(2012) 04 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

D.R.SINGH APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 288

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Advocate : HARIPRIYA PADMANABHAN , S.K.RAY

Judgement

1. MAJOR(Retd.) D.R. Singh who was the original complainant before the District Forum has filed this revision petition being aggrieved by the order of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the ''State Commission'') in Appeal No.150 of 2007 decided in favour of United India Insurance Co. Ltd., Respondent. In his complaint before the District Forum, Petitioner/Complainant who is an authorized dealer of Bharat Petroleum Corporation Ltd. and proprietor of Durga Gas Service, has stated that he had obtained a LPG Dealers'' combined Policy in respect of his service station for the period from 31.03.2004 to 30 -.03.2005. On 17.02.2005 at about 7.45 pm some anti -social elements entered the premises and took away cash amounting to Rs.1,52,375/ - after threatening his employees. Petitioner lodged an FIR with the Police and also informed the Respondent/Insurance Company and filed a claim for Rs.1,52,375/ -. However, instead of indemnifying the above claim amount, Respondent/Insurance Company offered only Rs.10,000/ - to the Petitioner on the ground that the risk covered under Section V of the Schedule mentioned at Sr.No.14 under the head "money elsewhere in the premises'' was only for Rs.10,000/ -. Aggrieved by this, Petitioner filed a complaint before the District Forum and requested that Respondent be directed to release a sum of Rs.1,50,000/ - along with interest @ 18% per annum from the date of incident till realization and any other relief as deemed appropriate. The above contentions were denied by the Respondent who stated that the claim of the Petitioner was covered under Section V (Sr.No.14) mentioned in the Schedule of the Insurance Policy which is limited to Rs.10,000/ - only, hence the amount of Rs.10,000/ -

was rightly offered strictly in terms of the insurance policy. The District Forum after hearing the parties and considering the evidence filed before it allowed the complaint and directed the Respondent/Insurance Company to pay the Petitioner, Rs.1,50,000/ - along with interest @ 9% from 24.08.2004 till realization, Rs.2,000/ - towards mental agony and Rs.2,000/ - as litigation costs within 30 days from the date of pronouncement of the order.

2. AGGRIEVED by this order, Respondent/Insurance Company filed an appeal before the State Commission which allowed the same and set aside the order of the District Forum by holding that the Petitioner was entitled to receive only Rs.10,000/ - in terms of Section V at Sr.No.14 mentioned in the Schedule of the LPG Dealers Combined Policy wherein it is specifically stated that if money is lost when it is elsewhere in the premises then the sum insured/indemnified would only be Rs.10,000/ -.

3. HENCE, the present revision petition. Counsel for Petitioner submitted that as per LPG Dealers Combined Policy taken by him, his claim was covered under Section IV of the Policy which is a money insurance policy and which clearly states that the Insurance Company will inter alia indemnify the insured in respect of loss or damage to money by burglary and there is no clause in this Section limiting the extent to which the Insurance Company is liable to indemnify for the loss of money. The claim was wrongly repudiated under Section (V) mentioned against Sr.No.14 in the Schedule of the Policy where the limit is Rs.10,000/ - because Section (V) does not deal with money insurance but pertains to fidelity guarantee which is not relevant in the instant case. It was also contended that the Schedule of the Policy was never made available to the Petitioner which itself amounts to deficiency in service on the part of the Respondent/Insurance Company.

4. COUNSEL for Respondent on the other hand while fairly accepting that Section V referred to at Sr.No.14 in the Schedule of the Policy does not pertain to money insurance, stated that he had written to the insurance company for clarification on this point and in response the Respondent/Insurance Company had clarified as follows: "1. There are twelve Sections in the concerned LPG Dealers Package Policy. 2. No limit of liability is mentioned in any section of the policy but the same has to be only seen through the Schedule. 3. Company is liable only for those Sections mentioned under the Policy Schedule for sum insured mentioned against each Section. 4. The Company is not liable under Section 4 at all which covers Money Insurance as it is not mentioned in the Policy Schedule.

5. THE purpose of the Schedule is to specifically define the limits and condition of the liability of the Company according to what has been availed by the insured. In this case, the insured has availed the money insurance for Rs.10,000/ - only which the Company is ready to pay the insured.? Counsel for Respondent further contended that as concluded by the State Commission, the claim was rightly repudiated because the money under the policy was insured for "money lying elsewhere in the premises which was covered for Rs.10,000/ - only and no

coverage was taken for "money in safe, steel almirah, cash box etc. , hence no further liability can be admitted by the Respondent/Insurance Company.

6. WE have carefully considered the submissions made by both parties and also the evidence on record. It is not in dispute that the claim for Rs.1,50,000/ - filed by the Petitioner was not accepted by the Respondent/Insurance Company who instead paid him only Rs.10,000/ - as per Section -V (Sr.No.14) of the Schedule attached to the Policy which limits the claim to Rs.10,000/ -. However, we have carefully gone through this Schedule and we are unable to comprehend this provision because Section V of the Policy mentioned in the Schedule does not at all relate to "money elsewhere lying in the premises . It deals with Fidelity Guarantee and which is not relevant for settling this claim in the instant case. Counsel for Respondent had fairly conceded that he is unable to explain this provision The clarification issued by the Respondent/Insurance Company also does not shed light in this matter satisfactorily. On the other hand, it is not in dispute that the loss of money occurred from the insuree s premises during business hours and prior to its being taken to a safe place, by thieves who threatened the staff of the insuree with assault and violence. An incident of this nature is covered under Section (IV) clause (c) of the said Policy and therefore, Petitioner''s claim would have to be indemnified in terms of this Section where no limit has been presctibed and not under Section V (Sr.No.14) of the Schedule. WE are also inclined to accept the Petitioner''s contention that the cover note and other relevant documents of the Policy were not made available to him since they were also not produced before the District Forum despite directions to do so. In view of the above facts and applying the principle of contra proferentem because of the ambiguity in the insurance policy documents and its Schedule, we are unable to uphold the order of the State Commission in favour of the Respondent and set aside the same. The revision petition is allowed. The order of the District Forum is restored. Respondent/Insurance Company is directed to pay the Petitioner, Rs.1,50,000/ - along with interest @ 9% from 24.08.2004 till realization, Rs.2,000/ - towards mental agony and Rs.2,000/ - as litigation costs within six weeks from the date of receipt of this order failing which the entire amount will carry interest @ 12% per annum from the date of default.