(2012) 12 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD — APPELLANT

Vs

Ajay Industrial Corporation, Precision Pipes And Profiles — RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Citation : 2012 0 NCDRC 846 : 2013 1 CPJ 14

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Appeal allowed

Judgement

1. TWO First Appeals (F.A. Nos. 473/2007 and 474/2007) have been filed by the National Insurance Co. Ltd. (hereinafter referred to as the ''Appellant '') being aggrieved by the orders of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the ''State Commission '') in Complaints Nos. 20 and 21 of 1997 decided in favour of Ajay Industrial Corporation and M/s. Precision Pipes and Profiles, original complainants before the State Commission and Respondents herein. Since the facts involved in two appeals are similar, it is decided to dispose of these appeals by a common order by taking the facts from F.A. No. 473/2007.

2. IN the complaint filed before the State Commission, it was stated that Respondents/Complainants are partnership firms and manufacturers of PVC Pipes, deep-well handpumps, plastic cane, etc. for which they had been importing PVC resin. In order to secure their money transaction risk including cash, Respondents had been taking Money-Insurance Policy from Appellant/ Insurance Company for the past 5 to 6 years in respect of loss of money with single carrying limit of Rs. 4 lakh and annual carrying limit of Rs. 50 lakh. The policy covered the loss of money by any cause from the safe or strong room whilst in the premises and the risk was for Rs. 5 lakh. An additional premium for infidelity risks of cash was also paid after which the policy was extended to cover loss of money as described in that schedule through the dishonesty of cash carrying messengers or employees. This policy was last renewed on 9.11.1993 and was valid upto 8.11.1994. On 14.5.1994 at about 6 p.m., Respondents ''

Accountant locked the money in the office cabinet and on the next working day i.e. on 16.5.1994 (15.5.1994 was a Sunday) he came to the office and found that cash of Rs. 9 lakh was missing, out of which Rs. 5 lakh belonged to the Respondent (Ajay Industrial Corporation) and Rs. 4 lakh to M/s. Precision Pipes and Profiles, Respondent in F.A. No. 474/2007. Since a Peon, Moti Rana, was also found to be absconding and all efforts to locate him including by the Police with whom an FIR was lodged, proved futile, it was apparent that he had, by using a duplicate/master key, opened the cabinet between 8.15 a.m. and 8.30 a.m. and stolen the missing cash. Apart from getting the case registered with the police, Appellant/Insurance Company was also immediately informed and a claim was lodged on 17.5.1994 for which necessary documents and information were furnished. Appellant/Insurance Company appointed a Surveyor to investigate and assess the loss. On 29.1.1995, Appellant/Insurance Company sent a communication to the Respondents repudiating the claim by observing as follows: "This has reference to alleged theft from locked cabinet at your premises by your employee. In this connection we would like to inform you that the circumstances under which the theft is reported to have taken place is beyond the scope of insurance cover under the above mentioned policy. Our Surveyor has also submitted his report accordingly. We, therefore, regret our inability to consider the claim and closing the file as ''No Claim ''. "

Although, Respondents protested against the arbitrary manner of repudiation since the survey report was not provided to the Respondents and further the claim was wrongly repudiated, since premium had been charged against Infidelity Guarantee which sought to cover the loss caused by various causes including infidelity by an employee the Appellant/Insurance Company was not justified in repudiating the claim. However, when there was no satisfactory response from the Appellant/Insurance Company, Respondents filed a complaint before the State Commission on grounds of deficiency in service and requested that Appellants be directed to pay the Respondent Rs. 5 lakh, being the sum insured as per the insurance policy, Rs. 3 lakh as compensation for causing harassment with interest @ 21% per annum after 3 months from the date of intimation of the claim and Rs. l lakh as litigation costs.

3. APPELLANT /Insurance Company on being served filed written submissions in which it denied that there was any deficiency in service and contended that the claim was rightly repudiated in terms of the insurance policy.

4. THE State Commission after hearing both parties and considering evidence on record, allowed the complaint by observing as under: "As is apparent, the aforesaid clause covered for Rs. 1 lac against loss of cash in safe as well as infidelity of the employee. The total effect of this clause is that the complainant had only covered the risk to the tune of Rs. 1 lac may be on account of loss of cash from safe or infidelity of the employee and therefore the question of repudiation of the claim on account of failure of the complainant to prove the burglary or house breaking, etc. did not arise. The loss has to be adjudicated

only in terms of the policy which is contract between the parties and if consumer suffers loss in such a policy which is on account of loss of cash in safe or infidelity of the employee, the same has to be reimbursed. Let us assume that duplicate key was supplied to the said employee of the complainant or procured and it was on account of this key that the said employee had taken away the money. Such an act of employee comes within the ambit of provisions of infidelity clause. What is infidelity? It necessarily means unfaithfulness. Procuring of duplicate key certainly is an act of unfaithfulness. It is not a case of the OP that no such loss ever took place. Though the complainant had claimed that there was loss of Rs. 4 lacs but since the policy covered only to the limit of Rs. 1 lac, we allow the complaint to the extent of Rs. 1 lac with Rs. 25,000 as compensation for mental agony and harassment suffered by the complainant and Rs. 10,000 as cost of proceedings. "

Being aggrieved, the present First Appeals have been filed by the Appellant/ Insurance Company.

5. COUNSEL for both parties made oral submissions. Counsel for Appellant contended that the claim was rightly repudiated keeping in view the provisions of the policy. It was specifically pointed out that as per the provisions of the Money Insurance Policy taken by the Respondents, the insurance was for the loss of money in transit by the insured or insured ''s authorised employee occasioned by robbery, theft or any other fortuitous cause. Further, as per the Exclusion Clause the Appellant/Insurance Company could indemnify the loss of money from safe or strongroom following use of the key to the safe or strongroom or any duplicate thereof belonging to the Insured, only if this had been obtained by threat or by violence. Counsel for Appellant contended that the State Commission erred in allowing the complaint in terms of the Infidelity risk provision without taking into account the fact that this clause was applicable only if the money was taken away dishonestly either by a messenger or an employee during transit. In the instant case since the money was not taken away from the office cabinet either by threat or by violence and nor was it misappropriated by an employee during transit, the loss was not covered as per the provisions of the Money Insurance Policy including the Infidelity risk. This was also the finding of the Surveyor who conducted a detailed investigation into the matter. Counsel for Appellant further contended that although two separate Money Insurance Policies were taken out by Respondent (Ajay Industrial Corporation) and M/s. Precision Pipes and Profiles, Respondent in F.A. No. 474/2007 being separate business entities operating from the same premises and using the same safe as well as common Accountant, it was not clear as to whom the money belonged as also the amount of the concerned Respondents. However, as stated earlier, the claim was repudiated in terms of the insurance policy which was common for both Respondents in both First Appeals.

6. COUNSEL for Respondents emphasized that Respondents had paid additional premium for the Infidelity risk specifically to cover the risk of cash being

misappropriated or stolen by their employees and the State Commission had rightly appreciated this provision and given the required relief. We have heard learned Counsel for both parties and have gone through the evidence on record. The facts pertaining to the Respondents '' taking Money Insurance Policies from Appellant/Insurance Company as also the risk to cover infidelity by an employee are not in dispute. It is also an admitted fact that despite best efforts of the Police, the accused employee could not be apprehended and an untraced report was sent to the Court. We have carefully gone through the provisions of the Money Insurance Policy and we find force in the contention of the Appellant/ Insurance Company that as per the provisions of the Money Insurance Policy, the loss of money could only be indemnified if it was in transit or if the money had been taken from the safe or strongroom by threat or by violence. Further, we have also carefully gone through the provisions of Infidelity risk cover for which an additional premium was paid and we again agree with the Appellant/ Insurance Company that this loss could have been indemnified only if the money had been misappropriated by an employee while it was in transit. In the instant case, it is not in dispute that the money was taken from the office cabinet of the Respondents by one of their employees by using a duplicate/master key and not through the use of any violence or force. Therefore, as per the provisions of the insurance policy, the claim could not have been indemnified. Further, while it is a fact that Respondents had paid additional premium to cover the risks of infidelity by their employees/messengers to cover the loss of money, as per the Infidelity clause, the loss could only have been indemnified if the money was taken by an employee when it was in transit. Admittedly the money was stolen from the office cabinet and not misappropriated in transit.

7. IT is well established through a number of judgments including of the Hon ''ble Supreme Court in United India Insurance Co. Ltd. v. M/s. Harchand Rai Chandan Lal, I (2003) CPJ 393, that "an insurance policy is a contractual agreement between the parties and its meaning has to be construed strictly in terms of the conditions of the policy..........and nothing can be added or subtracted from it ". In the instant case, in view of the clear and unambiguous provisions of the Money Insurance Policy as also the Infidelity risk cover, we agree that the Appellant/Insurance Company was justified in repudiating the claims of the Respondents since the money was, though admittedly stolen, but without the use of threat or violence and from the office cabinet and not in transit. Therefore, keeping in view the circumstances of this case as discussed above and respectfully following the judgment of the Hon ''ble Supreme Court, we are unable to uphold the orders of the State Commission and set aside the same. The First Appeals are allowed with no order as to costs. First Appeal allowed.