(2007) 01 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

ASHOK KUMAR SINGH APPELLANT

Vs

Oriental Insurance Company Ltd. RESPONDENT

Date of Decision : 08-01-2007

Acts Referred:

Citation : 2007 1 CPJ 317 : 2007 1 CPR 234

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition dismissed

Judgement

1. THIS revision is directed against the order dated 5.12.2005 of Consumer Disputes Redressal Commission Uttar Pradesh, Lucknow allowing appeal against the order dated 9.12.2004 of a District Forum and dismissing the complaint.

2. PETITIONER/complainant for earning his livelihood purchased computer, printer and scanner, etc. from M/s. Cyber Shoppe, Lalbagh, Lucknow for a sum of Rs. 2,84,000 on 25.7.2002. Out of this amount, loan of Rs. 2,00,000 was granted by Nainital Bank. Bank had taken policy from the respondent/opposite party Insurance Company also covering the peril of burglary for the period from 12.9.2002 to 11.9.2003. It was alleged that petitioner was in search of a suitable shop in a suitable area for running business but the deal could not be finalised due to one reason or other and he was compelled to keep the computer and other related items at his residence. On 7.11.2002 the paternal aunt - Mrs. Kamla Singh fell seriously ill and was admitted in Neera Hospital. PETITIONER and other family members were with the ailing aunt throughout the night of 7/8.11.2002. It was alleged that at about 6.00 a.m. on 8.11.2002 when the petitioner and family members came to the house they found the main lock of the gate broken and computer and other related items along with an attache containing documents burgled. FIR No. 210/2002 under Sections 457/380, IPC was lodged with Police Station, Gudamba. Police filed the final report on 30.10.2002. It was further alleged that the Insurance Company was intimated of theft in writing on 13.11.2002. Respondent appointed M/s. Technical Consultants and Co., as Surveyor, Bhatia & Co. was later on appointed as surveyor by the

respondent. Information demanded by the Surveyors was supplied by the petitioner. By the letter dated 31.3.2002 the respondent repudiated the claim. Alleging deficiency in service the petitioner filed complaint seeking direction to respondent - Insurance Company to pay total amount of Rs. 4,22,875 as detailed in para No. 25 of the complaint. Respondent contested the complaint by filing written version. Issuance of policy, intimation in regard to alleged theft on 13.11.2002 by the petitioner and repudiation of claim made through the letter dated 31.3.2003, were not denied. However, it was alleged that the petitioner did not supply complete information as demanded by the two surveyors and the facts gathered created doubt about the alleged theft and the claim made by the petitioner. Main thrust of argument advanced by Mr. Deepanker Bhatt for petitioner was that the petitioner, his wife, two children, mother, father and paternal aunt were the members of the family. Wife of the petitioner along with two children had gone to her parents'' house on the occasion of Bhaiya Duj and petitioner and his parents were with the ailing paternal aunt in Neera Hospital on the night of 7/8.11.2002 when the theft was committed. In its order the State Commission had incorrectly noticed about all the family members being in hospital during the said night. Further, in final report the police had not found the theft to be suspicious. It is pertinent to mention that in the FIR, intimation sent to the Insurance Company on 13.11.2002 by the petitioner, in the complaint and affidavit filed in support thereto, it was not alleged that the petitioner''s wife along with two children was away to her parental house on occasion of Bhaiya Duj on 7.11.2002. On the contrary, it had been stated that the petitioner and his family members were with the ailing paternal aunt on the night of 7/8.11.2002. In this backdrop, no fault can be found with the observation made by the State Commission about all the members being in hospital during the said night. Further, as may be seen from final report, the case was closed as untraced without there being a definite conclusion of theft of computer and other related items. Therefore, petitioner cannot derive any advantage from the final report. Copy of the rough sketch of the house of petitioner is at page 128. Bare perusal thereof would show that there were five bed-rooms and a store. Petitioner alleged that besides computer and other related items, an attache containing some documents were stolen. It does not appeal to reasons that the thieves entring into the house of petitioner, would not have stolen valuable articles kept in remaining bed-rooms. In this background, we do not find any illegality or jurisdictional error in the conclusion reached by State Commission that theory of theft was cooked up by the petitioner. Insurance Company had rightly repudiated the claim. Revision petition is, thus, liable to be dismissed being without any substance. Dismissed as such with cost of Rs. 3,500 to the respondent Insurance Company. Revision Petition dismissed.