(2007) 03 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

GTE Trading Co. Pvt. Ltd. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Citation : 2007 4 CPJ 431

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been directed by the complainant against order dated 23.1.2007 passed by Consumer Disputes Redressal Forum-II, U.T. Chandigarh (hereinafter to be referred as District Consumer Forum), vide which its complaint was dismissed being devoid of any merit.

2. BRIEFLY stated the facts are that the appellant (complainant) is a private limited company and is sole distributor of Verka milk and milk products for sale in Solan and Shimla Districts and its surrounding areas and it has been running business for the last 8 years. It is averred that it took insurance policy from the respondent-New India Assurance Company for a sum of Rs. 4,50,000 and paid Rs. 13,806 as premium. The copy of the proposal form is Annexure C-2 while copy of the insurance policy valid from 4.9.2004 to 3.9.2005 is Annexure C-3.

It was further averred that on 16.12.2004 its representative Sh. Gopal Chand was returning from Shimla to Chandigarh after collecting cash for a sum of Rs. 3,81,000 from various shopkeepers of Shimla, Solan, Dharampur in truck bearing No. HP-63-0642 which was taken on rent by the complainant company but in the way, at about 6.30 p.m. the driver stopped the truck at Dabli Dhabha, Sanwara (Dharampur) for checking air pressure in the truck and when Chhabil Dass driver returned after 10-15 minutes after checking the air pressure in the tyres, then he found that Gopal Chand was sleeping and further found the bag of cash was missing. On search they could not trace the cash bag and then immediately informed the police which recorded DDR No. 24 dated 16.12.2004 on the statement of Gopal Chand, Annexure C-4.

3. IT was next averred that intimation of theft Annexure C-5 was sent to the respondent and it deputed Sh. Rakesh Khanna, Surveyor to assess the loss and it fulfilled all the formalities. However, respondent repudiated the claim vide letter dated 7.9.2004 Anenxure C-8. Alleging deficiency in service, the complaint was filed and claimed the amount along with interest @ 18% p.a. from the date of lodging claim and further to pay Rs. one lac on account of mental pain and harassment.

4. RESPONDENT in the reply stated that the claim had been rightly repudiated vide letter Annexure R-1 dated 7.9.2005 as Gopal Chand had not taken proper care of the cash bag and further the amount was not taken in the truck of the complainant and in fact owner of the appellant had hatched conspiracy to defraud respondent by claiming the amount of Rs. 3,81,000. Parties adduced their evidence by way of affidavits. After hearing Counsel for the parties, District Consumer Forum vide order dated 23.1.2007 dismissed the complaint as meritless.

5. AGGRIEVED by the said order, complainant has filed the present appeal.

6. WE have heard Counsel for appellant Sh. Pankaj Chandgothia and carefully gone through the file. There is no dispute about it that appellant had taken insurance policy for a sum of Rs. 4,50,000 which was valid from 4.9.2004 to 3.9.2005. Admittedly the truck bearing No. HP-63-0642 in which Gopal Chand was carrying the amount was not owned by the appellant (complainant) but it was hired on rent on 16.12.2004 on the alleged day of mishap. In the DDR, the amount alleged to be stolen was mentioned to be Rs. 3,81,000 while the amount collected was shown to be Rs. 3,78,891. Discrepancy in the two figures has not been explained. As per Clause 3 of the general conditions of the policy, insured was to take all reasonable steps to safeguard the property against accident, loss or damage but in the present case Gopal Chand, representative of the complainant had not adhered to it as he had not taken reasonable care and he was not vigilant and went to asleep when driver Chhabil Dass had gone to check air pressure. If he had been awake and had taken proper precaution, then bag containing cash would not have been stolen.

It has been observed by Hon''ble Apex Court in United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, IV (2004) CPJ 15 (SC)=V (2004) SLT 876=2004 (8) SCC 644, that the terms and conditions of the policy had to be construed strictly. As per Clause 11 of the terms and conditions of the policy Annexure R-7 , loss or damage due to or contributed by the insured having caused or suffered anything to be done whereby the risks insured against were unnecessarily increased but were to be excluded and as per exclusion Clause 6 of the policy, the complainant was not liable to be paid in respect of money carried under contract of affreightment and theft of money from unattended vehicle. In the present case the amount was being taken in a rental vehicle in contravention of terms and conditions of the policy and further custodian went to asleep when alleged theft took place. In Clause 3 of the terms and conditions of the policy, it was required on the part of custodian of the cash amount to take reasonable steps to safeguard the property against accidental loss or damage which he had failed to take. Sh. Rakesh Khanna, surveyor and loss assessor vide his report dated 28.8.2005 acting on the investigation report of Sh. S.P. Singh, Forensic expert had concluded that the complainant company had made a conspiracy in connivance with the employees to take pecuniary advantage from Insurance Company to an amount of Rs. 3,81,000 by adopting various fraudulent means.

7. WE concur with the reasoning given by the District Consumer Forum and hold that there is no force in the appeal, hence, it is dismissed in limine. Copies of this order be communicated to the parties, free of charge. Appeal dismissed.

