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DHARMENDRA GOEL

v.

ORIENTAL INSURANCE CO. LTD.

(Civil Appeal No. 4720 of 2008)

JULY 30, 2008

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[ALTAMAS KABIR AND HARJIT SINGH BEDI, JJ.]

Consumer Protection Act, 1986 – Insurance claim – Renewal of Insurance policy of a vehicle in a sum of Rs 3,54,000/- on 13.02.02 to 12.03.03 – Accident during the insurance period – Estimate of Rs.3,37,246.59/- for repair by Service station – However, Surveyor of Insurance Company assessed value of vehicle on total loss basis as Rs.1,80,000/- – Claim of Rs.3,37,246.59/- with additional charges – Dismissed by District Forum – Award of Rs.1,04,043/- with interest @ 6% p.a. by State Commission – However, National Commission awarded Rs.1,80,000/- with interest @12% p.a. – On appeal, held: Insurance company having accepted the value of vehicle at Rs.3,54,000/- on 13.02.02 was bound by it – It could not claim that the value of vehicle on total loss basis on date of accident was only Rs.1,80,000/- – Value of vehicle could not depreciate from Rs.3,54,000/- to Rs.1,80,000/- from date of renewal of policy to the date of accident – However, on account of some depreciation, during the said period, value of vehicle reduced by Rs.10,000/- – Claimant to be paid sum of Rs. 3,44,000/-.

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The appellant purchased a new vehicle for a sum of Rs. 4,30,000/-. On 19.01.00, the vehicle was comprehensively insured in that amount with the respondent-Insurance Company. On expiry of the policy, it was again renewed for a year on 19.01.01 on the value of Rs.3,59,000/-. It was further renewed on 13.02.02 upto 12.03.03 on the value assessed at Rs.3,54,000/-. The vehicle met with an accident on 10.09.02. The service station submitted an

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estimate of Rs.3,37,246.59/-for the repair of the vehicle. The appellant submitted a claim for Rs. 3,37,246.59 /- with some additional charges. However, the Surveyor appointed by the respondent assessed the total loss as Rs. 1,80,000/-. The appellant filed a complaint before the District Consumer Forum seeking a sum of Rs.3,37,246.59 /- with some additional charges. The District Forum dismissed the complaint. In appeal, the State Commission directed the respondent to pay the appellant Rs. 1,04,043/- with interest @ 6% p.a. from the date of the filing of the complaint till payment. The appellant filed a revision petition claiming a sum of Rs. 3,54,000/- as compensation. The National Commission granted a compensation of Rs.1,80,000/- with interest @12% p.a. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 The accident happened on 10.09.02 during the validity of the Insurance Policy taken on 13.02.02 insuring the vehicle for Rs.3,54,000/- on a premium of Rs.8498/- It is also the admitted position that the vehicle had been declared to be a total loss by the surveyor appointed by the company though the value of the vehicle on total loss basis had been assessed at Rs.1,80,000/-. As the company itself had accepted the value of the vehicle at Rs.3,54,000/- on 13.02.02, it could not claim that the value of the vehicle on total loss basis on 10.09.02-on the date of accident was only Rs.1,80,000/-. The company's contention that within a span of seven months from 13.02.02 to the date of the accident, the value of the vehicle had depreciated from Rs.3,54,000/- to Rs.1,80,000/- cannot be accepted. [Para 6] [583 E-G 584 A-B]

1.2 Section 146 of the Motors Vehicles Act, 1988 casts an obligation on the owner of a vehicle to take out an insurance policy as provided under Chapter 11 of the Act and any vehicle driven without taking such a policy in-

A vites a punishment under Section 196 thereof. Therefore, it is obvious that in the light of this stringent provision and being in a dominant position the insurance companies often act in an unreasonable manner and after having accepted the value of a particular insured good dis-
B own that very figure on one pretext or the other when they are called upon to pay compensation. This 'take it or leave it' attitude is clearly unwarranted not only as being bad in law but ethically indefensible. [Para 6] [584 B-E]

1.3 The submission that it was for the appellant to
C produce evidence to prove that the surveyor's report was on the lower side in the light of the fact that a price had already been put on the vehicle by the company itself at the time of renewal of the policy cannot be accepted. In these circumstances, the company was bound by the
D value put on the vehicle while renewing the policy on 13.02.02. [Para 6] [584 D-E]

1.4 In the course of hearing before the National Commission, the respondent submitted that the appellant had limited his claim to Rs.1,80,000/- and having been awarded
E that amount, could not claim anything beyond that figure. However, from a bare reading of the order of the National Commission the respondent submitted that the primary claim made by the appellant was for a sum of Rs.3,54,000/- and in the alternative for Rs.1,80,000/-. This
F fact is made more explicit from the grounds of revision filed before the National Commission wherein a sum of Rs.3,50,000/- had been repeatedly claimed. Even otherwise, in such matters, the court must take a realistic view and if a particular claim to compensation is possible on
G the material on record, it should not be denied on hyper technical pleas. [Para 7] [584 F-H 585 A]

1.5 The submission that as the vehicle had been insured for Rs.3,54,000/- on 13.02.02 and the accident had happened about seven months later (on 10.09.02), some
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depreciation in the value of the vehicle ought to be made and the compensation determined on that basis, is accepted. The value of the vehicle is reduced by Rs.10,000/-. The appellant is directed to be paid a sum of Rs.3,44,000/- with interest. [Paras 8 and 9] [585 B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4720 of 2008

From the Judgment and Order dated 20.4.2006 of the National Consumer Disputes Redressal Commission, New Delhi in revision Petition No. 2405 of 2004

D.K. Singh, Pradeep Shukla and Abhijit Sengupta for the Appellant.

A.K. Raina and Anil Kumar Jha for the Respondent.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. Leave granted.

2. This appeal by way of special leave arises out of the following facts:

3. On 4th January, 2000, the appellant herein purchased a new Tata Sumo vehicle for a sum of Rs. 4,30,000/-. The vehicle was comprehensively insured on 19th January, 2000 with the Oriental Insurance Company (hereinafter referred to as 'the Company') on its purchase value of Rs. 4,30,000/- and a premium of Rs. 10,436/- was paid. This policy expired on 18th January, 2001 and on the very next day the said policy was renewed for a year by the company assessing the value of the vehicle at Rs.3,59,000/-. This policy expired on 18th January, 2002 but was again renewed on 13th February, 2002 up to 12th March, 2003 on a premium of Rs. 8498/- on the value assessed by the Company at Rs.3,54,000/- The vehicle met with an accident on 10th September, 2002 on which the appellant informed the company as to what had transpired. The vehicle was removed to Chambal Motors, Kota, Rajasthan, an authorized service station of Tata Motors, for repair. Chambal Motors submitted an

A estimate of Rs.3,37,246.59/-for the repair of the vehicle. The appellant then submitted a claim for Rs. 3,37,246.59 /- on 11th October, 2002 alongwith a bill of Rs.4,000/- for removing the vehicle to the workshop from the place of accident. The company, however, appointed a Surveyor, M.N. Chaturvedi Associ-
B ates on 14th December, 2002 to assess the loss and to submit a report. The surveyor in his report determined a total loss of Rs. 1,80,000/- after assessing the value of the salvage at Rs.85,000/- whereas the assessment on cash loss basis was made at Rs.1,04,433.53/-. The company, however, declined to
C defray any amount to the appellant on the plea that the driver did not have a valid driving licence on the date of the accident. The appellant thereupon filed a complaint before the District Consumers Forum praying that the sum of Rs.3,37,246.59 /-, the estimate given by Chambal Motors with some additional
D charges, be paid to the appellant. After the completion of the pleadings, the District Forum, by its order dated 19th January, 2004, dismissed the complaint on the ground that the question as to whether the driver of the vehicle had a valid driving licence on the date of the accident involved complicated questions of
E fact which could be decided only by a Civil Court. Aggrieved by this order the appellant filed an appeal before the M.P. State Consumer Disputes Redressal Commission, Bhopal. The Commission in its order dated 28th July, 2004 held that the driver did have a valid driving licence on the date of the accident and accordingly directed the Company to pay to the appellant a sum
F of Rs. 1,04,043/- with interest @ 6% p.a. from the date of the filing of the complaint till payment. Dissatisfied by the inadequate compensation awarded by the State Commission, the appellant preferred a revision petition before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter called
G "the National Commission"), claiming a sum of Rs. 3,54,000/- towards compensation. The National Commission, by its order dated 20th April, 2006 partly allowed the appeal and granted a compensation of Rs.1,80,000/- with interest @12% p.a. The claimant is before us in appeal in these circumstances.

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4. The learned counsel for the appellant has raised only one argument in the course of hearing. He has submitted that the company itself had issued an insurance policy in a sum of Rs.3,54,000/- effective from 13th February, 2002 to 12th March, 2003 and had also accepted a premium on that basis and as such to claim that the appellant was entitled to a figure below that amount was wholly unjustified. He has also submitted in elucidation, that there was absolutely no basis for the surveyor's conclusion that the appellant was entitled to a sum of Rs.1,80,000/- on total loss basis in the face of the estimate made by the Chambal Motors for a much larger amount.

5. The learned counsel for the Company – Respondent has , however, pointed out that the appellant's counsel, had in his arguments before the National Commission, given up his claim to Rs.3,54,000/- as now contended, and had limited the same to Rs.1,80,000/- and this amount had in fact been allowed and in this view of the matter, any claim for a further sum was not justified. It has also been pleaded that the appellant had led no evidence to challenge the value put on the vehicle by the surveyor so as to substantiate his claim.

6. We have heard the learned counsels for the parties and have gone through the record very carefully. The facts as narrated above remain uncontroverted. Admittedly, the accident had happened on 10th September, 2002 during the validity of the Insurance Policy taken on 13th February, 2002 insuring the vehicle for Rs.3,54,000/- on a premium of Rs.8498/- It is also the admitted position that the vehicle had been declared to be a total loss by the surveyor appointed by the company though the value of the vehicle on total loss basis had been assessed at Rs.1,80,000/- We are, in the circumstances, of the opinion that as the company itself had accepted the value of the vehicle at Rs.3,54,000/- on 13th February, 2002, it could not claim that the value of the vehicle on total loss basis on 10th September, 2002 i.e., on the date of the accident was only Rs.1,80,000/-. It bears reiteration that the cost of the new vehicle was Rs.4,30,000/- and it was insured in that amount on 19th Janu-

A ary, 2000 and on the expiry of this policy on 18th January, 2001, was again renewed on 19th January, 2001 on a value of Rs.3,59,000/- and on the further renewal of the policy on 13th February, 2002 the value was reduced by only Rs.5,000/- to Rs.3,54,000/-. We are, therefore, unable to accept the B company's contention that within a span of seven months from 13th February 2002 to the date of the accident, the value of the vehicle had depreciated from Rs.3,54,000/- to Rs.1,80,000/-. It must be borne in mind that Section 146 of the Motors Vehicles Act, 1988 casts an obligation on the owner of a vehicle to take C out an insurance policy as provided under Chapter 11 of the Act and any vehicle driven without taking such a policy invites a punishment under Section 196 thereof. It is therefore, obvious that in the light of this stringent provision and being in a dominant position the insurance companies often act in an unreasonable manner and after having accepted the value of a par- D ticular insured good disown that very figure on one pretext or the other when they are called upon to pay compensation. This 'take it or leave it' attitude is clearly unwarranted not only as being bad in law but ethically indefensible. We are also unable to accept the submission that it was for the appellant to pro- E duce evidence to prove that the surveyor's report was on the lower side in the light of the fact that a price had already been put on the vehicle by the company itself at the time of renewal of the policy. We accordingly hold that in these circumstances, the company was bound by the value put on the vehicle while re- F newing the policy on 13th February, 2002.

7. The learned counsel for the respondent, has however, argued that in the course of hearing before the National Commission, the appellant had limited his claim to Rs.1,80,000/- G and having been awarded that amount, could not claim anything beyond that figure. We, however, notice from a bare reading of the order of the National Commission that the primary claim made by the appellant was for a sum of Rs.3,54,000/- and in the alternative for Rs.1,80,000/-. This fact is made more explicit from the grounds of revision filed before the National H

Commission wherein a sum of Rs.3,50,000/- had been repeatedly claimed. Even otherwise, we believe that in such matters, the court must take a realistic view and if a particular claim to compensation is possible on the material on record, it should not be denied on hyper technical pleas, as has been argued by the respondent's counsel.

8. The learned counsel for the respondent company has finally submitted that as the vehicle had been insured for Rs.3,54,000/- on 13th February, 2002 and the accident had happened about seven months later (on 10th September, 2002), some depreciation in the value of the vehicle ought to be made and the compensation determined on that basis. We accept this prayer of the learned counsel and keeping in view that about seven months of the policy had expired, order that the value of the vehicle should be reduced by Rs.10,000/-

9. We accordingly allow the appeal and direct that the appellant should be paid a sum of Rs.3,44,000/- with interest. in the manner determined by the National Commission. The appellant shall also have his costs which are quantified at Rs.25,000/-.

N.J. Appeal allowed.