(1999) 04 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

D.S.AHLUWALIA APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Citation : 1999 1 CPC 606 : 1999 2 CPJ 373

Hon'ble Judges : J.B.Garg , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Appeal allowed with costs

Judgement

1. XTHE appellant is Proprietor of Tricode Electricals, Ph-VI, SAS Nagar, Mohali. The premises were insured for the period 24.5.1992 to 23.5.1993 for a sum of Rs. 4.00 lacs. A theft took place on the intervening night of 5/6.6.1992. A claim of Rs. 34,428/- was made, but the District Forum-II awarded only Rs. 25,745/-. The deduction was allowed on account of a plea of under-insurance raised there. Aggrieved against it, the present appeal has been preferred.

2. THE premises were insured for the period 24.5.1992 to 23.5.1993 for a sum of Rs. 4.00 lacs with United India Insurance Company, Chandigarh. A theft took place in the premises on the intervening night of 5/6.6.1992. A report was lodged with the police and the premises were also inspected. It was confirmed that the latch and the lock were bent. By the time the Surveyor visited on 9.6.1992, the aforesaid urgent repairs were got effected. One important objection raised was that the stock and machinery was insured to the extent of Rs. 4.00 lacs whereas total value of the stock and machinery actually found was Rs. 5,34,834/- and the plea of ''under insurance'' was held applicable. THE complainant has supplied a list of material stolen which finds mention on the second page of Annexure C4 and is reproduced as under : "1. Steel scrap 700 kgs. 2. HS scrap 500 kgs. 3. Patti flat 200 kgs. 4. Brass scrap 200 kgs. 5. Nut scrap 250 kgs. 6. Rods and cut pieces 400 kgs. 7. Rivets etc. 200 kgs."

All these were specifically-valued at Rs. 36,400/-. THE report that the goods remained untraced recorded by the police is Annexure C5. We have perused the report of the Loss Assessor Annexure R1/2 dated 30.9.1992. It appears to be hypothetical. The respondents have not paid any attention to the allegations made by the complainant regarding loss of the articles which he intimated at the earliest and which were reported to be untraced. The plea regarding under-valuation in this case is not based on facts and is not trustworthy.

This is a case where the factum of theft is well established. It is an admitted fact that the premises were insured for Rs. 4.00 lacs. The claim put forward by the complainant now appellant was in the sum of Rs. 34,428/- and on a supposed plea of under-valuation, the respondent was not entitled to claim a deduction of Rs. 8,683/-.

3. THE learned Counsel for the respondent has referred to M/s. New India Assurance Company Limited v. M/s. Matchless Investment Finance and Leasing Limited, II (1996) CPJ 201 (NC)=1996 (2) CPC 231, wherein a large number of issues such as material, wages, freight, customs duties, construction cost of material or items supplied, etc. etc. were involved. Besides this, a cheque sent by the Insurance Company on the basis of the discharge voucher was accepted by the complainant and thus it is wholly distinguishable. We hold the view that it was not at all a case of under-insurance nor the respondents were entitled to deduct Rs- 8,683/- THE conclusion is that the appeal succeeds and it is ordered that the total sum of Rs. 34,428/- was payable and the respondents shall be liable to pay interest @ 12% per annum after exempting the usual period of 3 months from the date of occurrence. THE appellant is also entitled to costs Rs. 500/-. Appeal allowed with costs. _____________