

(2015) 04 NCDRC CK 0234

In the National Consumer Disputes Redressal Commission

Mange Singh Chauhan

APPELLANT

Vs

New India Assrance Company Ltd

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Citation : (2015) 04 NCDRC CK 0234

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : PRAMOD TYAGI

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 28.05.2014 passed by the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun (in short, "the State Commission") in Appeal No. 419/2007 Divisional Office, The New India Assurance Co. Ltd. Vs. Sh. Mange Singh Chauhan by which, while allowing appeal, order of District Forum allowing complaint was set aside.

2. BRIEF facts of the case are that complainant/petitioner got his building, plant and machinery and goods insured from OP / respondent for a period of one year 7.2.2007 to 6.2.2005 under Burglary Insurance Policy. On 4.12.2004, theft took place in the insured premises and report was lodged and intimation was also given to OP, but OP did not settle claim. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that theft was not covered under the policy as stolen machinery was lying open without guard. It was further submitted that intimation of theft was given to OP on 29.12.2004, whereas theft took place on 4.12.2004. It was further submitted that Bank of Baroda has been impleaded as party unnecessary and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to pay Rs.82,343.25 along with 6% p.a. interest and further directed to pay Rs.2,000/- as litigation expenses. Appeal filed by OP was allowed by learned State Commission vide impugned order against which, this revision petition has been filed along with application for condonation of delay.

3. HEARD learned Counsel for the petitioner at admission stage and perused record. As there is delay of only 3 days in filing revision petition, delay stands condoned.

4. LEARNED Counsel for the petitioner submitted that learned District forum rightly allowed complaint, but learned State Commission committed error in allowing appeal; hence, revision petition be admitted.

5. PERUSAL of record reveals that theft took place on 4.12.2004 whereas FIR was lodged on 6.12.2004 and intimation of theft was given to Insurance Company on 29.12.2004. Thus, it becomes clear that there was delay of 2 days in lodging FIR and 25 days in intimation to Insurance Company. This Commission in *The New India Assurance Co. Ltd. Vs. Trilochan Jane* (F.A. No. 321 decided on 9.12.2009) dismissed complaint as there was delay of 2 days in lodging FIR and 9 days in intimation to Insurance Co. In the light of aforesaid judgment, learned State Commission has not committed any error in allowing appeal.

6. LEARNED State Commission also observed that watchman of the premises was not on duty on the date of theft on account of ill health and no other person was deputed by the complainant to safeguard the insured property and goods lying therein. Learned State Commission rightly observed that in absence of alternative arrangement for security of goods lying in open there was clear breach of terms and conditions of the policy on the part of complainant and I agree with the aforesaid observations.

7. I do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

8. CONSEQUENTLY , revision petition filed by the petitioner is dismissed at admission stage.