(2007) 10 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

BIRDI CHAND APPELLANT

Vs

United India Insurance Co Ltd RESPONDENT

Date of Decision : 22-10-2007

Acts Referred:

Citation : 2008 1 CPJ 111 : 2008 1 CPR 92

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao J.

Advocate : Rajesh Kumar , Rajesh Mootha

Judgement

1. -THIS revision petition is filed by the original complainant, Mr. Birdi Chand, aggrieved by the orders passed by the Rajasthan State Commission in F. A. No. 99/1995 dated 10. 2. 2003 and Chittoregarh District Forum in Case No. 77/94 dated 13. 12. 1994 whereby the appeal and complaint respectively were dismissed.

2. BRIEF facts of the case are that the petitioner is in the business of manufacturing shoes in the name of M/s. Champa Plastic Industries, Sadar Bazar, Chittoregarh. On 16. 3. 1988 he obtained working capital loan of Rs. 1. 05 lacs from the Chittor Central Co-operative Bank. The bank obtained the policy for one lac from the respondent, Insurance Company for the period from 12. 6. 1991 to 11. 6. 1992 in respect of loss of damage to raw material, finished goods of plastic shoes, machinery, etc. in the petitioner''s factory. It is the say of the petitioner that on 16. 11. 1991 a theft took place in the premises of the factory and he lodged FIR with the PS Chittoregarh that his factory premises were broken into and the miscreants have stolen nor the approximate value of such stolen goods. He has not furnished particulars of quantity or description of the goods alleged to have been stolen nor the approximate value of such stolen goods. The police registered Crime No. 597/91 under Section 457, IPC and two young boys were arrested. These were Prahlad Gill and Kanwar Lal and were convicted and sentenced for two months by the Court in Chittoregarh on 22. 1. 1992. Stolen property was not recovered from these boys although they confessed their guilt but were let off after two months of imprisonment.

The Insurance Company appointed Mr. Radhey Shyam as Surveyor and loss assessor. Although the Surveyor repeatedly requested the petitioner to furnish the relevant documents and particulars of the loss alleged to have been caused in the burglary no documents have been made available to him. The Insurance Company appointed Mr. M. L. Namdhar, Dy. S. P. as investigator. Mr. Namdhar investigated and reported that entire claim is false and manipulated with forged bill, etc. Insurance Company repudiated the claim based on the Investigator''s report.

3. REPORT of the Investigator Mr. Namdhar brought out the following grounds for recommending repudiation of the claim: 1. In the investigation, it was found that bill Nos. 2810 and 2811 dated 17. 9. 1990 of Sameer Plastic, Delhi were proved false according to confirmation vide letter dated 22. 4. 1993 from S. R. Kataria, Sale Tax Officer, Ward No. 44, New Delhi. There was no such factory in the name of Sameer Plastic, at the address mentioned as 195d, Shahzabad Industrial Complex, Old Rohtak Road, Delhi. This disproves the contention of the petitioner that he has purchased 3900 kilos of plastic bead (nearly 77 bags weighing 50 kilos per bag) on 17. 9. 1990 vide above mentioned bills for Rs. 1,01,420 against four percent CST from Sameer Plastic, Delhi and the material was delivered at Chittoregarh and payment was made in cash to the agent.

2. On the records received during investigation from electricity consumption of the factory, it is seen that consumption went down drastically from the month of March 1990 (261 units), April 1990 (222 units), May (34 units), June (118 units) and in July it was only 11 units. Further, on 14. 8. 1990, due to huge outstanding dues against electricity bills for Rs. 38,951. 67, Rajasthan State Electricity Board has disconnected the power consumption.

3. CKSB Bank, Chittoregarh had stopped CC limits and demanded its outstanding dues for nearly Rs. 80,000. It was further stated that when the officer of the Bank visited the factory on 13. 9. 1990 and on 5. 10. 1990, he found the factory was locked and in a non-working condition.

4. Rajasthan Financial Corporation gave a loan of Rs. 2,50 lakh, which was also outstanding and as the amount was not repaid in time, Rajasthan Financial Corporation sold all the machines of the factory on 22. 4. 1991 to recover its outstandng dues. The respondent submitted that after the machines have been sold, if there was any stock or other material, Kendriya Sarkari Bank would have taken its possession for the dues owed to them. Thus, there was no other material in the factory; the banks could not seize anything further, which clearly shows that there was no raw material available in the premises as claimed by the petitioner. Regarding the arrest, confession and sentence for two months of the two persons, namely Prahlad Gill and Kanwar Lal, Mr. M. L. Namdhar reported as under: "police either under due influence of the claimant or by any other interest arrested two boys Mr. Prahlad/kailash Bhil, age 22, Kanwar Lal Megwal age 24, they remained in police custody and also judicial lock-up for a period more than 2 months but no stolen goods were recovered as really they were not thieves

and did never make the theft. Police never investigated that 78 bags of raw materials, plastic graines, weighing 3900 kgs. were how transferred from the factory by the two boys without any automobile. These accused denied theft in the Court of law, but due to long imprisonment and lack of bail they were puzzled and due to the misguiding by the claimant they confessed their guilt during trial. Munsif Magistrate, Chittor punished them for two months jail to each on 22. 1. 1992 vide his judgment No. 509/91. And also released them as they were of tender age and it was their first offend. The period of jail since 20. 11. 1991 to 22. 1. 1992 was counted in conviction for two months imprisonment. "

Although these two boys were sentenced to two months imprisonment but no evidence regarding the stolen bag of plastic beads and the mode of transport of the same has been proved. It is contended that two months sentence to these persons does not prove the fact of theft. Learned Counsel for the respondent, Insurance Company contended that the petitioner made a fake claim clearly showing fake bills and had not come with clean hands. He further argued that this petition should be dismissed with cost. As against this, learned Counsel for the complainant contended that based on FIR which was registered by the police and after due investigation, they have arrested two persons who confessed to be guilty. It is further contended that all the documents and bills were produced to the Surveyor, Mr. Radhey Shyam Rathi. The respondents have appointed Mr. M. L. Namdhar as an investigator without assigning any reasons for appointing him. It is further contended that the survey report of Radhey Shyam was never produced and his affidavit only mentions that the respondent had asked the petitioner to bring the concerned record which he failed to comply with.

4. IF the theft had not taken place, police could not have arrested the accused and without committing any offence the accused would not have confessed to their guilt and faced imprisonment. Since the Court has convicted the two aforesaid persons who confessed to the act of theft, the Insurance Company cannot doubt the same to repudiate the claim. It is contended that possession of the machinery was only taken on 16. 4. 1991 and was sold in auction. Further, Rajasthan Financial Corporation took over the possession on 21. 3. 1994. They have relied on letter dated 26. 2. 2003 (A-9) given by Rajasthan Financial Corporation. This letter makes it clear that petitioner was having material and machineries at the relevant time of theft, and possession was taken by R. F. C. only after 3-4 years. Regarding the purchase of goods from Sameer Plastic which has been doubted by the Insurance Company that these were fake bills, it is submitted that he was not aware whether Sameer Plastic was registered with the Sales Tax Department or not. Various orders have been placed on different suppliers and the petitioner did not know registration details. The affidavit filed by one Ashwani Bhardwaj, who had stated that on 17. 9. 1990 goods from Sameer Plastic were brought by his vehicle to the petitioner''s factory has not been considered by Insurance Company. Though the stock list was submitted on 13. 10. 1990 and receipt was also obtained from his banker and this was also not acceptable to the Insurance Company.

5. LASTLY, it was argued that when Insurance Company had appointed Mr. Radhey Shyam to conduct the survey, without any reason they appointed a second Surveyor.

6. MR. Namdhar submitted a report without any foundation based on various documents produced by the petitioner. Insurance Company has rejected the entire claim only on one inquiry regarding Sameer Plastic. Just on a mere letter to Sales Tax Department and their reply to the same, the respondents have repudiated the claim without doing proper detailed investigation. It is sometimes not known to the buyers about the suppliers conduct as to their registration with the Sales Tax Department. Petitioner averred that the carrier''s receipt that they have transported the said stock to the petitioner has been completely ignored by the respondents. On all these grounds petitioner contended that Insurance Company has wrongly repudiated the claim and that his claim should be allowed. We have carefully considered the arguments advanced by both the parties. We find no merit in the revision petition for the following reasons: firstly, in the FIR filed immediately after the alleged theft, no detail, whatsoever, about the stolen material was mentioned. It was only at the later stage that a list of material allegedly stolen was given. No credibility can be attached to this subsequent action, which appears to be an afterthought. Secondly, the claim made by the petitioner that he has purchased plastic beads worth Rs. 1,01,420 (almost 80% of the value allegedly stolen material) was proved to be fatally false. Right from March 1990. his business seems to have been going down as revealed from the electricity consumption figures. Ultimately, the power was disconnected on 14. 8. 1990. Thirdly, in September and October 1990 the factory was found locked when the bank authority visited. Fourthly, neither the Surveyor nor the Investigator have recommended acceptance of the insurance claim. Fifthly, no material was recovered from the alleged thieves. Further, even the arrest of the two persons and sentence of two months has not proved the actual theft although they pleaded guilty so that they could be released being the first time offenders. The petitioner failed to adduce any evidence as to the nature of theft or retrieval of the stolen goods. Sixthly, petitioner tried to rely on a letter dated 26. 2. 2003 by Rajasthan Financial Corporation (RFC) that it took over possession of the factory only on 21. 3. 1994, that is, about three years after the alleged theft but this letter is of no help to the petitioner. In another letter dated 24. 2. 2006, the RFC has clearly stated that the machinery of the factory was in fact sold by the petitioner himself on 22. 4. 1991 to pay off the dues of the RFC.

Complainant should come to the Consumer Fora with clean hands to avail the remedy for the grievance and not through manipulation as we see in the present case. All this clearly shows that the claim was false. We, therefore, do not see any reason to interfere under our revisional jurisdiction in the well reasoned orders of the lower Fora.

7. IN view of the above discussion, the revision petition fails and is dismissed. R. P. dismissed.

