(2012) 07 NCDRC CK 0154

In the National Consumer Disputes Redressal Commission

Durga Medicine Agency APPELLANT

Vs

Branch Manager National Insurance Co Ltd RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 324 : 2012 3 CPJ 331

Hon'ble Judges : K.S.Chaudhari , Anupam Dasgupta J.

Advocate : Atul Kumar , S.D.Wadhwa

Judgement

1. THIS revision petition has been filed against the order dated 10.07.2006 passed by the Bihar State Consumer Disputes Redressal Commission, Patna (in short, ''the State Commission'') in Appeal No. 493/99 by which order of the District Forum allowing compensation was set aside.

2. BRIEF facts of the case are that complainant is a registered firm carrying on wholesale trading medicines. Raj Kumar is the proprietor of the firm. The firm was insured with the respondents on 2.9.1996 for a sum of Rs.7,00,000/- against burglary, house breaking, etc., and paid premium. Complainant also obtained cash credit facility from a local Branch of the State Bank of India. It was further alleged that during the intervening night of 18th - 19th May, 1997, a burglary was committed in the shop and medicines worth Rs.3,35,663/-, cash of Rs.18,900/- and five silver coins worth Rs.500/- along with several other papers and documents were carried away by the criminals. Petitioner lodged FIR No.180/1997 on 19.5.1997 under section 461 and 279 IPC at PS, Bettiah Town and the respondent-Insurance Co. was also informed on 20.5.1997. Information was also given to the State Bank of India. Respondent-Insurance Company appointed a surveyor who visited shop of the petitioner on 29.5.1997 and submitted a detailed survey report on 25.7.1997. But ultimately, the claim was repudiated by the respondent-Insurance Co. by letter dated 31.3.1998 which was received by the complainant on 28.8.1998.

3. RESPONDENT-Insurance Company filed written statement and alleged that the complainant-petitioner was not a consumer and further alleged that surveyor did

not find any mark of violence or forceful entry in the shop and the petitioner had failed to prove burglary and hence, complaint may be dismissed.

4. THE District Forum, after hearing both the parties, allowed the complaint and directed the respondent to pay a sum of Rs.3,55,053.17 along with interest @ 12% per annum from December, 1997 till the date of actual payment and further directed to pay Rs.1,000/- for mental agony and Rs.500/- as costs of litigation.

5. THE State Commission, by its impugned order, accepted the appeal on the ground that there was no evidence of burglary.

6. HEARD learned Counsel for the parties and perused record.

7. IT is an admitted case that the petitioner obtained insurance policy from the respondent-Insurance Co. for a sum of Rs.7,00,000/- and paid premium. Petitioner lodged FIR on 19.5.1997 and alleged that criminals had committed theft in his shop by cutting the locks during the intervening night of 18th - 19th May, 1997. Respondent deputed a surveyor who visited shop of the petitioner on 29.5.1997 and submitted a detailed report on 25.7.1997 which is placed as Annexure P-3. Perusal of the surveyor''s report reveals that the surveyor has mentioned the nature of loss as burglary at point 2.1. At page 44 of the paper book of this annexure it is mentioned, "Under such circumstances, entry/exit by means simple/imaginary cutting of locks (8 nos.) may be possible. But entry/exit through this apparent process is similar to opening the locks by duplicate or locally prepared key(s) and thereby it may not come under definition of Burglary". At page 49, however, he has mentioned, "All the five locks related to wooden door were not hanging at the position and iron flat used to link those, fallen the ground". He further mentioned at page 50, "Locks of both counters, which had been placed over dealing counter, found broken". Again at page 54, he mentioned, "In other statement, means of exit/entry is by means of cutting all the 8 nos. of locks of the door. Such traceless cutting is as good as using duplicate keys or self-made keys which may not come under Burglary, but a simple theft which stands out of cover in the policy conditions".

8. AFTER investigation, police submitted final report in which it was stated that the occurrence appeared to be true. Perusal of FIR, final report and surveyor''s report clearly reveals that thieves entered the shop after cutting and breaking locks put on the shop doors, etc. and there was no simple entry by the thieves in the shop.

9. LEARNED Counsel for the respondent has placed printed terms and conditions of the Burglary and Housebreaking Policy, Clause (a) of which is as under: "Any loss of or damage to property or any part thereof whilst contained in the premises described in the Schedule hereto due to Burglary or House-breaking (theft following upon an actual forcible and violent entry of and/or exit from the premises) and Hold-up".

10. ONCE a thief enters the premises after cutting or breaking locks, it can very

well be presumed that the entry has been made after applying force and thus, the alleged incident falls within the definition of burglary or house-breaking. Hindi version of this clause as printed in the policy document is re-produced as below: This clause clearly reveals that theft is also covered in this policy. Hindi version covers 3 things, namely, theft, house-breaking and robbery/burglary and learned Counsel for the respondent states that the Hindi version of the terms and conditions is also acceptable to the respondent. In such circumstances, not only burglary/robbery or house-breaking, but theft is also covered in this policy.

11. LEARNED Counsel for the respondent has placed reliance on judgement of the Apex Court in the case of United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal - 2005 ACJ 570 in which it was held that element of force and violence is a condition precedent for burglary and housebreaking. It was further held that it was not open to interpret the expressions appearing in an insurance policy in terms of common law but it had to be given meaning as defined in the policy. We respectfully agree with the law laid down by the Hon''ble Apex Court. But, in the present case, petitioner has proved (and the surveyor has admitted at some places in his report) that thieves entered the shop after cutting locks and committed theft, i.e., after breaking the locks of both counters in the shop and both broken locks were found on the counter. In such circumstances, it cannot be believed that it was a simple case of theft. Even if it is a case of theft, we are of the opinion that theft is also covered by this policy as per Hindi version of the terms and conditions of the policy.

12. FROM the above discussion, it becomes clear that the petitioner has proved that burglary was committed by miscreants after cutting locks of the shop and they took away medicines, cash and silver coins. The State Commission has committed an error in coming to the conclusion that the complainant failed to establish burglary in the shop and accepting appeal.

13. THE State Commission has not considered quantum of compensation to be given to the complainant and in such circumstances, after accepting revision petition, case has to be remanded to the State Commission to decide the matter afresh on the question of quantum of compensation.

14. HENCE, the revision petition filed by the petitioner is partly accepted and the impugned order of the State Commission is set aside. The matter is remanded to the State Commission to decide the appeal afresh (in the light of the above observations) in accordance with law, after hearing both the parties.

15. BOTH the parties are directed to appear before the State Commission on 22.8.2012. State Commission is directed to decide the matter expeditiously, preferably within a period of 3 months after first appearance of both the parties.