,50,000/- subject to the following conditions'..... Not only this the alleged letter of subrogation does also contain these words that 'in consideration of your paying to us the sum of Rs.2,50,000/-, settlement only **under protest** of my/our claim for the loss These words automatically disclose that whatever may be the amount paid by the opposite party to the complainant, the same was not accepted by the complainant as full and final settlement of the claim. There is a considerable discrepancy too in the papers furnished by the complainant as well as by the opposite party respectively as the aforementioned words pertaining to under protest have been found written in those papers which have been brought on record by the complainant and in the papers brought on record by the opposite party alleging the letter of subrogation and indemnity bond shows that on that averment wherein in the papers of complainant the averment of under protest is mentioned, Tanveer Sultana in Hindi has been written in place of the aforesaid words. Now the question arises as to under what circumstances two sets of paper remained in existence. Had there been any fraud played by the complainant in this regard, there would have been not in possession of the complainant of such papers showing the averment of under protest and signed by the witnesses named Shahid Husain Naqvi and Hasan Yusuf Rizvi. More so there was no occasion to write Tanveer Sultana in Hindi on those places in the papers filed by the opposite party, wherein the averment of under protest has been typed in the papers furnished by the complainant. Not only this expert opinion in this regard has also been brought on record on behalf of the complainant and that report shows that as per opinion of the expert the questioned signatures marked Q1 to Q3 have not been written by Tanveer Sultana, whose sample signatures are marked A1 to A8. There is no rebuttal of this expert report from the side of the opposite party. Hence, not only prima facially rather it is conclusively worth to be held

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that there had been no intention of the complainant to settle her claim full and final to the tune of Rs.2,50,000/-,

So far as the question of surveyor's report is concerned, we are of this view that the surveyor's report for assessment of the truck has no relevance in such type of cases wherein the property insured is valued by the insurer at the time of covering the risk of the property and in this regard the contention of the learned Counsel for the complainant is acceptable in view of the law laid down by the Hon'ble Supreme Court in the case of **Dharmendra Goyal V/s Oriental Insurance Company Limited** (supra) wherein, in such type of cases it is held that depreciation of the value of the vehicle cannot be more than Rs.10,000/- from the insured amount when the incident took place between seven months of the insurance. Hence, in this case before us since the truck was insured by the opposite party for the value of Rs.5,00,000/-, the depreciated value could be atleast to the tune of Rs.4,90,000/- and the insurer cannot be allowed to depreciate the value of the vehicle on his own when the insured declared value of Rs.5,00,000/- had been accepted by the opposite party at the time of covering the insurance and receiving the premium for coverage of the insurance to the tune of Rs.5,00,000/-. The Hon'ble Supreme Court has held in the aforesaid case that the insurance companies often act in an unreasonable manner and after having accepted the value of a particular insured good, disown that very figure on one pretext or the other when they were called upon to pay compensation and this 'take it or leave it' attitude is clearly unwarranted not only as being bad in law but ethically indefensible. Hence, there is no room to calculate the depreciated value of the truck of the complainant arbitrarily and the claim of the complainant to the tune of Rs.4,90,000/- is not only worth consideration but is found to be payable by the opposite party. The version of the opposite party in this regard is not acceptable and the claim of the complainant is to be settled to the tune of Rs.4,90,000/-. In our view the complainant is entitled to get a sum of Rs.4,90,000/- with interest @ 9% per annum from the date of the complaint till the date of final payment to be made by the opposite party,



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failing which the rate of interest shall be calculated to the tune of Rs.12% per annum from the date of the complaint till the date of payment made by the opposite party if the amount is not paid within two months from the date of this order.

ORDER

The aforesaid complaint is hereby allowed. The opposite party shall pay to the complainant within two months a sum of Rs.4,90,000/- (minus Rs.2,50,000/- which has already been paid), with an interest @ 9% per annum from the date of the complaint till the date of last payment made. If the payment is not made by the opposite party to the complainant within two months, the complainant shall be entitled for interest @ 12% per annum from the date of the complaint till the date of payment. A sum of Rs.10,000/- is further allowed as cost of the complaint to the complainant to be paid by the opposite party.


(JUSTICE VIRENDRA SINGH)
PRESIDENT ✓


(J N SINHA)
MEMBER


(SANJAI KUMAR)
MEMBER

Pnt.