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Himachal Pradesh State Consumer Disputes Redressal Commission Shimla.

First Appeal No. 127/2023

Consumer Protection Act, 1986–Section 2–Deficiency in Service– Insurance Claim–Surveyor's Report–Complainants being joint owners of a truck insured, suffered an accident–Justifiability of Deduction on account of taking the truck in question from the place of accident to workshop for repairs without intimating insurance company–Held–That, the surveyor had failed to properly account for the cost of necessary replacement parts and had wrongly deducted 25% from the assessed amount without valid justification as there was no negligence on parts of complainants–Complainants were entitled to full compensation for repairs–Complaint allowed–Order upheld–Appeal dismissed. (Para 16)

Parties represented by:

For the Appellant: Mr. Rupam Chauhan, Advocate vice Mr. Lalit K.Sharma, Advocate.

For the Respondents: Mr. Parikshit Singh Thakur, Advocate. Justice Inder Singh Mehta, President O R D E R :- Present appeal is preferred against the order dated 19.04.2023 of learned District Commission, Solan, H.P. in consumer complaint No.19/2019 titled Asha Ram & Anr. Versus The Oriental Insurance Company Ltd.

whereby the complaint filed by the complainants was allowed and the opposite party/insurance company was directed to pay a sum of Rs.1,81,747/- to the complainants alongwith interest @ 9% per annum from the date of complaint i.e. 21.02.2019 till its realization and further directed to pay compensation of Rs.20,000/- besides litigation cost of Rs.10,000/- to the complainants. Brief facts of the Case:

2. Briefly, case of the complainants is that complainants are joint owners of the vehicle/truck bearing registration No.HP 12D-3274. The said vehicle was insured with the opposite party/insurance company w.e.f. 07.08.2018 to 06.08.2019. On 08.09.2018, when vehicle was carrying goods/material from Baddi to Muradnagar, then it met with an accident near Muradnagar. The vehicle was badly damaged and it was taken to workshop through a crane. Intimation regarding accident and loss was given to the insurance company. The insurance company appointed surveyor, who assessed the loss to the tune of Rs.2,64,000/-. The complainants got repaired the said vehicle and paid a sum of Rs.2,64,000/-. Original bills of repair charges alongwith claim form was submitted to the opposite party, but the opposite party vide its letter dated 07.12.2018 approved payment of Rs.68,104/- against the actual repair charges of Rs.2,64,000/-. There is deficiency in service on the part of the opposite party/Insurance company. Hence, the present complaint.

3. The opposite party/Insurance company contested the complaint by filing reply and stated that on receipt of intimation regarding accident surveyor was appointed to assess the loss, who visited the premises of the repairer, inspected the truck thoroughly in presence of insured and repairer, worked out the loss and submitted his report dated 12.11.2018. The surveyor

recommended payment of Rs.68,104/- to the insured as per the terms and conditions of the policy. There is no 4. deficiency in service on the part of the insurance company. A prayer for dismissal of complaint was made.

4. The complainants filed rejoinder denying the contents of reply filed by the opposite party and reiterating those of the complaint.

5. Thereafter, the parties led evidence in support of their respective pleadings.

6. After hearing the counsel for the parties, learned District Commission allowed the complaint of the complainants.

7. Feeling aggrieved by the order of learned District Commission, the appellant/insurance company has filed the present appeal before this Commission.

8. Arguments heard on behalf of the parties and perused the written submissions filed on behalf of the appellant as well as the record carefully.

9. Learned counsel of the appellant/insurance company has submitted that the impugned order is bad in law and facts. He further submitted that on receiving intimation, surveyor was appointed who assessed the loss of Rs.68,104/-. He

further submitted that learned District Commission below exceeded its jurisdiction by discarding the report of surveyor. He further submitted that complainants had taken the truck in question from the spot without intimating the insurance company, therefore, insurance company has rightly deducted 25% from the assessed amount and prays that appeal of the appellant be allowed.

10. On the other hand, learned counsel of the respondents/complainants has submitted that the truck in question met with an accident. He further submitted that intimation was given to the appellant/insurance company and surveyor was appointed who assessed the loss. He has also relied upon the judgment of Hon'ble Apex Court in case titled New India Assurance Company Ltd. Vs. Pradeep Kumar, Civil Appeal No.3253 of 2002 dated 09.04.2009. He further submitted that the impugned order does not require any interference and prays that appeal of the appellant be dismissed.

FINDINGS : 11. The admitted fact which emerges on record is that

complainants are joint owners of the vehicle/truck bearing registration No.HP-12D- 3274 and the said vehicle was insured with the opposite party/insurance company

w.e.f. 07.08.2018 to 06.08.2019.

12. On 08.09.2018, vehicle of the complainants met with an accident when some unknown vehicle hit the vehicle at place near Muradnagar. Intimation regarding accident was given to the opposite party/insurance company.

13. On receipt of intimation regarding accident, the surveyor was appointed who inspected the vehicle and assessed the loss to the tune of Rs.68,104/-. It is coming on record that the complainants have received an amount of Rs.68,104/- as insurance claim under protest subject to decision of the Court.

14. Learned counsel of the Insurance company has vehemently argued that the learned District Commission below exceeded its jurisdiction by discarding the report of the surveyor. The said plea of the insurance company is not tenable as perusal of the Surveyor report, Annexure OP-10 itself shows that the surveyor has estimated the total costs of the parts i.e. front dash board Assy., steering box assy., steering box pipe set, steering column assy., steering wheel assy., head light assy., head light bezel, front indicator assy., front bumper assy. and steering assy. to the tune of Rs.1,59,045/-. However, the said amount of Rs.1,59,045/- was the costs of the parts, which were required to be replaced during repair of the vehicle.

15. But, the surveyor while assessing the amount of loss to be paid to the complainants has not either mistakenly calculated the amount of Rs.1,59,045/- or failed to bring on record proper calculation of the said amount in his survey report. Therefore, the costs of the parts, which were to be replaced during repairs of the vehicle has to be paid by the Insurance company.

16. Further, Survey report, Annexure OP-10 also indicates that surveyor has deducted 25% from the assessed amount, which has also been wrongly deducted by the surveyor. In the present case, vehicle in question met with an accident near Muradnagar on Highway and the vehicle after accident was to be

removed from the Highway. Therefore, there was no negligence on the part of the complainants to take away the vehicle from the place of accident to workshop for repairs and as such the deduction of 25% from the assessed amount is also bad in law and the complainants are entitled to the said deducted amount.

17. No reason has been assigned by the surveyor in his report Annexure OP-10 regarding non assessment of costs of the parts of the vehicle.

18. In view of above stated facts, this Commission does not find any infirmity in the order passed by learned District Commission below.

19. Consequently, appeal of the appellant/ insurance company fails and same is hereby dismissed and the impugned order remains upheld.

20. Parties are left to bear their own costs.

21. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission below alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

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Himachal Pradesh State Consumer Disputes Redressal Commission Shimla.

First Appeal No. 168/2023

Date of Order:04.01.2025.

Coram: Hon'ble Justice Inder Singh Mehta, President

The Ispur Cooperative Agriculture Service Society Ltd. & Ors.

..Appellant/Opposite parties No.1&2

V/s

Arvind Kumar ..Respondents/Complainant

Assistant Registrar, Cooperative Societies & Ors.

.....Respondents/Opposite Parties No.1&2

Consumer Protection Act, 1986 Section–2(1)(g) read with Section–92 of H.P. Cooperative Societies Act, 1968–Deficiency in Service–Jurisdiction–Maintainability of a Complaint–Dispute of settlement of accounts–Complainant is non-member of Opp-parties/society and sum of Rs.3,99,053/- including interest is lying deposited in saving account–Payment not made–Complaint allowed–Appeal–Held–That, the dispute regarding the settlement of accounts between a depositor and a cooperative society falls under the jurisdiction of the Registrar of Cooperative Societies under the H.P. Cooperative Societies Act, 1968–Complaint dismissed due to lack of jurisdiction–Appeal allowed.(Para 17)

Parties represented by:

For the Appellants: Mr. Prantap Sharma, Advocate.

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For the Respondents: Mr. Rattan Chand, Authorized representative for R-1 and Ms. Charu Gupta, ADA for R-2&3.

Justice Inder Singh Mehta, President

O R D E R :- Present appeal is preferred against the order dated 02.06.2023 of learned District Commission, Una, H.P. in consumer complaint No.137/2022 titled Arvind Kumar Versus The President, The Ispur Cooperative Agriculture Service Society Ltd. & Ors., whereby the complaint filed by the complainant was allowed and the opposite parties No.1 and 2/appellants were directed to pay back the amount of Rs.3,99,053/- to complainant alongwith 9% interest w.e.f. 28.02.2022 till realization and further directed to pay Rs.30,000/- on account of mental tension and harassment besides litigation cost of Rs.20,000/- to the complainant.

Brief facts of the Case:

2. Briefly, case of the complainant is that opposite parties No.1 and 2 are functioning and performing statutory duties under HP Cooperative Societies Act, 1968 and opposite parties No.3 and 4 are having administrative control over them. Complainant is non-member of opposite parties No.1 and 2 and having his saving A/c No. 3208 and a total sum of Rs.3,99,053/- including interest upto 28-02-2022 is lying deposited in the said account. As per the complainant, he was in need of money for his domestic need as well as treatment of his mother. Complainant made so many verbal as well as written requests to opposite parties for making payment of the amount lying deposited in his account but all in vain. The Registrar, Cooperative Societies, HP, Shimla vide letter dated 31-05-2022 gave directions to all Assistant Registrars of Cooperative Societies of Himachal Pradesh to make payment of deposits of non-members of the Society on priority basis but despite that opposite parties did not make payment. There is deficiency in service on the part of opposite parties. Hence, the present complaint.

3. Reply was filed on behalf of opposite parties No.1 and 2/Society wherein preliminary objection of maintainability has been taken and it has been submitted that complainant is not a consumer of opposite parties. On merits, it has been admitted that there is an amount of Rs.3,99,053/- in the saving account of complainant as on 28-02-2022. Society is not in a position to pay back the deposits of members. The then Secretary and the Managing Committee advanced the entire money of Society in shape of loans. The financial position of the society on 31-03-2020 is showing a very dismal picture. Against assets of Rs.17,06,59,778/- there is liability of Rs.22,12,02,715/-. Society is not in a position to make payment to depositor members and non members. Society had passed resolution to make the payment to all members in proportionate to their deposits in the society once they have enough money at least to pay 10% of the deposits. If Society makes payment to complainant and other depositors who approached the Commission, Society will exhaust its assets and many poor people will never get back their amount. A prayer for dismissal of complaint was made.

4. Separate reply filed on behalf of opposite parties No.3 and 4 and stated that opposite parties No.3 and 4 have nothing to do with alleged transaction

entered into between the complainant and opposite parties No.1 and 2. There is administrative control over the functioning of opposite parties No.1 and 2 as defined under HP Cooperative Societies Act. However, there is no control over daily working of the society. Opposite parties No.3 and 4 are not responsible for payment of amount to complainant. The complainant had filed complaints on different dates with opposite party No.3 which were forwarded to opposite party No.1 for necessary actions. The Registrar, Cooperative Societies of Himachal Pradesh has issued directions to all Assistant Registrars of Societies of Himachal Pradesh to make payment of deposits to non-members of the society on priority basis. A prayer for dismissal of complaint was made.

5. Thereafter, the parties led evidence in support of their respective pleadings.

6. After hearing learned counsel for the parties, learned District Commission allowed the complaint of the complainant.

7. Feeling aggrieved by the order of learned District Commission, the appellants/opposite parties No.1 and 2 have filed the present appeal before this Commission.

8. Arguments heard on behalf of the parties and perused the record of case file carefully.

9. Learned counsel of the appellant has submitted that the appellant is a Cooperative Society and it has more liability than the assets of the Society. He further submitted that Society is ready to pay the liability towards the shareholders. He further submitted that the impugned order is bad in law and prays that appeal of the appellant be allowed.

10. On the other hand, Authorized Representative of respondent No.1/complainant Mr. Rattan Chand has submitted that it is not in dispute that the money has not been deposited by the respondent/complainant with the Society. He further submitted that the complainant is entitled for the amount so deposited by him with the society. He further submitted that the impugned order does not require any interference and prays that appeal of the appellant be dismissed.

11. Learned ADA for the respondents No.2 and 3 has submitted that respondents No.2 and 3 have administrative control over the society and they are not liable to indemnify the respondent No.1/complainant.

FINDINGS :

12. The admitted fact which emerges on record is that the complainant is having saving account No.3208 with the opposite parties No.1 and 2/Society in which an amount of Rs.3,99,053/- was lying deposited upto 28.02.2022.

13. The complainant has alleged that aforesaid amount was required by him for treatment of his mother, but despite requests, said amount has not been released to the complainant.

14. The complainant in para-2 of his complaint has stated that opposite parties No.1 & 2 are functioning and performing statutory duties under the H.P. Cooperative Societies Act, 1968 and the opposite parties No.3 & 4 are having Administrative Control over the functioning of the opposite parties No.1 & 2.

15. It is crystal clear from the aforesaid pleadings that dispute pertains to settlement of accounts between the complainant and the opposite parties No.1 & 2/Society. It is also clear from the record that the opposite parties No.3 & 4 are having Administrative Control over the functioning of the opposite parties No.1 & 2/Society.

16. The opposite parties No.1&2/Society in their reply have taken a specific objection that complaint is not maintainable before the Consumer Commission in terms of H.P. Cooperative Societies Act, 1968.

17. Since transaction/settlement the dispute of pertains to accounts between the complainant and the opposite parties No.1&2/Society and opposite parties No.3 & 4 are having Administrative Control over the functioning of the opposite parties No.1 & 2, therefore, the complaint filed before the learned District Consumer Commission is not maintainable in terms of the H.P. Cooperative Act, 1968. The complainant should have approached the Assistant Registrar/Registrar of Cooperative Societies under the H.P. Cooperative Societies Act, 1968 for settlement of his accounts with the opposite parties No.1 and 2/Society, but the complainant has chosen to file complaint before the learned District Commission below which is not maintainable.

18. In view of the above stated facts, appeal of the appellants/Society is allowed and the impugned order is set aside. However, the complainant is given liberty to approach the Registrar of Cooperative Societies under the H.P. Cooperative Societies Act, 1968 for redressal of his grievance.

19. Parties are left to bear their own costs.

20. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission below alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.