(2015) 12 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

Case No : 3307 of 2011

M/S. RATNAMALA JEWELLERS APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Indian Penal Code, 1860, Section 379 - Punishment for theft

Citation : 2016 1 CPJ 257

Hon'ble Judges : J.M. Malik, Dr. S.M. Kantikar

Advocate : S.K. Sharma, R.A. Gupta, R.K. Gupta

Judgement

1. M/s Ratnamala Jewellers, the proprietorship concern, the complainant got the insurance cover for jewellery of gold and silver or other ornaments from the New India Assurance Co. Ltd. The policy was in respect of theft, robbery etc., kept in insured''s business premises or held in trust or on commission.

2. During the subsistence of the policy, on 14.02.2001, upon demand from its customers M/s Mahavir Jewellers and M/s Parshwa Jewellers, the complainant instructed his employee Mr. Dinesh Kumar Mantri to carry ornaments in noon time weighing 1295 gms., i.e. more than 1 Kg. to its customers. The authority letter was issued. The said ornaments were covered in brown

cover plastic bag, then taken in canvas bag and alongwith bag the said employee boarded double decker bus. While he was getting down, somebody cut the said bag with short weapon and removed the whole packet containing the ornaments. The police could not arrest the thief.

3. The surveyor investigated the case and the Insurance Company repudiated the claim. The defence set up by the OP was that there was violation of the terms and conditions of the policy and proper care was not taken.

4. The District Forum allowed the complaint and directed the OP to pay a sum of Rs.4,41,605/- with interest @ 9% p.a. from 14.03.2001 and also directed to pay

compensation for a sum of Rs.10,000/- and litigation costs in the sum of Rs.5,000/-.

5. During the appeal, the State Commission set aside the order passed by the District Forum and dismissed the complaint.

6. We have heard the counsel for the parties. Learned counsel for the petitioner/ complainant submitted that there was no violation of the terms and conditions of the policy and it was a practice to take the jewellery by bus. The ''Conditions Precedent to Liability'' are reproduced here as under:- "(i) Book Keeping :

The Insured shall keep a daily record of the property (quantity, quality and value) both on the premises and entrusted to any person covered under the Policy, such record shall be deposited in a secured place in the insured premises. Preferably a copy be maintained at a place other than the insured''s business premises. The record should be produced as documentary evidence in support of a claim under this policy. (ii) Maintenance of keys :

The keys to the premises &/or sale shall not be left on the premises out of business hours unless the premises are occupied by the insured or any authorized employees of the insured, in which case, such keys it left on the premises shall be deposited in a secured place. (iii) Entrustment :

The Insured shall cause the persons to whom the Insured property is entrusted to maintain a daily record of the property, (quantity, quality and value) entrusted by all persons to them. Such records shall be deposited in a secured place and produced as documentary evidence".

7. We have also perused the report of the Surveyor. The Surveyor assessed the loss at Rs.4,41,605/- but he also observed:- "6.5 However, the Insured''s (inventory records) did not reflect movements of ornaments which were entrusted to their employee for sales trips and the returns when remaining unsold. These outward movements when goods were reportedly carried for inspection of jewellers were not documented. The sales during the trip if any were billed on return the salesman.

6.7 The accounts were written up at half yearly intervals. However, in view of the small nature of the business and the staffing level, the practise was not unusual with traders and showrooms with business of similar volume and size.

7.5 The movements of ornaments and jewellery outside the Insured''s business premises for the purpose of inspection and/or sale were not documented.

7.6 As reported, the insured''s saleman Mr. Dinesh Kumar Mantri, commutted by public transport i.e. by BEST buses, auto rikshaws and/or train. During these transits, the ornaments were generally packed in brown paper wrappers/covers which were bound with rubber bands. The covers were packed into a polythene bags and these polythene bags were carried in a rexine or canvas portfolio with a shoulder sling and a chain device for locking.

11.2 Earlier, at around 15.00 hours on February 14,2001, the Insured had entrusted Mr. Dinesh Kumar Mantri with 1,295 gms (net) of 22 ct. gold ornaments comprising of 29 chains/mangalsutras and 15 bracelets. The entrustment to Mr. Dinesh Kumar Mantri had not been documented or recorded or evidenced by an approval memo and/or issue voucher. These comprised of jewellery which was primarily not in the display at the insured''s showroom.

11.4 At around 15.30 hours Mr. Dineshkumar Mantri boarded a double decker BEST bus plying on route no. 203, moving towards Borivali (West). He moved into the gangway of the bus and secured a seat somewhere in the centre of the lower deck. He kept the portfolio on his lap. When the bus crossed the Poisar bus stop at around 13.55 hours or so, Mr. Mantri moved to the foot board of the bus so that he could disembark at the Mulji Nagar bus stop. There were a few other

passengers at the foot board, all waiting to disembark. The portfolio was slung over his shoulder and also held with his right hand. At around 16.00 hours or so, Mr. Mantri disembarked from the bus at the Mulji Nagar bus stop at Borivali (West). He immediately realised that the Portfolio held by him appeared lighter in weight. He checked the portfolio and found that although the locking chain was intact, the bag had been slit at the side. On examining the portfolio, he detected that the plastic package holding the two covers with ornaments was missing.

12.1 Mr. Dinesh Kumar Mantri had registered a complaint with the Borivali Police Station, Mumbai which was recorded vide FIR No. 83/2001 at 19.30 hours on February 14, 2001. A case of theft was registered under Section 379 of the Indian Penal Code.

16.2 During the course of our visit on February 16, 2001 we inventoried the insured''s stock available at their showroom. The physical stocks could not be immediately reconciled with the Insured''s accounts as the Insured''s primary records and accounting and inventory records were not readily available. The Insured''s cash book was also not immediately available.

16.5 The Insured''s business with retail jewellers was fairly recent, the Insured were unable to evidence or provide documentary evidence with respect to the number of such trips undertaken by their salesman since the commencement of this line of business.

16.7 An analysis of the Insured''s accounts indicated the Insured''s inventories of 22 cts gold ornaments were relatively high in comparison with their recorded sales and exceeded 24 months sales volume.

17.6 This entrustment of 1295 gms of ornaments to Mr. Dinesh Kumar Mantri had not been documented. The insured represented that this entrustment was in the normal course of business and was generally not documented till sold, if at all.

17.8 The sales of this volume over a three month period did not appear to warrant the carrying of stocks of the volume of 1,295 gms to the jewellers premises. However, the Insured submitted that a large number of articles had to be offered for selection to jewellers to enable them to stock assorted variety at their showrooms ".

8. The facts and circumstances of the above said report clearly go to show that none of the above said terms and conditions were complied with. Even if, the petitioner was a small jeweller, he should not have sent one person, all alone, with jewellery weighing more than a Kg. It is difficult to fathom why did Mr. Mantri go in a double decker bus. The story appears to be made out of whole cloth. Again, he could not catch/hold the thief when a huge amount of gold was stolen from his possession. He was not carrying a toffee or a packet of chocolate, that he does not know when the same was stolen, but he was carrying good amount of gold. The person should

have come to know immediately at the moment when about one kg gold is removed from his bag. The gold should have been taken in locked brief case.

9. It is also surprising to note that he did not inform the owner immediately. The police was informed about at 7-30 P.M., i.e., 31/2hours from the theft of the gold. He should have used the mobile or should have made a call from the local phone call booth or any neighboring shop. The story propounded by the complainant does not just stack up. The order passed by the State Commission cannot be faulted and the same is hereby affirmed and the Revision Petition is dismissed.

