
(2002) 11 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Mazboot Packers And Engineers

APPELLANT

Vs

PUNJAB NATIONAL BANK

RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Citation : 2002 3 CPJ 234 : 2003 1 CLT 253 : 2003 1 CPR 129 : 2003 2 CPC 297

Hon'ble Judges : K.C.BHARGAVA , D.D.BAHUGUNA J.

Judgement

1. THIS is an appeal against the judgment and order dated 14.7.2000 passed by District Consumer Forum, Gonda in Complaint Case No. 4/1999.

2. THE facts of the case stated in brief are that the complainant took an insurance policy from United India Insurance Company Limited for his shop, Vimal Auto Service for a sum of Rs. 5,00,000/- . The policy as to run from 18.4.1996 to 17.4.1997. According to the complainant in the night of 6/7 April, 1994 there was a theft in which several items alongwith Rs. 10,331/- in cash and five silver coins were stolen. The cost of the stolen items was Rs. 1,73,072/- . An FIR was lodged on 7.4.1997 and the intimation of the theft was also given to the Insurance Company on the same day along with the list of stolen articles. The claim which was submitted by the complainant remained pending with the Insurance Company till 28.7.1998. On that date the complainant was informed that as the stolen nozzles totalling 403 had been recovered from one Parmeswar Shukla and Naimul -Haq and Sri Parmeswar Shukla is an employee at the complainants shop, hence the complainant is not entitled for any amount. Therefore, the claim has been repudiated. According to the complainant Parmeswar Shukla is not an employee of the complainant but was working as an apprentice and was not given any wages. When the claim was not settled the complainant filed the complaint for recovery of Rs. 1,73,072/- along with interest at the rate of 18% per annum and damages of Rs. 25,000/- .

3. IN the written version the opposite party has alleged that 403 nozzles were recovered from Parmeswar Shukla and Naimul -Haq. Parmeswar Shukla is an employee of the complainant which fact came to the light during investigations.

Parameswar Shukla had given a statement that from the last four years he is working in Vimal Auto Service as Helper in the Service Department. It has further been alleged that in view of Section 11 of Exclusion Clause of the policy the claim is not admissible because if an employee steals any property, then the policy clause does not permit for giving the claim amount. It is also alleged that there is no deficiency on behalf of the opposite party.

4. THE learned District Forum, after perusing the evidence on record and hearing both the parties, came to the conclusion that there was deficiency in service on behalf of the opposite party, Insurance Company, and hence it directed the Insurance Company to pay to the complainant a sum of Rs. 1,66,431/- along with 18% per annum interest with effect from 7.4.1997 till the date of payment. It also allowed a sum of Rs. 5,000/- as compensation and Rs. 1,000/- as cost. Aggrieved against the order of the learned District Forum, the opposite party Insurance Company has come in appeal and has challenged the correctness of the order passed by the District Forum.

5. WE have heard the learned Counsel for the parties. Learned Counsel for the Insurance Company has argued that Parameswar Shukla is an employee of the complainant and 403 nozzles which were stolen from the shop of the complainant were recovered from his possession along with possession of another person. According to learned Counsel if an employee of a shop commits theft, then the owner cannot get any amount of claim from the Insurance Company. The basic question in the case is whether Parameswar Shukla is an employee of the complainant or not and if he is an employee of the complainant whether recovery of so many nozzles in his possession will deprive the claimant of his compensation. In the first instance we do not find that there is any evidence on record to show that Parameswar Shukla was an employee of the complainant at his shop. The burden to prove this fact was on the Insurance Company, which it has utterly failed to discharge. According to the complainant this man, Parameswar Shukla, is working as an Apprentice and is not being paid any wages. There is no evidence on record to show that any amount towards wages is paid to Parameswar Shukla. In the absence of any evidence on record, it cannot be said that Parameswar Shukla was an employee of the complainant. The evidence of the complainant is very much clear on this point supported by an affidavit. Thus the Insurance Company has failed to prove that Parameswar Shukla is an employee of the complainant.

6. THE next question which arises for consideration is whether Parameswar Shukla had stolen the nozzles which has been recovered from his possession. Merely possessing the stolen property may raise a presumption that the theft might have been committed by the person, but it is not a conclusive evidence to prove the fact that Parameswar Shukla has committed the theft. The presumption cannot take the place of proof. Thus we find that the Insurance Company has failed to prove that the theft was committed by Parameswar Shukla. Thus we find that the judgment and order of the learned District Forum

are perfectly correct and requires no interference. The appeal is liable to be dismissed. ORDER The appeal is dismissed and the judgment and order of the learned District Forum are confirmed. The appellant shall pay a sum of Rs. 2,000/- as cost of appeal to the respondent/complainant. Let compliance of the order be made within a period of two months from today. Appeal dismissed.