(2005) 06 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

KAIRALI MARKETING And PROCESSING CO-OPERATIVE SOCIETY LTD. — APPELLANT

Vs

National Insurance Co. Ltd. — RESPONDENT

Date of Decision : 10-06-2005

Acts Referred:

Citation : 2006 2 CLT 543 : 2006 2 CPJ 513 : 2006 3 CPR 236

Hon'ble Judges : T.M.Hassan Pillai , A.Radha J.

Final Decision : Complaint dismissed

Judgement

1. WE are called upon to adjudicate in this O.P. filed by the complainant the claim made to grant the relief of allowing it to realise from the 1st opposite party an amount of Rs. 14,03,867.50; being the value of the copra kept in the godown of the complainant and alleged to be stolen by the depot manager of the complainant on 1.2.1996 with interest on that amount at the rate of 18% per annum from 30.7.1998 on the ground that copra stolen was insured with the 1st opposite party. Further relief prayed for is to award to the complainant cost of the proceedings.

2. THE main plank of the case of the complainant adumbrated in the complaint is that there was a stock of 640 quintals 71.450. kgs. of copra in the godown of the complainant on the date of alleged commission of theft and depot manager Alex Zacharia committed theft on 1.2.1998 after breaking open the lock of western door of the godown. THE copra was packed in gunny bags (each gunny bag contained 50 kgs. of copra). THE complainant got information that some one after breaking open the western door of the godown committed theft. THE total quantity of copra stolen from the godown was 390.5 quintals. After investigation police charge-sheeted a case against the depot manager before the Judicial First Class Magistrate Court, Alappuzha under Section 454 and Section 380 of I.P.C. as CC 23/99. THE stock of copra in the godown was insured with the 1st opposite party for Rs. 30 lakhs against burglary, house breaking and fire etc. THE complainant informed the 1st opposite party about the burglary at the earliest

opportunity after getting information. THE 1st opposite party is duty bound and ought to have made necessary inquiries on getting the information of theft and the complainant tried its level best to make the 1st opposite party to investigate upon the matter and determine the loss. But the attitude of the 1st opposite party was non-co-operative. THE 1st O.P. is liable to compensate the loss sustained by the complainant. It is also alleged by the complainant that it suffered a loss of Rs. 14,03,867.50, being the value of the stolen copra and the 1st opposite party is duty bound to compensate the loss. THE complainant is entitled to realise value of stolen copra from the 1st opposite party as per the terms of the policy. The 1st opposite party in the written version filed not disputed the fact that the goods alleged to be stolen from the godown of the complainant were insured jointly by complainant amd 2nd opposite party. The liability is denied by the 1st opposite party mainly on the ground that the theft was committed by an employee (Depot Manager) of the complainant and as such the exclusion clause in the policy applied to the facts of the case and the complainant is not entitled to any compensation. The other contentions raised by the 1st opposite party will be dealt with by us at the appropriate stage.

The 2nd opposite party filed version supporting the claim made by the complainant asserting that goods stolen were insured jointly by complainant and the 2nd opposite party.

3. IT is an undisputed fact that key loan was obtained from 2nd opposite party hypothecating the goods kept in the godown. For adjudicating the question whether the complainant is entitled to get compensation we have to first decide the question whether Alex Zacharia who is accused of having commissioned theft of copra was the Depot Manager of the complainant at the material time. The necessity for deciding that question arose for the reason that the additional 3rd opposite party who got impleaded contended in his written version that the statements of the complainant to the effect that Alex Zacharia was the employee and he was entrusted with the key of the godown and burglary was committed are not true and correct.

4. BEFORE dealing with that question we may point out here that we entertain doubt regarding the competency of the additional 3rd opposite party (hereinafter referred as 3rd opposite party) to raise such a contention before us on the ground that 3rd opposite party is not the complainant and he is not the consumer, the consumer dispute is only between the complainant society and the 1st opposite party. It is nobody''s case that the complainant society has not satisfied the definition of complainant. The terms ''complainant'' and ''consumer'' are defined in the Consumer Protection Act, 1986 as amended by Consumer Protection (Amendment) Act, 2000 (for short the Act). The terms ''complainant'' and ''consumer'' reads as under: "complainant" means, (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, or under any other law for the time being in force; or (iii) the Central Government or any State Government, who or which makes a complaint; or (iv) one or more

consumers, where there are numerous consumers having the same interest; (v) in case of death of a consumer, his legal heir or representative; -who or which makes a complaint."

"Consumer" means any person who- "(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

The 3rd opposite party is only a member of the complainant''s society and nowhere in his version he contended that he is a consumer satisfying the definition of a consumer. It is also not his contention that he is a complainant satisfying the definition of complainant contained in the Act. No such fact is asserted by 3rd opposite party in his affidavit. Being not a consumer nor a complainant it cannot be said that there arose any consumer dispute between 1st opposite party and 3rd opposite party. There is no assertion in the version or in the affidavit filed by him that he availed of the service of the 1st opposite party for consideration either paid or partly paid or partly promised. We may also point out here itself that it is not the case of 3rd opposite party that he is a beneficiary. It is to be pointed out at this juncture that 3rd opposite party has no case that there is collusion between 1st opposite party and the complainant and the complainant has not been conducting the case properly and with due diligence to safeguard or protect the interests of the society on account of collusion between the 1st opposite party and the complainant. We may also point out here that a question may also arise for consideration if no relief can be granted to the complainant on the basis of the case pleaded by it whether it is possible for us to grant relief to the complainant against 1st opposite party on the basis of a case set up by 3rd opposite party who got impleaded subsequently. It is also to be pointed out here that no relief is claimed by the 3rd opposite party for him against the 1st opposite party and the complainant is not claiming any relief against 3rd opposite party. In our view no such relief can be granted to the complainant on the basis of case set up by the 3rd opposite party on the ground that 1st opposite party is called upon only to meet the case pleaded by the complainant and not to defend a case set up by the 3rd opposite party in his version. We may repeat that no case is pleaded by the complainant that Alex Zacharia was not the employee of the complainant at the time of alleged commission of theft and, therefore, we have to hold that there is no dispute between complainant and 1st opposite party on the aspect whether Alex Zacharia was complainant''s depot manager or not. That dispute is only between the complainant and 3rd opposite party and 1st opposite party is least concerned with that dispute. Even if we assume that there is inter se dispute between the 1st opposite party and 3rd opposite party that dispute cannot be resolved by us in this proceeding. Consumer dispute arose only between the complainant society and the 1st opposite party. We may point out here again that the very case pleaded in the complaint is that Alex Zacharia was the depot manager of the complainant society at the time of alleged commission of theft by him on 1.2.1998. It is asserted in the complaint that the godown was kept locked by using 2 locks. Of these 2 locks keys of one lock were kept with the Bank and that the keys of the other lock were kept by the Depot Manager of the said godown one Alex Zacharia, Chennakadu, Chunkam, Alappuzha employed by the complainant. In the affidavit filed in support of the assertions made in the complaint, the President of the society sworn to the fact that the process of trade including purchasing and selling of the goods in trade was done by the depot manager who is the employee of the society. The office bearers inspect the stock in the godown and the accounts etc. once or twice a month. Accordingly on 21.1.1998 the President of the society had inspected the godown and found that there was a stock of 640 quintals 71.450 kgs of copra. "Since the business was done under key loan with the 2nd opposite party one of the keys of the godown was kept by the second opposite party. The depot manager and the 2nd opposite party used to deliver goods from the godown jointly. The depot manager was engaged in the job in 1997. Since then he was incharge of the godown".

5. IT is thus clear from the pleadings of the complainant and affidavit filed by the President on behalf of the complainant that Alex Zacharia who is alleged to have committed theft of copra was complainant''s depot manager at the time of commission of theft and he was employed as depot manager from the year 1997. In the additional affidavit filed by the President of the society one K.K. Pankajakshan on 13.2.2002 a totally new case is attempted to be proved. The new case attempted to be proved is that Alex Zacharia was not an employee of the society and "he was doing some work on commission basis during seasons and he was an expert in the purchase and market of copra. He was popularly known as the Manager in the locality and thus it happened so, that in the petition and affidavit the said person was denoted as Depot Manager and since that person was receiving commission for his work, he was referred as employee. The petitioner society is having only one employee that is the secretary. The petitioner society is having sanction to employ only one person that is the secretary and there is no post of depot manager in the society".

6. HERE arises a question whether after having pleaded a case in the complaint and also after filing an affidavit in support of the case that Alex Zacharia was the depot manager of the complainant employed by the complainant at the time of alleged commission of theft and was employed from the year 1997 whether it is

open to the complainant to take a stand that he was not an employee of the society and was paid only commission by the society for the work done by him i.e., whether such an volte-face or somersault is permissible under law. Our answer to the question on the basis of legal position laid down by the Apex Court in several decisions is that such an volte-face or somer-sault is not permissible under law. Apex Court had occasion to consider the effect of admissions made in the pleadings by a party. In Nagindas Ramdas v. Dalpatram Iccharam @ Brijram and Others, AIR 1974 SC 471, Apex Court held: "Admissions if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admission. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand evidentiary admissions which are receivable at the rival as evidence are by themselves not conclusive. They can be shown to be wrong."

The law is laid down in Bhart Singh''s case, AIR 1966 SC 405, thus: "Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence."

7. IN Viswalakshmi Sasidharan (Mrs.) and Others v. Branch Manager, Syndicate Bank,Balgaum, (1977) 10 SCC 173, Apex Court held: "On the other hand, it is admitted that due to slump in the market they could not sell the goods, realize the price of the finished product and pay back the loan to the Bank. That admission stands in their way to plead at the later stage that they suffered loss on account of the deficiency in service..........."

"Judicial Admissions by themselves can be made the foundations of the right of the parties."

8. IN M/s. Modi Spinning and Weaving Mills Co. Ltd. and Another v. M/s. Ladha Ram and Co., AIR 1977 SC 680, the law is stated in the following terms: "It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the

admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the Trial Court."

M/s. Estralla Rubber v. Dass Estate (Pvt.) Ltd., IV (2001) CLT 82 (SC)=VI (2001) SLT 577=2001 AIR SC 3544, Supreme observed thus: "normally a clear admission made conferring right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of plaintiff, depending on facts and circumstances of a given case."

In Sita Ramacharaya (Dead) Through LRs. v. Gururajacharya (Dead) Through LRs., I (1997) CLT 337 (SC)=(1997) 2 SCC 548, Apex Court laid down that under Section 18 of the Evidence Act the admission made by the party would be relevant evidence. Section 31 provides that admissions are not conclusive proof of the matters admitted but they may operate as estoppel under the provisions hereinafter contained.

9. THUS it is clear from the legal position laid down by the Supreme Court that the clear admissions made by the complainant in the pleadings that Alex Zacharia was the depot manager of complainant at the time of alleged commission of theft cannot be allowed to be withdrawn by filing an affidavit adopting the contention of the 3rd opposite party that Alex Zacharia was at no time an employee of the complainant. It is noteworthy to point out here that though in the affidavit dated 13.5.2002 filed by the President of complainant''s society such a fact is asserted the allegation made in the complainant that Alex Zacharia was the depot manager employed by the society is not got amended by the complainant and the complainant''s case in its pleadings on that aspect remains the same. So it is only open to the complainant to contend that theft was committed by its employee and the complainant is estopped from contending otherwise.

10. IT is well settled legal position that in the absence of a plea no amount of evidence led in relation thereto can be looked into, Bandar Singh v. Nihal Singh, II (2003) SLT 649=II (2003) CLT 91 (SC)=AIR 2003 SC 1383. So on that ground also we can hold that the assertion made in the additional affidavit dated 13.5.2002 cannot be looked into by us. We may also point out here that no material has been produced before us by the complainant to hold that admission made by it that Alex Zacharia was its depot manager employed by it from 1997 is not true. Further either the complainant or the additional 3rd opposite party produced any documentary evidence to prove that Alex Zacharia was paid then and there for his work. If that assertion of him (3rd additional opposite party) is true that fact could have been proved by him by getting summoned the documents from the custody of the complainant showing payment to Alex Zacharia for the work done. We may here again point out that if the assertion of complainant in the additional affidavit dated 13th September, 2002 that Alex

Zacharia was only doing some work on commission basis during seasons is true that fact could have been proved by it by producing the account books maintained by it. No account book or any other documentary evidence has been produced by the complainant to prove such a fact. IT is not the case of the complainant that it was not maintaining any accounts regarding payment of commission to Alex Zacharia. The inference to be drawn is that the case attempted to be proved by the complainant (Alex Zacharia was not an employee) is only an after-thought and the admission made in the pleadings by the complainant that he was the depot manager employed by the complainant is true. The well known observation of Baron Parke in Slatteri v. Pooley, (1840) 6 M & W 664 (689) C is that what a party himself admits to be true may reasonably be presumed to be so and that statement of law was adopted in the decision in 34 Ind. Appeal 27(B). Supreme Court in Nabubai v. B. Shema Rao, AIR 1956 SC 530 (5) , held that no exception can be taken to this preposition. But before it can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained. There is clear and unambiguous admission that employed by it. Alex Zacharia was the depot manager of the complainant from 1997 and the explanation attempted to be given in the affidavit dated 13.5.2002 is unacceptable. The 1st opposite party is only called upon to meet the case pleaded in the complaint and as no such case is pleaded by the complainant that Alex Zacharia was not the depot manager employed by it 1st opposite party can very well take advantage of by relying on the admission made by the complainant. From the pleadings of complainant and first opposite party it is clear that there is no dispute between the complainant and the 1st opposite party as to whether Alex Zacharia was an employee or not under the complainant at the time of alleged commission of theft and such a dispute is only between complainant and additional 3rd opposite party. Even if we assume that there is such a dispute between 1st opposite party and additional 3rd opposite party it cannot be adjudicated in this OP and additional 3rd opposite party alone raised a contention in his pleadings that Alex Zacharia was not the depot manager.

In the charge sheet filed by the police before the Judicial First Class Magistrate Court, Alappuzha it is asserted that the society has resolved to appoint Alex Zacharia as its depot manager, though no order appointing him was seen in the records maintained by the society. There is no case either for the complainant or for the 3rd opposite party that Alex Zacharia was not competent to be appointed as a depot manager on the ground that he was not having the requisite qualification to be appointed as a depot manager. We repeat that in the affidavit filed by the 3rd opposite party he asserted that Alex Zacharia was a person having some connection in the copra market and the assertion made on behalf of the complainant in the additional affidavit dated 13.9.2002 by its President is that he was an expert in the purchase and market of copra and he was popularly known as the manager in the locality. Additional 3rd opposite party in order to prove his case that sanction was obtained by the society from Registrar to appoint only one employee i.e., the secretary relied on Ext. R1. Relying on Ext. R1 it is contended by him that no sanction was obtained to appoint Alex Zacharia as depot manager and as such the appointment, if any, made was, illegal. He also relied on the decision rendered by the Hon''ble Kerala High Court in Eranathur Service Co-operative Bank Ltd. v. Labour Court & Others, 1986 KLT 802. Hon''ble High Court in that decision considered Section 80 of the Co-operative Societies Act, and Rule 186 of the Kerala State Co-operative Societies Rules. The question that was decided by the Hon''ble High Court was whether appointment made by a co-operative society without obtaining the sanction of the Registrar of Co-operative Societies was valid or not and the Hon''ble High Court held that such an appointment (appointment of a person who is not possessing requisite qualification) bypassing the qualification as provided for under Rule 186 can be had only if the society applies for and obtains the prior approval of the Registrar of the Co-operative Society. Here we have already pointed out that it is not the case of any of the parties that Alex Zacharia was not having the requisite qualification to be appointed as a depot manager. So there is no need at all for the society to appoint Alex Zacharia as depot manager to obtain previous permission of Registrar of Co-operative Society. The facts of the present case are distinguishable. We are justified in not placing any reliance on the above cited decision in view of the law laid down by the Supreme Court in Bharath Petroleum Corporation Ltd. v. N.R. Nairamani, VI (2004) SLT 586=AIR 2004 SC 5461. Supreme Court observed thus: "Courts should not place reliance on decisions without discussing as to how the factual situation fits in which the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid''s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton, 1951 AC 737 at p. 761, Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge. "10. In Home Office v. Dorset Yachi Co., 1970 (2) All ER 294, Lord Reid said, "Lord Atkin''s speech is not to be treated as if it was a statute definition it will require qualification in new circumstances," Magarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russel, LJ as if it were an act of Parliament."

And in Herrington v. British Railways Board, 1972 (2) WLR 537, Lord Morris said: "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

The factual situation does not fit in with the fact situation of the decision on which reliance is placed by 3rd OP.

11. IT is true that Ext. R1 produced by the 3rd opposite party shows that complainant society was given permission to appoint only Secretary and relying on Ext. R1 we are not prepared to hold that appointment of Alex Zacharia as depot manager was illegal. Approval of Registrar is necessary only if the society is appointing a person not competent to be appointed and as pointed out by us there is no dispute between 1st opposite party and complainant regarding the validity of the appointment of Alex Zacharia as depot manager. IT is also to be remembered that it is admitted by the complainant that keys of the one of the locks (keys of the lock of the society) for locking the godown were with the depot manager Alex Zacharia and that fact is not disputed by the 3rd respondent. His explanation for the possession of keys by Alex Zacharia is that "may be for convenience sake the said Alex Zacharia kept the key with him." No such case is pleaded by the complainant and no such fact is asserted by the President of the complainant''s society in the affidavit filed by him on 13.5.2002. Further it is unlikely for the society to allow Alex Zacharia to keep with him keys of one of the locks used for locking the godown if he was not employed as a depot manager. The explanation regarding possession of keys by Alex Zacharia by the 3rd opposite party is unacceptable on the ground that it is against probability i.e., in the normal course no one would allow a person who was not an employee to keep with him the keys of godown where valuable goods were stacked, particularly when the stacked goods were hypothecated for availing key loan. So the conclusion emerges from the discussion held above is that Alex Zacharia was the depot manger of the complainant society employed by it and he continued to be an employee of complainant''s society at the time of commission of the theft of copra from the godown belonging to the complainant society. Now the question that is to be considered by us is whether the complainant proved that the burglary was committed i.e., the theft of 390.5 quintals of copra was committed by Alex Zacharia on 1.2.1998 after breaking open one of the locks with which the godown was locked. The relevant clause in Ext. B1 policy is extracted below: (a) Any loss of or damage to property or any part thereof whilst contained in the permises 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. (b) Damage caused to the premises to be made good by the insured resulting from burglary and/or house-breaking or any attempt there at any time during the period of insurance: Provided always that the liability of the company shall in no case exceed the sum insured stated against each item or total sum insured stated in the Schedule.

12. BEFORE proceeding further we have to bear in mind the law laid down by Supreme Court in the United India Insurance Company Ltd. v. M/s. Harchand Rai

Chandan Lal, IV (2004) CPJ 15 (SC)=V (2004) SLT 876=AIR 2004 SC 5481. Supreme Court in that case considered an identical clause in the policy issued by the appellant to the respondent in that appeal. Construing an identical clause the Supreme Court laid down the law thus: "The policy is a contract between the parties and both parties are bound by the terms of contract. As per the definition of the word burglary, followed with violence makes it clear that if any theft is committed it should necessarily precede with violence i.e., entry into the premises for committing theft should involve force or violence or threat to insurer or to his employees or to the members of his family. Therefore, the element of force and violence is a condition precedent for burglary and house-breaking. The term ''burglary'' as defined in the English Dictionary means an illegal entry into the building with an intent to commit to crime indemnification against the insurance company. The terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended. It is true that in common parlance the terms ''burglary'' would mean theft but it has to be preceded with force or violence. If the element of force and violence is not present then the insurer cannot claim compensation against theft from the insurance company."

"9. It is possible that an insurer may sustain loss in technical terms of the criminal law, but no relief can be given to him unless his case is covered by the terms of the policy. It is not open to interpret the expression appearing in policy in terms of common law; but it has to give meaning to the expression as defined in the policy. The act that causes the loss must fall within the definition in the policy and it cannot take the cover and contents of the definition as laid down in the criminal law. Therefore, when the definition of the word ''burglary'' has been defined in the policy then the cause should fall within that definition. Once a party has agreed to a particular definition, he is bound by it and the definition of criminal law will be no avail. In this connection, the decision of the National Consumer Disputes Redressal Commission in the case of National Insurance Company Ltd. v. Public Type College, which has taken the colour and content of the definition given in the criminal law does not lay down the correct proposition of law. It is settled law that terms of the policy shall govern the contract between the parties, they have to abide by the definition given therein and all those expressions appearing in the policy should be interpreted with reference to the terms of the policy and not with reference to the definition given in other laws. It is a matter of contract and in terms of the contract the relation of the parties shall abide and it is presumed that when the parties have entered into a contract of insurance with their eyes wide open, they cannot rely on definition given in other enactment. Thus, the decision of the National Consumer Disputes Redressal Commission in the case of National Insurance Company Ltd. v. Public Type College, is not a good law and all the Tribunals i.e., National Consumer Disputes Redressal Commission, State Commission and District Forum having applied the ratio of that case; the impugned order cannot be sustained."

"12. The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy."

Though in the complaint it is alleged that complainant has got information regarding the commission of theft on 11.2.1998 no material has been produced before us to show that when the President and the Secretary of the society visited the godown they found that lock was broken open and force was used to make entry into the godown. In the affidavit of the President of society there is no whisper that he had seen the lock broken and entry was forcible and violent. From the affidavit of the 3rd opposite party also it is not discernible that he had visited the premises of the godown and found the lock of the godown broken open and entry was made forcibly. His assertion in his affidavit is that the statements in the petition to the effect that Alex Zacharia was employed as depot manager and "he was entrusted with the key of the lock that of the society and burglary was committed by the said Depot Manager etc. are not true and correct. No one alleged to have given information (in the affidavit of President of the society it is asserted that other labourers in the godown gave the information to the complainant regarding the commission of theft) was examined by the complainant to prove the asserted fact that forcible entry was made into the godown by the thief after breaking open one of the locks. It is true that in the charge sheet filed by the police in C.C. 23) the accusation made against the accused (Alex Zacharia) is that he with the intention of committing theft of copra broke opened one of the locks of the godown on 1.1.1998 and committed theft. The mere fact that police laid challenge making such an accusation against Alex Zacharia by itself is not sufficient to show that burglary was committed making entry into the godown forcibly. So we are not able to accept the case of the complainant regarding commission of theft after making forcible entry into the godown by breaking open the door. Now we shall consider whether the exclusion clause applies to the facts of the case. Exclusion clause reads as under: "(ii) Loss or damage where any inmate or member of the insured''s household or of his business staff or any other person lawfully in the premises in the business is concerned in the actual theft or damage to any of the articles or premises on where such loss or damage have been expedited or any way assisted or brought about any such person or persons."

It is contended on behalf of the 3rd opposite party that there is no evidence whatsoever to prove that Alex Zacharia entered the premises lawfully and according to the 3rd respondent in the absence of any such evidence the exclusion clause is not attracted. In order to substantiate his contention that entry of Alex Zacharia in the premises of the godown was not lawful the 3rd opposite party relied on Ext. R2 wherein it is stated that "Bank''s Agriculture Officer" will be incharge of stocking and releasing of copra and he will be assisted by a peon, loan section". Contention raised by the 3rd opposite party in his version is that the said Alex Zacharia was not having any independent right or authority to open or lock the godown without the permission of the society that too in the presence of the official of the 2nd opposite party. May be for convenience sake the said Alex Zacharia kept the key with him and terming the said act as entrustment of key by the society is without knowing its implication. His other contention is also that the person who has committed the crime can never be termed as an inmate, member, business staff or any other person lawfully in the premises as stated in the exclusion clause and the petitioner society or its employee or any other person have no right or authority to enter the godown without the permission of the 2nd opposite party bank as the entire stock in the godown was hypothecated under the key loan to the bank. Without obtaining the key from the bank the godown cannot be lawfully opened. By opening lock of the society alone no body can enter the godown.

13. THE contention of the 3rd opposite party construing the exclusion clause appears to be based on a misreading of the exclusion clause. It is plainly clear from a reading of the exclusion clause to apply the exclusion clause employee or staff of the complainant need not meter the premises of the godown lawfully. THE clause provides for lawful entry into the premises of a person who is not an inmate or member of the insured''s household or of his business staff. If a person who is not an inmate or member of the insured''s household or his business staff lawfully enters in the premises and causes loss or damage the exclusion clause applies.

14. HERE it is the case of complainant that Alex Zacharia was the depot manager at the time of alleged commission of theft. He being a staff of the complainant society the exclusion clause squarely applies to the facts of the case. On that ground also the complainant society is not entitled to any compensation under Ext. B1 policy. In the result, the complaint is dismissed. No order as to costs. Complaint dismissed.