(2001) 05 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

ASHOK TYRE HOUSE — APPELLANT

Vs

National Insurance Company Limited — RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Citation : 2002 1 CPJ 375

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Complaint allowed

Judgement

1. BY means of this complaint, the complainant has prayed for decree of Rs. 2,96,000/- as cost of the material which has been stolen. A sum of Rs. 81,760/- as interest from 1.1.1992 to 15.4.1993 at the rate of 24% per annum along with cost of this petition and pendente lite interest is also prayed.

2. THE facts of the case stated in brief are that the complainant carries on the business of tyres and tubes of Tractor, Trolly, Jeep, Car, Truck, Bus etc. THE complainant had got the insurance done in the year 1991 which was to expire on 6.12.1991. THE complainant in order to get the insurance renewed gave a sum of Rs. 1,010/- to the Development Officer Sri S.L. Aggrawal for renewal of the policy from 7.12.1991 to 6.12.1992. THE complainant used to store a lot of tyres and tubes etc. in his godown. On account of some special reasons the complainant had to leave the godown and had to transfer the entire tyres, tubes etc. on 11.12.1991 in the shop. THE value of the stock was about Rs. 4,00,000/- which was kept in the shop. THE cover note of the policy was issued on 2.12.1991. THE complainant got the amount of the insured articles enhanced which was accepted by the Insurance Company on 12.12.1991 from Rs. 2,00,000/- to Rs. 4,00,000/-. During the night of 14/15th December, 1991 there was a theft in the shop of the complainant. THE complainant immediately lodged an F.I.R. and informed the Insurance Company. THE tyres worth more than Rs. 2,96,000/- were stolen. Even after the investigation, the police could not recover the material or catch the thieves. A Surveyor was appointed by the Insurance Company as far as known to the complainant. The Surveyor has reported a loss

of Rs. 2,32,000/- approximately. The complainant had submitted a copy of the F.I.R., Final Report, copy of the stolen articles, copies of the bahi khata, copy of the stock book etc. to the Surveyor. The complainant has also done all other formalities which were required to be done by him in pursuance of the claim submitted by him. The Insurance Company promised to settle the claim as early as possible but nothing has been done so far, hence the complainant filed this claim for reliefs mentioned above.

In the written version, the opposite party, National Insurance Company has alleged that previously the shop was insured for a sum of Rs. 2,00,000/- for one year from 7.12.1990 to 6.12.1991. The complainant got the policy renewed for one more year and paid a premium of Rs. 1,010/-. He did not make any request for enhancement of the same at the time of renewal of policy. It is further alleged that even though the complainant had issued a cheque dated 12.12.1991 which was given to the Field Officer of the opposite party but subsequently it was found by the Investigator that the cheque was given by the complainant after the happening of the incident. The circumstances which have come to the light of the Investigator cast a doubt on the happening of the entire incident. The spot Surveyor did not conduct any investigation or scrutiny in the correctness of the claim of the complainant. The report was prepared on the basis of the information furnished by the complainant. As it was a case of close proximity and the circumstances under which the enhanced sum insured was made, a detailed investigation was necessary in this matter and steps were taken in this regard. Mr. D.P. Jairath was appointed as Investigator to conduct a careful investigation. He was a retired Army officer and he has covered every aspect of the situation. The claim of the complainant has been repudiated as the complainant did not cooperate and the incident did not also happen as alleged by the complainant. The complainant did not make any statement about the conduct of the investigation made by Mr. D.P. Jairath. This amounts to concealment of facts and misrepresentation. The complainant has not suffered the loss as alleged by him.

3. IT is further alleged that Sri D.P. Jairath, Investigator also interrogated Mr. J.N. Agrawal, Development Officer. The complainant was asked by the Surveyor to furnish the information and to cooperate on six points specified in the letter, the copy of which is Annexure C-4 to the written statement. IT is further alleged that in the year 1990 the complainant also lodged a claim of burglary on identical facts showing that he purchased stock worth Rs. 48,133/- on cash basis just a day before the theft was committed. In the same way the complainant has also tried to get the same enhanced just two days before the alleged burglary. The Surveyor issued reminders to the complainant and the last reminder was issued on 17.9.1993 directed to supply the informations and make available the witnesses by 18.10.1993 the copy of which is Annexure C-9 to the written statement. IT has further been alleged by the Insurance Company that the conduct of the complainant created doubt by the Investigator about the genuineness of the theft. IT is also alleged that the capacity for storing the stock worth Rs. 4,00,000/- was apparently beyond the capacity of this shop. IT is

alleged that Sri Agrawal, Development Officer in collusion with the complainant had accepted the premium cheque after the burglary has been committed. IT is further alleged that the matter involves complicated question of facts and law and as such the Civil Court is only competent to try this complaint. The parties filed evidence in support of their respective contentions. We have heard the learned Counsels for the parties and perused the evidence on record. The first question which arises for determination in this case is, whether the policy which was previously taken for Rs. 2,00,000/- was enhanced to Rs. 4,00,000/- or not. According to the complainant he issued a cheque on 12.12.1991 and paid the same to Sri Agrawal, Development Officer who issued a cover note. According to the version of the Insurance Company, Sri Agrawal colluded with the complainant and issued the cover note and accepted the cheque in the back date in order to cover the burglary which had been committed later on. According to the Insurance Company this cheque was not deposited on the same day with the Insurance Company but was deposited on 16.12.1991 after the burglary had been committed in the night of 14/15th December, 1991. It may be said that the Development Officer is authorised to receive the premium from the party. He is the agent of the Insurance Company. The Insurance Company has not been able to prove by evidence on record that there was a collusion between Sri Agrawal, Development Officer and the complainant on account of which the cover note as well as the cheque were ante-dated and they were in fact issued after the theft had been committed. The Investigator has merely on the basis of the facts of the case come to this conclusion but there is no definite proof on record to prove this fact. If the Development Officer after accepting the premium did not deposit the same with the Insurance Company then it is the fault of the Development Officer for which the complainant cannot be penalised. Unless the facts alleged by the Insurance Company it cannot be presumed on the basis of the facts on record that there had been collusion between the complainant and the Development Officer, Sri Agrawal. No presumption can be made of this fact because the evidence on record does not warrant such a presumption to be fraud. The cases are not decided on the basis of presumption which are based on the facts. The facts have to be proved and on the basis of the proved facts a decision has to be arrived it. The opposite party has not placed the necessary facts on record along with the evidence on record in order to show that there was a collusion between the two and the premium was accepted after the theft. Thus we come to the finding that the cheque of the premium amount was paid by the complainant on 12.12.1991 before committing of the theft and if the Development Officer had not deposited the cheque before the occurrence of the theft then the case of the complainant is not at all affected by any action of the Development Officer. The Insurance Company cannot derive any advantage from this fact.

4. THE next point is to be considered is, whether the complainant has transferred his stock to his shop two days before the theft had been committed or not. In the earlier part of the judgment we have come to the conclusion and have held that the complainant had on 12.12.1991 issued a cheque of premium amount to

enhance the limit of the insurance from Rs. 2,00,000/- to Rs. 4,00,000/-. According to the learned Counsel for the complainant the limit was enhanced on account of the fact that the complainant had transferred the stock of Rs. 2,00,000/- and thereafter on the next day, the insurance limit was enhanced. In para 3 of the complaint, the complainant has alleged that he used to keep a number of tyres and tubes in his godown which he had to vacate on 11.12.1991 for some special reasons and has transferred the entire stock in his shop. THE value of the stock was about Rs. 4,00,000/- hence the insurance was enhanced. It has been argued by the learned Counsel for the Insurance Company that the complainant has not produced any evidence to show that he has transferred the stock from his godown to his shop on 11.12.1991. THE complainant has alleged this fact in his complaint and it was the duty of the Insurance Company to show that the stock was not worth Rs. 4,00,000/- when the insurance was enhanced. It was the duty of the Development Officer to have satisfied himself about the value of the stock before enhancing the limit of the insurance cover. Generally the Insurance Company takes such a plea which cannot be allowed to be taken by them because it is the duty of their agent to visit and satisfy himself about the existence of the property and its value before it is insured. If the Development Officer had not visited the shop of the complainant when the insurance was enhanced from Rs. 2,00,000/- to Rs. 4,00,000/- then the fault lies with the Development Officer and not with the complainant. THE Insurance Company will be deemed to have accepted the stock worth Rs. 4,00,000/- were kept in the shop when the insurance was enhanced. Thus the Insurance Company has failed to show that there was no stock of worth Rs. 4,00,000/- in the shop when the insurance cover was enhanced. Now the question of rate of interest arises. Learned Counsel for the Insurance Company has argued that the interest should be fixed at the rate of 12% per annum. In support of his argument he has placed reliance on the case of United Insurance Company Limited v. M.K.J. Corporation, III (1996) CPJ 8 (SC)=1996-1999 Consumer 4781 (NC), in which it was held that the rate of interest in the case of Insurance Company should be 12% per annum. However, the learned Counsel for the complainant has argued that the interest should be awarded at the rate of 18% per annum in view of the decision of the Hon''ble Supreme Court in the case of United India Insurance Company Limited v. Fancy Traders, VII (2000) SLT 365=JT 2000 (10) SC 337. The Hon''ble Supreme Court in this case held that the interest at the rate of 18% per annum is justifiable. The order of the Hon''ble Supreme Court is very short and is being reproduced below : "ORDER 1. Leave is granted. 2. Heard learned Counsel for the parties. 3. The net loss caused to the respondent due to fire was assessed at Rs. 4,72,146/- but the applicant paid only a sum of Rs. 2,75,146/- to the Bank of the respondent. The balance amount together with interest at the rate of 18% was ordered to be paid to the respondent by the State Commission. 4. Having regard to the facts and circumstances of the case, the High Court also did not interfere with the rate of interest awarded by the State Commission. We find no justification for our interference in the matter under Article 136 of the Constitution. 5. The appeal is accordingly dismissed. There shall be no order as to the costs."

In a recent case National Insurance Company v. Jit Ram Shiv Kumar, III (2000) CPJ 5 (SC)=VI (2000) SLT 624=2001 CTJ 1 (SC), the Hon''ble Apex Court had also considered the quantum of interest which should be awarded in the case of Insurance Company. In that case before the Apex Court, it was held that the repudiation of the claim by the Insurance Company was wholly mala fide. It was held that all the risks were covered by the insurance policy. The ship which was carrying the goods was lost on the high seas. Before the Hon''ble Supreme Court it was contended that the Commission was not justified in awarding interest at the rate of 18% per annum to the respondent. The Hon''ble Supreme Court repelled the contention of the Insurance Company about the rate of interest in the following words : "So far as the question of quantum of interest is concerned, we see no infirmity in the order passed by the Commission except that the order of the Commission requires a little alteration so that the date 6.12.1987 is altered to 12.8.1987 in consonance with the judgment of the Commission itself."

5. THE learned Counsel for the Insurance Company has placed reliance on the case of Smt. Kaushnuma Begum & Ors. v. THE New India Assurance Company Limited & Ors., I (2001) ACC 151 (SC)=I (2001) SLT 300=JT 2001 (1) SC 375. According to learned Counsel in this case the interest at the rate of 9% per annum has been directed to be paid. We have gone through this case. It has been held that "how we have to fix up the rate of interest. Section 171 of the Motor Vehicles Act empowers the Tribunal to direct that ''in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf''. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India, the interest rate has been lowered. THE Nationalised Banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. THE amount of Rs. 50,000/- paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date".

6. THUS we find that the Hon''ble Court has considered the provisions of Section 171 of the Motor Vehicles Act. The provisions of the Consumer Protection Act were not considered in that case and the interest at the rate of 9% per annum was allowed which is being granted now on fixed deposits by the Nationalised Banks. Learned Counsel for the complainant has argued that the Hon''ble Supreme Court has in all previous cases under Consumer Protection Act has confirmed the rate of interest at 18% per annum because this also represents the amount of damages which has to be given. According to learned Counsel the damages are granted in the form of interest and damages consist of many components. Learned Counsel for the complainant has a point in this argument.

Under the Consumer Protection Act no rate of interest has been provided. The Hon''ble Supreme Court has granted interest under the provisions of Section 34 of the Civil Procedure Code. The Hon''ble Supreme Court in the case of Sovintorg (India) Limited v. State Bank of India, II (1999) CPJ 4 (SC)=VI (1999) SLT 545=1999 (6) SCC 406=1999 (II) CCC 34 (SC), has held that the interest can be awarded as compensation or damages because it is based on equity, justice and good conscience. Reliance has been placed by the learned Counsel for the complainant on the case of Jit Ram Shiv Kumar v. National Insurance Company, III (2001) CPJ 5 (SC)=I (2001) SLT 660=2001 (I) Supreme 333. In that case the interest was awarded by the National Commission at 18% per annum on the principal amount. Thereafter an appeal was brought to the Supreme Court against the judgment of the National Commission. The Apex Court directed for deposit of principal amount along with 12% per annum interest. Thereafter, the Hon''ble Supreme Court passed the final order confirming the award of principal amount and interest as reported in 2001 CTJ 1. It was held in 2001 (I) Supreme 333 (supra), that liability to pay interest at 18% does not cease merely because principal amount along with 12% interest was deposited pursuant to interim order. The respondent was, therefore, held liable to pay interest at the rate of 18% per annum. THUS the Apex Court has held that 18% interest is to be paid in cases under Consumer Protection Act. That was a case against the Insurance Company which went to the Hon''ble Supreme Court against the judgment of the National Commission. THUS we find that in cases arising under the Consumer Protection Act, the Hon''ble Supreme Court has consistently taken a view that interest at the rate of 18% per annum has to be paid on the compensation amount. This rate of interest has been allowed by the Hon''ble Supreme Court keeping in view the facts that the claims which are pending before the Insurance Companies are not decided by the Insurance Companies within a reasonable time and the claims are repudiated on flimsy grounds. The complainant is harassed by the Insurance Company and he has to suffer mental torture and has to run to the office of the Insurance Company and has to wait for getting the insured amount after entering into litigation. All these factors are considered while granting compensation in the form of interest in such cases. Thus in view of the majority of decisions of the Hon''ble Supreme Court, it is now clear that the interest at the rate of 18% per annum is to be paid by the Insurance Company when it is found that the deficiency is on behalf of the Insurance Company.

Thus the result is that the complaint is liable to be allowed. ORDER The complaint is allowed. The opposite party, Insurance Company is directed to pay a sum of Rs. 2,96,000/- along with interest at the rate of 18% per annum with effect from three months after the date of filing of the claim till the date of payment. The Insurance Company shall pay a sum of Rs. 3,000/- as cost to the complainant. Let compliance of this order be made within a period of two months. Let copy of this order be made available to the parties as per rules. Complaint allowed.