
(2016) 08 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

Case No : 441 of 2007

MEHTA WATCH INDUSTRIES

APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 21(a)(ii) - Appeals - Jurisdiction of the National Commission

Citation : 2016 3 CPR 361

Hon'ble Judges : B.C. Gupta

Advocate : Sayid Marsook, Kishore Rawat

Final Decision : Appeal Dismissed

Judgement

1. This first appeal has been filed under Section 19 read with Section 21(a)(ii) of the Consumer Protection Act, 1986, challenging the impugned order dated 31.5.2007, passed by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (hereinafter referred as the "State Commission") in Consumer Complaint No.91/2000, vide which, the said complaint filed by the present appellants was ordered to be dismissed.

2. The complainant Mehta Watch Industry is a proprietary concern of Ramniklal Bhaichandbhai Mehta, situated at Gujarat Industrial Development Corporation (GIDC) Estate, Rajkot, and engaged in the manufacture of wrist watches. The complainant obtained an insurance policy from the respondent, United India Insurance Company for their factory and godown premises, valid for the period 16.4.1999 to 15.4.2000, against burglary and house-breaking for an insured sum of Rs.20 lakhs. It has been stated that during the intervening night of 14.10.1999 and 15.10.1999, there was theft at the factory premises and goods worth Rs.8.5 lakhs were stolen by making hole into a wall and taking keys of safe from the drawer and also by opening and damaging the safe. The facts came to notice when the factory was re-opened on 15.10.1999 at 10.30 a.m..

The matter was reported to the police and the insurance company was also informed. The insurance company appointed Shri Upender Shah as surveyor to assess the loss. The complainant supplied the required documents to the surveyor, but despite that, their claim was not paid by the insurance company. The consumer complaint was filed, seeking directions to the OP- insurance company to grant an amount of Rs.8.25 lakhs alongwith interest @ 18% per annum from 15.10.1999 onwards and also to pay Rs.50,000/- as compensation and litigation cost of Rs.10,000/-.

3. In their reply, filed before the District Forum, the insurance company stated that the complainant had violated the terms and conditions of the policy and hence, the claim had been rightly repudiated by them and there was no deficiency in service on their part. In the proposal form, the complainant had stated in clause 6 that they had deployed chowkidar to guard their premises during night hours. However, the said chowkidar was not on duty on the date of incident and hence, there was violation of the terms and conditions of the policy on the part of the complainant. Moreover, as stated by the complainant, duplicate keys had been placed in the drawer in their store office and the said keys were used to open the safe etc. The keys had thus, not been obtained by assault, violence or any threat and hence, under exclusion clause 7, the insurance company was not liable to make payment of the claim.

4. The State Commission, after taking into account the averments made by the parties, held that there had been clear violation of conditions no.7 and 8(a) of the policy and also the complainant could not ensure the presence of watchman as stated in column 6 of the proposal form and hence, there was no deficiency in service on the part of the OP insurance company. The State Commission dismissed the complaint, vide impugned order. Being aggrieved against the said order, the complainant is before this Commission by way of the present appeal.

5. During arguments before me, the learned counsel for the appellant/complainant has drawn attention to the report of the surveyor Upendra R. Shah, saying that at clause 9.5 of the said report, it had clearly been stated that no breach of any of the terms or conditions of the policy was noticed by the surveyor. The surveyor made assessment of the net claim as Rs.7,48,205/- in the said report, submitted on 15.2.2000. However, in an addendum to the report submitted on 20.4.2000, the surveyor made assessment of the net claim as Rs.6,51,678/-. The learned counsel argued that there could not be any departure from the report of the surveyor, unless valid reasons were given. The learned counsel has drawn attention to an order dated 17.9.2013, recorded by this Commission, in which it was observed that the respondent was bound by the report of the surveyor, but the learned counsel for the respondent was asked to find out vide this order, if any reasons were recorded for rejecting the report of the surveyor. The learned counsel has further drawn attention to an order passed by the Hon'ble Supreme Court in "Sri Venkateswara Syndicate Vs Oriental Insurance Company Limited & Anr. (2009) 8 SCC 507) , stating that unless there

was sufficient material to believe to the contrary, the report of the surveyor should be accepted. The learned counsel has referred to the repudiation letter dated 14.11.2000 of the OP company, saying that the claim had been duly forwarded by the Divisional Manager of the company to their Head Office for approval. The learned counsel also pointed out that theft has taken place by making entries into the premises by violent means and hence, exclusion clause 7 of the policy was not applicable.

6. Per contra, the learned counsel for the respondent insurance company has drawn attention to the impugned order passed by the State Commission, in which it has been stated that "the Advocate appearing on behalf of the complainant had fairly submitted that the watchman was absent on the date of incident and keys were in the drawer of the cupboard". The learned counsel pointed out that the complainant in their letter dated 26.4.2000, addressed to the insurance company, had categorically admitted that they had deployed a watchman to guard their premises, but the said watchman did not turn up for duty after 15 days and thereafter, they could not find any suitable person for security duty. In the said letter, the complainant also admitted that the thieves had used duplicate keys kept in the table. It was also stated that the entry of the thieves in the premises was forceful, but no force was applied to open the cupboard/locker. The violation in the terms and conditions of the policy had, therefore, been proved by the own admission of the complainant. The learned counsel stated that it was clearly written in column no.6 of the proposal form that a watchman was guarding the premises in question. On the day of incident, there was no watchman on the spot. The learned counsel argued that the claim was not payable, keeping in view the exclusion clause 7, the special condition 2 and exclusion clause 8(b) of the policy in question. The learned counsel has further drawn attention to the panchnama recorded by the police. In the said Panchnama, it is stated that there was no evidence of any scratches etc. on the cupboard. The learned counsel referred to an order passed by the Hon"ble Supreme Court in New India Assurance Company Ltd. Vs. Pradeep Kumar IV(2009) CPJ 46 (SC), saying that the report of the surveyor could be the basis for settlement of claim, but it was not the last and final word. Referring to another order of the Hon"ble Supreme Court in Polymat India Pvt. Ltd. and another vs. National Insurance Company Ltd. and others, IV(2004) CPJ 49 (SC), the learned counsel stated that the claim could not be paid even on non-standard basis. The learned counsel argued that it was a settled legal proposition that the terms and conditions of a policy have to be strictly followed, otherwise the claim is not payable.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

8. It is amply made clear from the facts on record that there was no watchman on duty, when the theft took place and also the thieves used the keys placed in the drawer on the premises in question. In the proposal form submitted before

the insurance company, the complainant stated that a chowkidar had been deployed to guard the premises. However in their own letter dated 26.4.2000 addressed to the insurance company, the complainant categorically stated that they had employed a watchman to guard their premises, but the said watchman, did not turn up for duty after 15 days. They tried to employ another watchman but could not find any suitable person for security. It is clear therefore, that the complainant failed to keep their premises guarded as per the commitment made in the proposal form with the insurer. Further, it has been stated in special condition no.2 of the policy that the keys of the safe or strongroom shall not be left on the premises out of business hours, unless the premises are occupied by the insured or by his authorised employee, in which case, the keys shall be deposited in a secure place not in the vicinity of the safe or strongroom. In their letter dated 26.4.2000 to the insurance company, the complainant stated that the thieves had used duplicate keys kept in the table and that no force was applied to open the cupboard/locker. It is very clear, therefore, that there has been a violation of special condition no.2 of the policy, because the complainant left the keys on the premises out of business hours and also, they did not make any effort to keep the keys at a secure place.

9. Further, the exclusion clause no.7 of the insurance policy says as follows: "Loss of money and/or other property abstracted from the safe following the use of the key to the said safe or any duplicate thereof belonging to the insured unless such key has been obtained by assault or violence or any threat.

10. Although the version given by the complainant is that the entry of the thieves was forcible, but there is no evidence on record to show that the keys had been obtained by assault or violence or any threat. Obviously, there is violation of condition no.7 of the policy as well. Further, in accordance with clause 8 (b) of the exclusion clause, the action of the complainant in not deploying the watchman or keeping the duplicate keys on the table or in the cupboard etc. amounts to increasing risks to the property in question and hence, there is violation of clause 8 (b) of the policy as well.

11. The main thrust of the argument given by the appellant/complainant is that the surveyor had mentioned in its report that there had been no violation of the terms and conditions of the policy. This version of the surveyor is evidently incorrect, keeping in view the facts and circumstances of the case and the own admission of the complainant, as brought out in the preceding paragraphs. It has been made clear in the order passed by the Hon"ble Supreme Court in *New India Assurance Company Ltd. Vs. Pradeep Kumar*(Supra) and also in the case cited by the complainant in " *Sri Venkateswara Syndicate Vs Oriental Insurance Company Limited & Anr. (supra)*, that the report made by the surveyor could be the basis for settlement of a claim, but the same was not binding upon the insurer or the insured. In *Sri Venkateswara Syndicate Vs Oriental Insurance Company Limited & Anr. (supra)*, the Hon"ble Apex Court observed that non consideration of material facts by the surveyor could be a ground for insurance company to appoint

another surveyor by conducting fresh survey. It is therefore, justified not to place reliance on the report of the said surveyor, since the violation of the terms and condition of the policy is proved from the material on record.

12. It is a settled legal preposition that the contract of insurance is a contract of good faith (*uberrima fides*) and the same has been brought out in a number of judgments passed by the Hon"ble Apex Court and this Commission. The insurance company was therefore fully justified in repudiating the claim, taking the plea that there had been violation of the material terms and conditions, governing the insurance policy. I, therefore, do not find any merit in this appeal and the same is ordered to be dismissed. The order passed by the State Commission is upheld with no order as to costs.