(2015) 04 NCDRC CK 0218

In the National Consumer Disputes Redressal Commission

Case No : NO 1557 of 2014

NARESH CLOTH STORES — APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED & ANR. — RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2015 3 CPJ 213

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : R.K. Bhawnani, Mohd. Anis Ur Rehman

Judgement

1. The complainant/petitioner took a loan from the Respondent No.2 State Bank of India against hypothecation of stock and also took an insurance policy from the Respondent No.1 New India Assurance Co. Ltd. insuring the goods which had been kept in his shop. The said policy was valid from 13.5.2008 to 12.5.2009. In the night intervening 28/29 th August, 2008, a theft took place in the shop of the complainant and according to him material worth about Rupees five lacs was stolen. The complainant submitted a claim for Rs.4,31,477/- with the insurance company, which appointed a surveyor to assess the loss claimed by the complainant. The insurance company later informed the complainant that the claim was not payable because the insurance policy had been taken in respect of the goods kept at Kharora whereas the theft had taken place in the shop situated at Tilda. Alleging negligence on the part of the opposite parties/respondents, the complainant approached the concerned District Forum, seeking payment of the claim amount of Rs. 4,31,577/- alongwith compensation amounting to Rs.2.00 lacs and cost of litigation.

2. The complaint was opposed by the insurance company on the ground that since they had insured only the goods kept in the shop at New Bus Stand Kharora, they were not liable to pay any amount to the complainant on account of the theft of the goods which he had kept in his shop at Tilda. It was also pointed out in the reply filed by the insurance company that the policy issued by

them was also in respect of the shop at near bus stand Kharora. The bank however, did not file any written statement contesting the complaint. Vide its order dated 24.12.2010, the concerned District Forum directed the insurance company to pay a sum of Rs.79,567/- to the complainant along with interest @ 6% per annum.

3. Being dissatisfied with the order passed by the District Forum, the insurance company approached the concerned State Commission by way of an appeal. Since the complainant was also not satisfied with the compensation awarded to him, he also filed a separate appeal challenging the order passed by the District Forum. Vide impugned order dated 23.12.2013, the State Commission allowed the appeal filed by the insurance company and the appeal filed by the complainant was dismissed. Being aggrieved from the dismissal of his complaint, the complainant is before this Commission by way of this revision petition.

4. A perusal of the insurance policy issued to the complainant clearly shows that the said policy was in respect of only of the goods kept in the shop of the complainant at New Bus Stand Kharora, Raipur. Admittedly, the incident of theft took place in the shop of the complainant at Tilda and not in the shop at New Bus stand, Khorora. Therefore, the order passed by the District Forum, directing payment of cost of Rs.79,567/- by the insurance company cannot be sustained.

5. It was contended by the learned counsel for the complainant that the Bank was required to obtain insurance policy in respect of the shop at Tilda and therefore, it was negligent in taking the policy at the address of the New Bus Stand Kharora, Raipur. A perusal of the impugned order would show that the counsel representing the bank contended before the State Commission that the insurance policy was issued for the shop at Tilda, by mistake the address of Kharora was mentioned and noticing the said mistake, they had asked the insurance company to correct the mistake.

6. There is no evidence of the bank having requested the insurance company to issue the policy in respect of the goods kept in the shop of the complainant at Tilda. There is no evidence of either the complainant or the bank having requested the insurance company, at any time before the theft took place on 28/29.8.2008 requesting the said company to change the address in the policy from the shop at Kharora to the shop at Tilda. Document No. A-2 requesting for change of address in the policy was produced before the District Forum, but the seal of the insurance company on the said letter clearly showed that it was received by the said company only on 08.9.2008, much after the theft had already taken place. It is thus obvious, that at the time theft took place, there was no insurance in respect of the goods kept in Tilda shop of the complainant. The goods in the shop at Tilda having not been insured, the insurance company cannot be asked to reimburse the complainant for the loss of the said goods.

7. It has come in the complaint that the insurance policy used to be taken by the State Bank of India and the amount of premium used to be deducted every year

from the account of the complainant. It is also alleged that since the policy was kept by the bank, the complainant had no knowledge of the address at which the policy was taken by the bank. It is also claimed in para 14 of the complaint that the bank was negligent since it did not notice that the premium was being deducted from Naresh Cloth Store, Tilda, whereas the policy was issued in the name of the Naresh Cloth Store, Kharora. The aforesaid averments made in the complaint have gone virtually unrebutted by the bank, which did not file any reply controverting the said averment. If the insurance policy used to be taken by the bank and not directly by the complainant and it used to be kept by the bank, there was gross deficiency on the part of the State Bank of India in rendering services to the complainant since it ought to have obtained policy in respect of the goods kept at the shop of the complainant in Tilda whereas the policy was obtained in respect of the goods kept in the shop at Kharora. Had the bank obtained the policy in respect of the correct shop, the complainant would have been reimbursed by the insurance company, in respect of the loss of the goods kept in the shop at Tilda.

8. The surveyor appointed by the insurance company assed the loss to the complainant at Rs.79,567/-, respondent No.2 bank therefore, is liable to pay the aforesaid amount to the complainant.

9. For the reasons stated herein above, while maintaining the order of the State Commission, qua the insurance company, we direct respondent No.2 State bank of India to pay aforesaid amount of Rs.79,567/- to the complainant along with interest @ 9% per annum from the date of filing of the complaint. In the facts and circumstances of the case, there shall be no order as to costs.

