(2017) 09 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Case No : 540 of 2016

M/S. SANGAM DIAMONDS THROUGH ITS PROPREITOR SHRI VIKAS J. SOLANKI — APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED — RESPONDENT

Date of Decision : 06-09-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 21(a)(2) - Appeals - Jurisdiction of the National Commission

Citation : 2017 4 CPR 33

Hon'ble Judges : B.C. Gupta

Advocate : Sukumar Pattjoshi, Sunil Mund, K.K. Bhat

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 against the impugned order dated 10.03.2016, passed by the Andhra Pradesh State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission'') in Consumer Complaint No. CC/13/278, vide which, the said complaint was ordered to be dismissed.

2. Briefly stated, the facts of the case are that the complainant M/s. Sangam Diamonds, which is a proprietary concern of Vikas J. Solanki is engaged in the wholesale business of gold-diamond jewellery. The complainant obtained an insurance policy called the Jeweller''s Block Policy for a total sum of 40.47 crores, which included the property in the lock/safe, the property in the custody of the insured, partners, directors, brokers, employees etc. and also for cash and currency while in transit, furniture, fixtures, fittings etc. The said policy was valid for the period 26.08.2011 to 25.08.2012 and a premium of 2,83,533/- had been paid to the opposite party (OP) Insurance Company. It is stated in the consumer complaint that on 21.05.2012, one of the employees of the complainant Chetan Raj Gaur left Mumbai by air and he was in possession of Jewellery having

approximate value of 99 lakhs, that consisted of gold-diamond studded jewellery, gross weight 1391.980 gms, gold 1352.482 gms, diamond 183.22 gms cts studded and colour stones 1.27 cts. The said employee Chetan Raj Gaur met other employees of the complainant at Bangalore and visited various customers for approval of their merchandise. After obtaining orders from the customers, Chetan Raj Gaur and another employee Bhupender Upadhyay boarded a bus, belonging to M/s. Sharma Travels at 10:30 PM on that very day for coming back to Mumbai. They were carrying the jewellery described above worth approx. value of 99 lakhs in an executive bag. The said bag was chained to the bus seat of Bhupinder Upadhyay. The said bus which started at 10:30 PM from Bangalore, stopped at Kolhapur at 8:30 AM for refreshments the next morning. They checked the bag containing the jewellery at that time and found it to be intact. As per the norms of M/s. Sharma Travels, all the passengers were required to get down from the bus and the doors and glass of windows of the bus were shut by the driver/cleaner. However, when Chetan Raj Gaur and Bhupinder Upadhyay boarded the bus again with other passengers after taking the refreshments, they noticed that the said jewellery was missing from the executive bag. They asked the bus to stop and checked the bags of all the passengers thoroughly. The local police was also informed, which came immediately and checked the bags of all passengers as well as the bus, but could not find the jewellery. An FIR bearing No. 22588 about the incident was then registered with the Police. They recorded the statements of the Bus driver as well as the statements of the employees of the complainant. On that very day, i.e., 22.05.2012, the complainant informed the OP Insurance Company about the incident. The said company appointed a surveyor to examine the claim of the complainant. The report of the surveyor was submitted on 22.12.2012, i.e., after seven months of the incident. In the said report, although the factum of theft was admitted, but the surveyor reported that the employees of the complainant were not diligent in taking care of the jewellery. Based on the report of the surveyor, the OP Insurance Company repudiated the claim of the complainants, saying that there was violation of the terms and conditions of the policy on the part of the complainant. Alleging deficiency in service on the part of the OP Insurance Company, the complainant filed the consumer complaint in question, seeking directions to the insurance company to pay a sum of 99 lakhs to them alongwith interest @18% p.a.

3. The complaint was resisted by the OP Insurance Company by saying that the claim was not payable on account of violation of the terms and conditions of the policy on the part of the complainant. It was also averred that the matter involved complicated questions of law and fact, which could not be decided in summary proceedings. Moreover, the complainants did not fall under the definition of consumer, as they were carrying on commercial activities. The State Commission after taking into account the averments of the parties dismissed the consumer complaint, stating that the complainants had violated condition no. 10 of the policy in question, as they had not exercised due diligence in the matter to avoid or to diminish the loss. Being aggrieved against the impugned order of the

State Commission dated 10.03.2016, the complainants are before this Commission by way of the present first appeal.

4. It was argued by the learned Senior Advocate for the appellants that the employees of the complainant had exercised due diligence in the matter to safeguard the property in question. The contention made by the State Commission in the impugned order that the employees of the complainant should have taken the bag containing the jewellery with them, when they got down form the bus for taking refreshments, is not tenable, because it would be safe to leave the bag carrying valuables inside the bus, rather than carrying it with them, while going away from the bus for refreshments. The learned Senior Advocate has drawn attention to the statement made by the driver of the bus during police investigation, in which he stated that as per the rules of their company, all passengers had to get down from the bus in the case of halt at any place. After the passengers get down, all glasses of the bus and the doors are locked till the passengers come back. In the present case, when all the passengers got down, only one aged lady alongwith one small girl was sitting in the bus. However, the said persons were also made to get down from the bus and the doors of the bus were locked. The learned Senior Advocate argued that no deficiency could be pointed out on the part of the employees of the complainant in leaving the jewellery bag inside the bus, because all the passengers were made to get down the bus. The learned Senior Advocate argued that the contention raised by the opposite party that the bag carrying jewellery was not locked, does not have any significance, because there was no passenger left in the bus at the time of its halt at Kolhapur. The learned Senior Advocate has drawn attention to the report submitted by the surveyor also, saying that the said surveyor had assessed the loss as 87,13,230/- to the complainants. The Insurance Company, therefore, should have allowed the claim of the complainants under the Insurance Policy.

5. The learned counsel for the OP Insurance Company stated, per contra, that as per the own version of the complainants, the box containing the jewellery was lying in a leather bag and no lock etc. had been put on the same, as was clear from the statement made by Chetan Raj Gaur. When he went by morning flight to Bangalore on 21.05.2012, he was carrying diamond ornaments in a leather type office/executive bag which did not have any lock. The learned counsel argued that the claim had been rightly repudiated by the insurance company, relying upon clause 10 of the Policy in question, which reads as follows:-

"The insured shall use due diligence and do and concur in doing all efforts reasonable practicable to avoid or diminish any loss under this Policy."

6. The learned counsel further argued that it had been brought out in the report of the surveyor as well that there was gross negligence on the part of the insured and hence, violation of the terms and conditions of the policy.

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

8. The OP Insurance Company repudiated the claim of the complainant vide their letter dated 04.03.2013, relying upon clause 10 of the Jeweller''s Block Policy, as per which, the insured is expected to use due diligence and make all efforts reasonable/practical to avoid or diminish any loss under the policy. It has been adequately brought out from the statements given by the employees of the complainant that the bag containing the jewellery worth 99 lakhs was being carried without any lock. During bus journey also, the bag is stated to have been tied to the seat with a chain and the said jewellery was left unattended, when the employees of the complainant got down from the bus to have refreshments. Although, it has been argued that leaving the jewellery inside the bus, when all the passengers got down from the bus, was comparatively safer than carrying it outside, it appears unnatural that a bag containing such valuable items is left unattended inside the bus without any lock. The least that could have been done in such a situation was that one of the employees could have gone for refreshments, but the other should have stood near the bus to ensure safety of the property. It has also not been made clear, as to whether the doors of the bus were reopened only after all the passengers including the employees of the complainant had returned from the refreshments. It is evident, therefore, that the bag containing the property was left unguarded, when the employees of the complainant had gone away for taking refreshments.

9. Based on the discussion above, I have no reason to disagree with the findings of the State Commission that both the employees acted in a casual manner and the theft took place due to lack of proper care and negligent attitude of the employees. There is no sufficient ground, therefore, for giving relief to the complainants in the instant appeal and the same is ordered to be dismissed. The order passed by the State Commission is upheld. There shall be no order as to costs.