

Complaint No.IO(CHN) 11.07.1058 / 2010-11
Award no-IO(CHN)/G/27/2010-11 dated 30th July 2010
(Motor)
MrB.S.Rajasekar vs Tata AIG Gen Ins Co Ltd

The complainant had insured his car with the above insurance co for a sum insured of rs2,71,107/-from 25.06.2009 to 24.06.2010 and the car was heavily damaged due to an accidental fire on 14.11.2009.The insurer has agreed to settle the claim on repair basis as assessed by the surveyor for rs 1,26,836/ and while assessing the loss the surveyor has applied depreciation on various parts which require replacement.-The complainant had sought the claim to be settled on the basis of constructive Total loss since the aggregate cost of retrieval and /or repair of the vehicle before applying depreciation on various parts as mentioned in the survey report exceeds 75% of the IDV as per GR8 of the IMT. The insurer had mentioned that the surveyor has assessed the loss on repair basis for rs 1,26,836/-which is within 75%of the IDV and hence the claim could not be considered as a CTL as demanded by the insured.

The insured had stated that he had already depreciated the cost of the vehicle to arrive at the IDV of Rs 2,71,107/-and the insurer is again applying depreciation on parts for the purpose of deciding the eligibility for constructive total loss settlement. The insurer had argued that since the cost of repair or retrieval did not exceed 75% of IDV the claim could not be considered as constructive total loss. They are agreeable for settlement on repair basis. From the records it is observed that there is no dispute in fixing up the IDV for the vehicle at the time of inception of the policy and only dispute is about the application of depreciation on parts while determining whether the loss has to be assessed on total loss basis or not. The policy wording state as "The insured vehicle shall be treated as CTL if the aggregate cost of retrieval and /or repair of the vehicle subject to terms and conditions of the policy exceeds 75%of the IDV of the vehicle."Nothing specific is mentioned about application of depreciation in case TL/CTL and merely mentions "subject to terms and conditions of the policy "This is very vague.

Though the insurer has no contractual obligation to accept the insured's desired mode of settlement ,judging from the severity of damages to the vehicle and also the fact that the cost of retrieval/repair of the vehicle as per estimate exceeds 75%of IDV,the insured is justified in seeking settlement on constructive total loss basis. Considering all the factors the decision of the insurer in considering the claim only on repair basis is not correct and hence they are directed to settle the claim on total loss basis subject to terms and conditions of the policy.
The complaint is allowed.