BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SHIMLA (H.P.)

Complaint No.: 263/2018
Presented on: 10.09.2018
Decided on : 06.06.2024

Shri Hemant Kumar Verma, Son of Shri Dharam Prakash,
Resident of Village Thaya, Post Office Kangal,
Tehsil Kumarsain, District Shimla, H.P.

....Complainant

Versus

1. The Oriental Insurance Company Limited,
Mythe Estate, Upper Kaithu, Shimla-3,
Through its Divisional Manager.

2. Rajneesh Dhiman, Surveyor & Loss Assessor,
Ram Bhawan, Tuti Kandi, Shimla, H.P.

....Opposite Parties

Coram :

Dr. Baldev Singh, President.
Ms. Janam Devi, Member.

For Complainant: Mr. Peeyush Verma, Advocate.
For Opposite Party No.1: Mr. Bunesh Pal, Advocate.
For Opposite Party No.2: Ex-parte.

O R D E R:

Present complaint has been filed by Shri Hemant Kumar Verma (hereinafter referred to as the complainant) under Sections 11&12 of the Consumer Protection Act 1986 (hereinafter referred to as the Act) against The Oriental Insurance Company Limited & Anr. (hereinafter referred to as the OPs), on account of deficiency in service and unfair trade practice, seeking relief therein that the OPs be directed to pay Rs.1,29,000/- alongwith interest, to pay Rs.50,000/- as damages, to pay Rs.15,000/- as costs of litigation etc.

2. The case of the complainant in brief is that complainant was owner of a Hyundai Creta Vehicle No. HP-62D-0770 and got the insurance of vehicle done from OP No.1 for a sum of Rs.9,50,000 at IDV and policy was valid w.e.f.

26.07.2017 to 25.07.2018. It is stated that against the payment of premium by complainant, the insurance company issued a cover note and apart from this, no other document whatsoever was provided by the OP No.1 to the complainant at any point of time. It is stated that the vehicle, in question, unfortunately suffered damage in the morning of 24.09.2017 when the vehicle was being taken from Kangal to Saverakhad as the driver of the vehicle was giving pass to a tipper near Chamola and vehicle had to be taken onto the Katcha portion of the road and in the process some stones hit the lower portion of the vehicle and caused damage to the same and resultantly, the vehicle became non-functional. It is stated that OP No.1 was informed telephonically on that very day, whereafter the spot surveyor visited the authorised workshop at Shoghi and called upon the complainant to submit the claim form duly filled in alongwith certain other documents. It is stated that complainant submitted the claim form, estimate of repairs to the tune of Rs.54,000/- which had been worked out without opening the vehicle for repairs. It is stated that after submission of documents the official of OP No.1 called upon the complainant to get the vehicle repaired and thereafter submit the bills of repair to the insurance company. It is stated that when the vehicle was opened for effecting the repairs, it was observed that in fact the vehicle had suffered much more damage than that had been assessed on an external surveyor of the accidental vehicle. It is stated that a fresh estimate of repairs was prepared by the authorised repairer to the tune of Rs.2,59,272/- only and the same was made available to OP No.1. It is stated that thereafter OP No.1 called upon the OP No.2 to assess the loss in terms of the newly submitted estimate. It is stated that OP No.2 accordingly surveyed the accidental vehicle and prepared the estimate of loss. It is stated that in the meantime, the complainant got the vehicle repaired and submitted the bills of repair to the OP No.1 to the tune of Rs.1,70,000/-. It is stated that in May 2018 when complainant

visited the office of the OP No.1, the office of insurance company got executed form the complainant a discharge voucher in full and final settlement of the claim after informing that the claim had been passed for a sum of Rs.41,000/- only. It is stated that the complainant being not satisfied with the grossly reduced amount of the indemnification amount executed the discharge voucher under protest. It is stated that the OP No. 2 has worked at the dictates of the OP No.1 and has not submitted a fair and actual report in an attempt to defeat the just and payable claim of the complainant. It is stated that aforesaid acts on the part of OPs amount to deficiency in service and unfair trade practice. It is prayed that the complaint may be allowed.

3. After admission of complaint, notices were issued to the OPs. The OP No.2 was duly served for 05.05.2022, but when failed to appear on the aforesaid date, then was ordered to be proceeded ex-parte. The complaint so filed has been opposed by the OP No.1 by filing reply taking preliminary objections therein regarding maintainability, suppression of facts, estoppel, cause of action etc. It is stated that immediate after receiving intimation the replying OP had conducted the spot survey and appointed an independent surveyor to assess the loss and damage occurred to the vehicle. It is stated that the surveyor assessed the loss and recommended that the claim may be settled at Rs.41,000/- after deducting the salvage value of Rs.1169 and compulsory excess of Rs.2,000/-. It is denied that fresh estimate of vehicle was prepared by the repairer to the tune of Rs.2,59,572/- only. It is stated that on dated 27.09.2017 surveyor inspected the insured vehicle in the presence of the insured and on receipt of the supplementary estimate dated 09.10.2017 on dated 13.10.2017 surveyor again inspected the vehicle. It is stated that the surveyor on restoration of the vehicle again inspected the vehicle on dated 12.12.2017 in the presence of the insured and repair representative. It is stated that after receipt of bill and scrutiny of repair bills, repair estimates, inspections and discussions, loss has

been assessed by the surveyor. It is stated that replying OP had settled the claim on the basis of the surveyor's report on to the tune of Rs.41,000/-. It is denied that officials intimated that in case the complainant refused to receive the amount, as offered, he may land up getting nothing. It is stated that there is neither any deficiency in service nor unfair trade practice on the part of the replying OP and prayed that the complaint may be dismissed.

4. Rejoinder was filed on behalf of the complainant and the allegations as contained in the complaint were reasserted after refuting those of reply filed by contesting OP contrary to the complaint.

5. The parties adduced evidence in support of their contentions. On behalf of the complainant affidavit of complainant was tendered in evidence. Complainant has also filed documents in support of his contentions. On behalf of OP affidavit of Ashok Kumar Sharma was tendered in evidence. OP has also filed documents in support of his contentions.

6. We have heard learned counsels for the parties and have also gone through the entire record, carefully.

7. After hearing the submissions made by Ld. Counsel for the parties and perusing the entire record carefully including pleadings and evidence of the parties, it is clear that the simple question involved in this complaint is whether the complainant is entitled for the amount of Rs.1,29,000/- alongwith interest @12% per annum and the amount claimed on account of compensation and litigation charges and further the decision of the OP to make the payment of Rs.41,000/- to the complainant, though received under protest, was justified or not. It is not in dispute that the complainant is the registered owner of the vehicle and the vehicle met with an accident during the subsistence of the insurance policy and the loss caused to the vehicle was intimated to the OPs and the OPs deputed surveyor and loss assessor, who assessed the loss to the tune of Rs.41,000/-, after making necessary deductions on account of

salvage and compulsory excess clause. The plea of the complainant is that the complainant has spent Rs.1,70,000/- for the repair of the vehicle and the OP has made payment of Rs.41,000/- only which has been received by the complainant under protest and therefore, the complainant is entitled for the remaining amount of Rs.1,29,000/- from the OP. It is also the plea of the complainant that first the complainant submitted approximate estimate of repair of Rs.54,000/- and thereafter fresh estimate to the tune of Rs.2,59,572/- and finally submitted the bills of Rs.1,70,000/- to the OPs, but on the other hand the said estimate and repair bills were not taken into consideration while assessing the loss. The plea of the OP No.1 on the other hand is that the estimate and bills submitted by the complainant were duly taken into consideration by the surveyor-cum-loss assessor and only thereafter the loss was assessed to the tune of Rs.41,000/- which amount was paid by the insurance company to the complainant much prior to the filing of this compliant. Now, it is to be seen whether the complainant has been able to prove his case for amount of Rs.1,29,000/- against the OPs or not. Ld. Counsel for the compliant in addition to his pleadings and evidence on record, has relied upon the decision of the Hon'ble Apex Court in NIAC Versus Pradeep Kumar and Sri Venkateshwara Syndicate Versus OIC, wherein it was held that surveyor's report is not the last and final word and approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of loss suffered by the insured but surely such report is neither binding upon the insurer nor insured. In the present case, the complainant is also claiming that he is entitled for the amount which he has spent on the repair of the vehicle because the OP/insurance company has paid less amount to him. It is well settled preposition of law that parties can take number of pleas in the pleadings but has to prove the same by leading evidence during the proceedings of the case. The complainant has filed his affidavit and photocopies of estimate

stated to have been submitted by him to the OPs and copies of bills vide which he has made payment of Rs.1,70,000/- to the Tapan Hyundai, Shimla. As at the bottom of bills it is printed that payment received from customer vehicle permitted to leave workshop. It is on the strength of these bills the complainant is claiming remaining amount. On behalf of the OP No.1 report of surveyor Annexure R-1 has been placed on record and from the perusal of said report it is clear that surveyor has recommended Rs. 41,000 to be paid by insurance company to the complainant and the same stands already paid to the complainant. The complaint is claiming remaining amount of Rs.1,29,000/- because the complainant had spent Rs.1,70,000/- for the repair of the vehicle and the opposite party/insurance company has paid only Rs.41,000/- to the complainant.

8. The plea of the opposite party/insurance company is that the complainant is entitled for the amount assessed by the surveyor and not for the amount he has spent for the repair of the vehicle. It is stated that report of the surveyor cannot be ignored easily and has to be taken into consideration to assess the loss. However, the plea of the complainant is that report of the surveyor is not binding upon the insurer as well as on the insured and in the given facts and circumstances of the case, the report of the surveyor can be ignored and insurer can take independent decision about the indemnification of the loss of the insured. The complaint has placed on record the copy of bill Annexure C-7, through which the payment of Rs.1,70,000/- was made by the complainant to Tapan Hyundai Shoghi, Shimla and at the bottom of the bill it is printed that payment received from customer, vehicle permitted to leave the workshop, meaning thereby that complainant through Annexure C-7 has been able to prove that he has spent Rs.1,70,000/- for the repair of the vehicle. The opposite party/insurance company has relied much upon the report of the surveyor Annexure R-1, wherein the net liability of the opposite party/insurance company was assessed at

Rs.41,000/-. The perusal of the said report clearly goes to show that regarding some parts, the estimate was ignored by the surveyor on the ground that loss to the said parts was consequential. However, it is clear from the record that as and when the accident took place, the complainant took the vehicle to the authorized agency and they prepared the estimate and same was supplied to the opposite party/insurance company as well as its surveyor. The vehicle was taken to the authorised agency on the same day on which the accident took place as is evident from claim intimation form on record. No doubt, the complainant has pleaded that he has supplied estimates of Rs.54,000/- and Rs.2,59,572/- and finally paid Rs.1,70,000 to the authorised agency Tapan Hyundai Shimla and only thereafter the owner of the workshop allowed the complainant to take the vehicle from the workshop. The complainant has received amount of Rs.41,000/-, paid by opposite party/insurance company, under protest because he was not satisfied with the settlement of the claim on the part of the opposite party/insurance company. As mentioned here-in-above, the opposite party/insurance company has put reliance upon the report of the surveyor and surveyor in his report Annexure R-1 has stated in relevant columns that said loss was consequential and loss regarding the said parts was not assessed for the purpose of indemnification. However, the opposite party/insurance company has not been able to prove that what was the cause of consequential damage to the parts and for the same, who is liable, because when the complainant took the vehicle to the authorized agency on the date of accident itself and through authorised agency gave intimation to the opposite party/insurance company about the accident, then it was obligatory on the part of the opposite party/insurance company to immediately sent the concerned person to make the preliminary inspection so as to ascertain the loss caused to the vehicle, however, it appears to us that same has not been done and the opposite party/insurance company is relying upon the final

survey report and it appears to us that such stand of the opposite party/insurance company is not justified. The opposite party/insurance company has, in no way disputed that complainant has not made payment of Rs.1,70,000/- to the authorised agency when vehicle was got repaired. Hence, we are of the considered opinion that the loss to the parts of the vehicle, which has been termed by the surveyor as consequential damage appears to be part of the loss due to accident and the opposite party/insurance company is liable to indemnify the complainant for the same. We find support in this regard from the decisions cited on behalf of complainant in case titled NIAC Versus Pradeep Kumar and Sri Venkateshwara Syndicate Versus OIC. We are also aware about the legal position that report of the surveyor cannot be ignored easily and has to be taken into consideration while quantifying the loss, but in the present facts and circumstances of the case, the report of the surveyor is not a final word to assess the loss caused to the vehicle, for the reason that opposite party/insurance company has simply relied upon the report of the survey without knowing the actual position about the loss caused to the vehicle in the accident. The concerned authorities of insurance company must have applied their mind independently after going through the report of the surveyor wherein major loss to the parts of the vehicle has been shown consequential loss, when the vehicle was already with the authorised agency right from the date of accident till the date of payment of Rs.1,70,000/- made by the complainant to the Tapan Hyundai, Shimla, on 16th December 2017 and the surveyor has submitted his final report on 20th April 2018. There was much scope for the concerned authority of the opposite party/insurance company to look into the matter and settle the claim of the complainant as per estimate or amount he spent for the repair of the vehicle, but neither the estimate nor the amount spent by the complainant for the repair of the vehicle was taken into consideration by the opposite party/insurance company and has

simply relied upon the report of the surveyor who termed the major loss as consequential one. Report of the surveyor clearly goes to show that policy has endorsement of nil depreciation, however, the surveyor has made deductions on account of excess clause and salvage also, which deduction are not permissible in case of nil depreciation cover/policy. Hence, the report of surveyor, which OPs considered as final words for settlement of claim of complainant itself becomes doubtful and questionable and cannot be considered for the settlement of claim and the complainant is entitled for the entire amount of Rs.1,70,000/- which was spent for repair of vehicle from the OPs. Accordingly, we are of the considered opinion that the opposite party /insurance company is liable to indemnify the loss caused to the complainant by making payment of entire amount of Rs.1,70,000/- which was spent for repair of the vehicle from the authorized agency and not from any private workshop. As the opposite party/insurance company has already made payment of Rs.41,000/- to the complainant, hence, the OP is liable to pay the remaining amount of Rs.1,29,000/- to the complainant alongwith interest. The complainant is also held entitled for compensation on account of mental harassment and agony as well as for litigation charges.

9. In view of the foregoing discussion and reasons assigned therein the complaint is ordered to be allowed and the OPs are directed to pay a sum of Rs.1,29,000/- to the complainant alongwith interest @ 9% per annum from the date of filing of complaint till its payment. The OPs are also directed to pay a sum of Rs.15,000/- to the complainant as compensation for mental harassment and agony and sum of Rs.10,000/- as costs of litigation. The OPs are directed to comply this order within 45 days from the date of receipt of copy of the order. Copy of this order be supplied to the parties free of cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 6th day of June, 2024.

(Dr. Baldev Singh)
President

(Janam Devi)
Member

GUPTA