(2017) 03 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Case No : 88 of 2011

M/S. CROSS TRADE LINKS — APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

Indian Penal Code, 1860, Section 380 - Theft in dwelling-house, etc.

Citation : (2017) 03 NCDRC CK 0021

Hon'ble Judges : Ajit Bharihoke, Anup K Thakur

Advocate : SONIA MATHUR, Mohan Babu Agarwal

Final Decision : Appeal Dismissed

Judgement

1. The appellant herein being aggrieved of the dismissal of his complaint no. 152 of 2008 of the order dated 26.11.2010 passed by State Commission Delhi has preferred this appeal.

2. Briefly put, the facts relevant for disposal of the appeal are that appellant filed a consumer complaint in the State Commission Delhi alleging that he purchased a Burglary and House Breaking Policy from the respondent opposite party. The policy insured the stock in trade of the complainant at H-897 Phase No.3, Rico Industrial Area, Bhiwadi, Alwar. The sum assured was Rs.50,00,000/- for the period w.e.f. 27.10.05 to 26.10.2006.

3. According to the complainant he used to keep the raw material, goods in process and finished goods in the insured premises which also is the factory premises of M/s Amity Engineers, the sister concern. On 04.09.2006, the complainant came to know that the insured premises had been burgled by some miscreants who had taken away the material and machinery of M/s Amity Engineers as also the raw material, stock in process and the finished material of the complainant lying in the said premises. The complainant suffered huge loss of Rs.26,31,331/- because of loss of goods in the subject incident which was given effect by breaking four locks of the factory premises. The burglary was

reported to the police by M/s Amity Engineer and FIR No. 365 of 2006 under section 380 IPC was recorded at PS Bhiwadi.

4. It is further the case of the complainant that he intimated the burglary to the respondent opposite party and filed his insurance claim. The opposite party appointed a surveyor who conducted survey at the site of occurrence. The surveyor did not consider the true facts and closed the case as no claim vide letter dated 11.11.2007. The complainant sent a protest letter dated 20.11.2007 justifying its claim but the opposite party arbitrarily rejected the claim vide letter dated 26.03.2008. Being aggrieved of the repudiation of the claim, the appellant raised a consumer dispute by filing complaint in the State Commission Delhi.

5. The opposite party in its written statement justified repudiation of the insurance claim on the plea that as per the report of the surveyor, no evidence or sign of forcible / violent entry in the insured premises to commit theft was found. It was also pleaded in the written statement that surveyor closed the case as no claim because the complainant failed to cooperate and furnish necessary information.

6. The State Commission on consideration of evidence dismissed the complaint on three counts, namely, that the complainant failed to prove that the loss was caused due to burglary; the complainant failed to substantiate its allegations of loss to the tune of Rs.26,31,331/-; and that although the incident allegedly took place on 4 th September, 2006 the FIR was lodged much later on 15 th September, 2006 at P.S. Bhiwadi under Section 380 IPC.

7. Learned Shri Sushil Kumar Dubey, Advocate for the complainant has assailed the impugned order on the plea that the State Commission has returned the finding in utter disregard of the evidence. Expanding on the argument learned counsel has firstly contended that the State Commission has failed to appreciate that the theft resulting in loss was committed by breaking the locks of the insured premises covered by the burglary and housebreaking policy. It is contended that the State Commission has failed to appreciate that there is no provision in the IPC defining the term burglary and the dictionary meaning of burglary is commission of theft by a person who enters a building illegally with the intention to commit theft.

8. In order to appreciate the above contention of learned counsel for the appellant it would be useful to have a look on the relevant term of the insurance policy which is reproduced as under: - "The company hereby agree subject to terms, conditions and exclusions herein contained or endorsed or otherwise expressed hereon to indemnify the insured to the extent of intrinsic value of :

Any loss or damage to property or any part thereof whilst contained in the premises 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)

The insured shall give immediate notice thereof in writing to the nearest office with a copy of the policy issuing office of the company as well as lodge forthwith a complaint with the police.

The insured shall deliver to the company within 14 days of the date on which the event shall have come to his knowledge, a detailed statement in writing, of the loss or damage, with an estimate of intrinsic value of the property loss and the amount of damage sustained"

9. On bare reading of the above it is clear that the term burglary or housebreaking have been explained in the portion given in bracket as "theft following upon an actual forcible and violent entry of and/or exit from the premises and hold-up." Thus, in order to bring the subject theft under the burglary clause of the insurance policy the appellant was required to establish that the thief gained entry into the insured premises by forcible or violent means or exited from the premises by violent means or hold-up. Undisputedly, it is not a case of violent entry or violent exit. The stand of the appellant is that burglars gained entry into the insured premises by use of force i.e. breaking the locks. No doubt a case of entry into a premises by breaking open the lock can be termed as forcible entry but the question is whether the appellant has been able to establish that the alleged thief had entered into the insured premises by breaking the locks? The stand taken by the appellant complainant is that this is a case of burglary because the thief (s) entered into the subject premises forcibly by breaking open the locks. The aforesaid version of the appellant is not reliable for the following reasons:

10. It is admitted case of the appellant complainant that incident was reported in writing to the police vide complaint dated 04.09.2006. On perusal of said complaint, we find that there is no mention that the locks of the premises were broken for committing the theft. Even in the FIR dated 05.09.2006, there is no mention of breaking of locks by thieves to gain entry in the factory premises. The story of breaking open of the locks surfaced for the first time in the Claim Form filed by the insured, much later. This obviously is an after thought in order to bring the loss due to alleged theft within the four corners of the insurance policy. Thus, under the circumstances, we do not find any fault with the conclusion of the State Commission that the appellant complainant has failed to establish the loss caused due to burglary.

11. Even if for the sake of arguments it is assumed that theft was committed by breaking open the locks of the subject premises, then also in order to succeed, the appellant was required to prove that the stolen articles belonged to him. On perusal of record, we find that theft was reported to the police for the first time vide a complaint dated 04.09.2006 addressed to the SHO Bhiwadi by Anil Sharma of M/s Amity Engineers followed by the FIR. On perusal of said complaint and FIR, we find that there is not even a whisper that alleged stolen goods belonged to the appellant M/s Cross Trade Links. Even in the letter dated 14.09.2006 sent by M/s Amity Engineers to the respondent insurance company,

there is no mention that the goods belonging to the appellant were stolen. Thus, it is highly improbable that the stolen goods belonged to the appellant. Therefore, also the order of the State Commission cannot be faulted.

12. In view of the discussion above, we do not find any infirmity in the impugned order. The appeal being without merit is dismissed.

