

(2012) 04 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

Aerolux India Pvt. Ltd. Through its Director Shri Rohit Kumar	APPELLANT
Vs	
New India Assurance Co. Ltd	RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 109 : 2012 2 CPJ 385 : 2012 2 CPR 331

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Advocate : Anupam Kumar Jha , Rajesh Gogna , Kishore Rawat

Judgement

1. M/s Aerolux India Pvt. Ltd., a company registered under the Companies Act, 1956, engaged primarily in the business of ?window dressing? including the manufacturing of ?venetian blinds?, have filed this consumer complaint under Section 21 of the Consumer Protection Act, 1986, alleging deficiency in service on part of the opposite party, the New India Assurance Co. Ltd., seeking a direction from this Commission to direct them to pay a sum of Rs.29,51,105/- with pendent lite interest @ 24% per annum on the said sum of Rs.29,51,105 from the date of signing/verification or from the date of filing of the present complaint till the realization thereof.

2. FACTS, in brief, are that one of the main raw materials used for the manufacturing of ?venetian blinds? is aluminium coils/slats, which is imported by the complainant from the United States. The imported stock of the aluminium coils/slats along with other raw materials, such as line fabric, PVC cloth, wooden, plastic and metal components, drapery rods etc., is stored in his factory premises at 122, Udyog Vihar, Phase-I, Gurgaon. In order to secure the raw materials from any untoward incident of theft, burglary etc., they had obtained two Burglary (Business Premises) Insurance Policies covering the risk upto Rs.2.50 Crores from the opposite party/Insurance Company. During the currency of the said insurance policies, between the period July, 1999 and August, 1999 they noticed shortage in the stock of raw material in factory premises. Initially, they estimated that at least 100 aluminium coils/slats were missing. In order to verify the cause of shortage, they appointed a private detective agency by the name of ?The Spy

Masters? to investigate into the episode of theft. However, the private detective agency's investigation was met with some resistance from the employees of the complainant and had to be abandoned. Thereafter, the complainant lodged a complaint on the 24th of August, 1999 with the Udyog Vihar Police Station, Gurgaon, requesting for a probe into the matter. The police authorities sometimes on the 24th/25th of October, 1999 arrested one Jagat Singh @ Ajay Kumar in connection with the theft of the aluminium coils/slats, who confessed to have committed the theft by cutting some iron grills, which he also claims to have welded them later in order to prevent detection. The complainant thereafter on 27th of October, 1999 informed the opposite party/Insurance Company about the incident, who promptly appointed M/s Ajay Chopra & Associates, Surveyors-cum-Loss Assessors, to survey and assess the loss and also appointed M/s So-Men Media Pvt. Ltd. to investigate into the matter. While the investigators submitted their report on the 22nd of July, 2000, M/s Ajay Chopra & Associates, the surveyors, submitted their report on 14th of August, 2000 and assessed the net loss at Rs.4,70,640/-. M/s Ajay Chopra & Associates, the surveyors, vide their letter dated 1st of November, 1999 had requested the complainant to submit a number of documents, including the burglary claim form duly filled in so as to proceed further in the matter, pursuant to which the complainant had submitted a claim of Rs.17,87,500/-. Thereafter the complainant pursued the matter with the opposite party/Insurance Company by writing a number of representations and reminders for the settlement of the claim at an early date. Finally, a legal notice dated 16th of December, 2000 was issued, which was replied to by the opposite party/Insurance Company vide their letter dated 22nd of January, 2001, to which even a rejoinder was filed but the opposite party/Insurance Company rather than considering the claim of the complainant favourably repudiated the same vide their letter dated 2nd of February, 2001. Aggrieved thereupon that this complaint has been filed by the complainant, seeking a direction as already stated above. On notice being issued, the opposite party/Insurance Company has resisted the complaint and in their written version a number of preliminary objections, in particular with regard to the maintainability of the complaint, have been raised. It has been contended that the claim having been repudiated by a detailed speaking order, no cause of action survived for the complainant to approach the consumer fora. Further, the dispute raised involved complicated questions requiring elaborate evidence which cannot be decided in summary proceedings. It has further been stated that the principal amount of claim being Rs.17,87,500/- which was less than Rs.20,00,000/-, the complaint would not lie before this Commission.

On merits, it has been pleaded by the opposite party/Insurance Company that the alleged loss did not fall within the scope of the insurance cover as there is no proof that the alleged theft had been occasioned following any forcible and violent entry into the premises. Relying on the investigations carried out by 'The Spy Masters', the investigating agency engaged by the complainant themselves, it has been stated that the loss was due to systematic pilferage by the workers

as neither there was any security guard/personnel appointed in the factory premises nor was there any checking of the workers when they left the factory. Further, there being no regular storekeeper to keep the records in respect of the stock purchased, issue for processing and the balance available on a regular basis, it provided a field day for the employees to pilfer the stock without being detected. Thus, the plea of the opposite party/Insurance Company is that the complainant did not exercise 'reasonable care' as was expected of a man of ordinary prudence.

3. ANOTHER defence taken by the opposite party/Insurance Company is that there has been undue delay in reporting/lodging FIR. While the complainant had noticed pilferage in the stock of raw material on 22nd of July, 1999, the Police was informed about it on 24th of August, 1999 after more than a month. The opposite party/Insurance Company was informed about it much later only on 27th of October, 1999. This was not only a breach of the conditions of the policy but a valuable period of three months had been lost in the process for the opposite party/Insurance Company to investigate into the matter. A reference has also been made to condition no. 2(e) of the terms and conditions of the policy and it has been stated that since the theft has taken place in connivance with their own employee Santosh Kumar, the claim was not payable under this clause.

4. YET another ground advanced is that the claim had been fraudulently made as the complainant had earlier reported pilferage of only 100 aluminium coils/slats amounting to Rs.5,00,000/- but has inflated the same to Rs.13,50,000/- and yet again to Rs.17,87,500/- in a subsequent letter. Relying extensively on the report of the private detective agency 'The Spy Masters' engaged by the complainant himself and the report of their investigator, M/s So-Men Media Pvt. Ltd., the opposite party-Insurance Company has pleaded that it was not a case of theft with the use of force but it was pilferage over a period of time, in which the employees of the complainant are involved. It has, accordingly, been prayed that the complaint be dismissed. In the rejoinder the complainant has reiterated its averments and allegations made in the complaint. Any delay on part of the complainant to inform either the police or the insurance company has been denied. It has been explained that even though the suspicion with regard to the loss of the aluminium coils/slats arose during July 1999, the complainant could not rush for filing FIR as it wanted to be sure about the cause of such loss. Further, being a delicate and sensitive issue, which could involve the questioning of their employees, it was considered appropriate to first get the matter investigated by a private detective agency. The moment it was confirmed that the loss has occurred the complainant on 24th of August, 1999 requested the SHO, Police Station Udyog Vihar, Gurgaon to investigate into the matter. It has also been denied that Jagat Singh arrested by the police was their employee or that Santosh Kumar had been abruptly dismissed for his involvement in the incident of theft. It has also been denied that Santosh Kumar lived inside the factory premises with his family. It has, however, been explained that he was

living outside the factory premises in the outhouse provided to him.

5. IN support of their respective evidence, the complainant has filed the affidavit of Shri Rohit Kumar, one of the Directors on behalf of the complainant, while the opposite party-Insurance Company has filed the affidavits of Mrs. Mukta Sharma, Divisional Manager, Shri N.D. Pandey, Manager (Operations) of M/s So-Men Media Pvt. Ltd. and that of Shri Ajay Chopra of M/s Ajay Chopra & Associates, the surveyors.

6. WE have given a patient hearing to Shri Anupam Kumar Jha, Advocate with Mr. Rajesh Gogna, Advocate for the complainant and Shri Kishore Rawat, Advocate appearing for the opposite party-Insurance Company. WE have also carefully considered the evidence adduced on record by both the parties. The main case set up by the complainant is that sometimes in the month of July, 1999 when he received substantial supply order for the purchase of ?venetian blinds?, he visited the basement of the business premises where raw material was stacked to ascertain whether with the recently imported quantum of aluminium coils/slats and the previous old stock, it would be possible for him to honour the supply order. To his surprise, he found that the stocks as available were not sufficient and that a large number of aluminium coils/slats appeared to have been missing. Since it was only a suspicion, it was considered imprudent to immediately file an FIR with the police or inform the opposite party-Insurance Company. Since the police investigation could cause questioning of his employees resulting into their harassment and humiliation, it was considered appropriate to engage a private detective agency to investigate into the missing of aluminium coils/slats. ?The Spy Masters? were, therefore, engaged to investigate into the matter, which, however, could not be conclusive as the employees raised some objection to such a course and, therefore, the complainant finally requested the SHO, Police Station Udyog Vihar, Gurgaon to investigate into the matter. The opposite party-Insurance Company too was informed about the incident. While it is argued that all the necessary documents asked for by the surveyor and the investigator were supplied and all their queries were satisfactorily answered, the opposite party-Insurance Company for no good reason continued to delay the settlement of the claim, which forced the complainant to finally issue a legal notice. A rejoinder to the reply received was also filed. The opposite party-Insurance Company in their letter of repudiation has raised vague and unsubstantiated ground just to frustrate the claim of the complainant. The commitment of theft having been duly established by the confession of Jagat Singh, who categorically stated that entry to the premises was managed by cutting the iron grills, there was no substance in the stand taken by the opposite party-Insurance Company that the incident did not fall within the terms and conditions of the policy. The opposite party-Insurance Company's own surveyor M/s Ajay Chopra & Associates in their conclusion have clearly stated that ?the insured factory was affected by burglary as there had been a forcible entry into the premises?. It has further been contended that the sum of Rs.4,70,640/- assessed by the said surveyor, though totally unacceptable to the complainant,

has also been denied for no reason as the repudiation is based on the report of investigators M/s So-Men Media Pvt. Ltd., which is a totally tutored report to frustrate the complainant's claim. The fact of Jagat Singh, brother-in-law of Santosh Kumar, having committed the burglary by cutting the iron grills and thereafter welding the same to avoid detection, has not been believed by the opposite party-Insurance Company despite the confessional statement before the police just to implicate Santosh Kumar and bring the case under clause 2(e) of the conditions of the policy. Denying that there was any negligence or want of reasonable care, it has been submitted that the claim stands fully established and the same be allowed.

Learned counsel for opposite party-Insurance Company referring to the letter of repudiation dated 2nd of February, 2001 has contended that the claim of the complainant did not fall within the purview of the terms and conditions as the involvement of the complainant's own employee is clearly visible and the so called confession by Jagat Singh has been manipulated to derive undue benefit. The fact remains that it was a case of systematic pilferage of the aluminium coils over a period of time by their own employees, which went unnoticed as the complainant had neither any full time security guard nor a storekeeper to account for the receipt and supply of the raw materials nor did they have any system of checks and balances and above all it had left the total responsibility on Santosh Kumar, who was living within the factory premises with his family, as has been brought out by the complainant's own investigator. Referring also to the fact that the report to the police was made after about a month of the detection of the pilferage and further that the opposite party-Insurance Company has been informed after more than three months of the occurrence of the incident which amounts to violation of clause-4 under the terms and conditions of the policy, the counsel contends that the claim has been rightly repudiated warranting no interference by this Commission. FINDINGS :-

7. INsofar as the preliminary objections raised by the opposite party-Insurance Company are concerned, we do not find them sustainable. Just because the claim has been repudiated by passing an order, the right of a consumer cannot be foreclosed for approaching a consumer forum. The plea of the opposite party-Insurance Company that the dispute involves complicated question of facts and voluminous evidence and, therefore, the matter be relegated to a civil court also does not carry conviction, inasmuch as on the opposite party-Insurance Company's own showing it mainly involves the examination of the terms and conditions stipulated in their policy and whether there has been any breach thereof and this is a matter which is very much within the domain of this Commission. Insofar as the objection with regard to the principal claim of Rs.17,87,500/- being below Rs.20,00,000/- is concerned, as per Section 21(a) of the Consumer Protection Act, 1986 a complainant is entitled to claim the value of the goods or services as well as reasonable compensation, if any. In the present case, the complainant apart from the principal amount of Rs.17,87,500/- has also claimed compensation and other reliefs amounting to Rs.29,51,105/-, which

exceeds Rs.20,00,000/-. We, therefore, do not find any substance in this objection as well.

8. COMING to the merits of the case, suffice it to say that the opposite party-Insurance Company has repudiated the claim of the complainant under the terms and conditions of the policy of insurance. The first and the foremost ground advanced by the opposite party-Insurance Company is that there has been a flagrant breach of clause-4 of the conditions of the Burglary (Business Premises) Insurance Policy. The said clause reads as under :- 4. On the happening of any Loss or Damage the Insured shall forthwith give notice thereof in writing to the Police and also to the Company detailing the circumstances of the case and shall within seven days after such Loss or Damage shall have come to the insured's knowledge and at the Insured's own expense deliver to the Company a Claim in writing and containing as particular an account as may be reasonably practicable of all the property loss or damaged and of the amount of the Loss and Damage in respect thereof respectively having regard to its value at the time of the Loss or Damage and also of the damage (if any) to the premises. The Insured shall also produce and give to the Company when where and to whom and in a manner required by the Company and at the Insured's own expenses all such Books of Account, Vouchers, Invoices, Documents, Proofs and information as may be reasonable required and the Insured shall be bound to satisfy the Company by such reasonable evidence as the Company may require that the Loss or Damage claimed for has actually arisen from one of the causes insured against and the property in respect of which a claim is made is not merely mislaid or missing.?

As per the said clause, it was incumbent upon the complainant to have immediately informed about the alleged theft or burglary to the police and also to the opposite party-Insurance Company. That there has been a theft in his premises was discovered by the complainant on 22nd of July, 1999 but a report to the police was made on the 24th of August, 1999, after a delay of more than a month; while the opposite party-Insurance Company was informed only on the 27th of October, 1999, after a gap of more than three months. The explanation offered by the complainant that he had only a suspicion to begin with and wanted to be sure with regard to the theft and, therefore, he engaged a private detective agency, which was rightly objected by their employees, does not constitute satisfactory explanation to cover the delay. The contention of the complainant that he was under the impression that registration of an FIR was a pre-requisite before lodging a claim before the Insurance Company is a misconception without any basis and appears to be an afterthought. In our view, both the police as well as the Insurance Company lost timely investigating opportunities to recover the stolen aluminium coils/slats. Having regard to the rulings of the Hon'ble Supreme Court in the cases of United India Insurance Co. Ltd. V. Harchandrai Chandanlal [2005 ACJ 570 SC], Bharati Knitting Company V. DHL Worldwide Express Courier Division of Airfreight Ltd. [(1996) 4 SCC 704] and Polymat India V. National Insurance Co. [IV 2004 CPJ 49 SC] that the terms

of the policy are in nature of a contract and the same have to be construed and interpreted as they appear on the policy document and that they are binding on both the parties and the courts/fora have to interpret them as they appear; there is no escape from conclusion that the complainant in the case in hand has deviated from the terms and conditions laid down in the policy. The opposite party-Insurance Company has also relied upon clause 2(e) of the conditions of the policy, which reads as under:- ?2. The policy does not cover the following unless specifically mentioned in and expressly insured in the Policy : (e) Loss or damage where any inmate or member of the Insured's Household or of his Business Staff or any other person lawfully in the premises is concerned in the actual Theft of or Damage to any of the Articles or premises nor where such loss or Damage have been expedited or any way assisted or brought about by any such person or persons.?

9. THE plea advanced by the opposite party-Insurance Company is that Santosh Kumar, one of the trusted employees of the complainant was hand in glove with his brother-in-law Jagat Singh and had been instrumental in systematically organizing the pilferage of the aluminium coils/slats over a period of time. According to them, it was not a case of burglary as the complainant had handed over charge of the entire factory premises after duty hours to Santosh Kumar, who resided with his family within the factory premises. According to them, the so called burglary was in fact a systematic pilferage organized by their own employee Santosh Kumar, who connived with Jagat Singh. According to the opposite party-Insurance Company there was no violent/forcible entry and the statement of Jagat Singh that he cut the iron grills and committed the theft is a well-designed strategy to not only exonerate Santosh Kumar but is also to build up a case of violent/forcible entry to bring the incident under the purview of the policy. We, however, find that M/s So-Men Media Pvt. Ltd., the investigator, as well as M/s Ajay Chopra & Associates, the surveyor, appointed by the opposite party-Insurance Company in their reports have concluded that the burglary had occurred at 122, Phase-I, Udyog Vihar. THEir findings are based on the confessional statement made by Jagat Singh before the police. Copy of the confessional statement and the FIR as recorded by the police have not been produced. In the absence of any recovery or the stolen material and considering that the said Jagat Singh was the brother-in-law of Santosh Kumar and further that 100 aluminium coils/slats perhaps could not be stolen within few hours and further that services of Santosh Kumar had been terminated soon after the incident, it would not be far from the truth to presume that the said Santosh Kumar and Jagat Singh had indeed acted in collusion to systematic pilferage of the aluminium coils/slats over a period of time. In that event, the provision of clause 2(e) gets duly attracted. We also take note of the findings of not only the investigator appointed by the opposite party-Insurance Company but also the findings recorded by the complainant's own private detective agency that the complainant had not engaged any security staff or even a storekeeper leaving the entire stock on the mercy of Santosh Kumar. It also appears to be a case of

reposing excessive trust on a single employee which has resulted in the above episode.

10. OVERALL, we are convinced that the complainant has not been able to make out a case to support his claim, inasmuch as he has failed to take reasonable care to protect the insured premises and the stock of raw materials kept therein and has further failed to comply with the mandatory and specific conditions of the policy relating to immediate notice of the loss to the police and to the Insurance Company. We are also not convinced that there has been any violent and forcible entry of any outsider/burglar to commit theft. Rather there is every possibility about the involvement of his own staff in the commission of the offence. Under the circumstances, we find no merit in the complaint and, accordingly, dismiss the same. No order as to cost.