

(2001) 05 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd.

APPELLANT

Vs

PUBLIC TYPE COLLEGE

RESPONDENT

Date of Decision : 10-05-2001

Acts Referred:

Citation : 2001 2 CPJ 26

Hon'ble Judges : D.P.Wadhwa , C.L.Chaudhry , J.K.Mehra , B.K.Taimni J.

Final Decision : Petition dismissed

Judgement

1. THIS is insurer petition under Clause (b) of Section 21 of the Consumer Protection Act, 1986. Insurance Company as opposite party lost both before the District Forum as well as in the State Commission.

2. RESPONDENT (complainant) purchased an electronic plain paper copier for a sum of Rs. 1,40,000/- and insured the same with the petitioner for burglary/theft and fire. During the subsistence of the insurance policy on the night of 6th and 7th August, 1994 the machine along with another machine was stolen from the premises of the complainant by someone by way of house breaking for which a criminal case was registered by the police. Complainant alleged that house breaking took place by opening the locks of the door of the shop which was done either by using duplicate keys by the thieves or by using second set of keys which complainant said he had lost about an year back. Police did investigate the case but neither the machine nor the thieves were traceable. Complainant filed his claim under the insurance policy and submitted all the relevant documents. His claim was denied by the insurer. It was contended that insurer was liable to indemnify the insured only if any loss or damage was caused to the insured property due to burglary or house breaking and theft following upon actual forcible and violent entry in the premises and also if the keys had been obtained by assault or violence or under any threat. It was thus stated that there was no forcible entry in the premises of the complainant nor the keys were obtained by assault or violence or any threat. Insurer contended that there was no such allegation in the complaint and it was right in repudiating claim of the

complainant as it did not satisfy the terms and conditions of the insurance policy.

District Forum after considering the terms of the policy and the provisions of law came to the conclusion that claim was covered under the policy and allowed the complaint. It directed the insurer to pay Rs. 1,40,000/- with interest @ 18% per annum. It awarded cost of Rs. 1,000/- as well to the complainant. The insurer went in appeal to the State Commission which, as noted above, dismissed the appeal which order is now impugned before us.

3. IF we refer to the order of the State Commission there is no such discussion that the insurance policy did not cover the theft in question of the photo copier. Only plea which appeared to have been taken before the State Commission was that the District Forum did not take into account the depreciator of the machine which had been purchased in the year 1989. State Commission, however, reduced interest from 18% to 12% otherwise maintaining the order of the District Forum. In the grounds of appeal to the State Commission we find that the Insurance Company did take up the ground that the claim was not covered under the insurance policy inasmuch as there was no forcible entry in the premises and further that there was no evidence of any violence. In the grounds of revision before National Commission this very plea has also been taken. In spite of the fact that before the State Commission during the course of arguments the plea of exclusionary clause was not taken as we do not find any discussion in the judgment. We accept the submissions of the Insurance Company that such a plea was raised though not considered. We have not been addressed any argument on the plea of depreciation of value of the machine which we rather find was not taken in the grounds of appeal before the State Commission. We allowed the insurer to take up the plea on forcible and/or violent entry in the premises for committing theft and heard the learned Counsel if the insurance policy did not cover the case in hand. Schedule to the insurance policy which perhaps is the cover note contains the description of the machine, its insured value and the premium etc. It is mentioned that the policy pertains to "Burglary and House Breaking Policy".

4. REFERENCE has been made to the operative clause of the insurance policy which is to the following effect : "The Company hereby agrees subject to terms, conditions. and exclusions herein contained or endorsed of otherwise expressed hereon to indemnify the insured to the extent of intrinsic value of : (a) any loss or damage to property or any part thereof whilst contained in the premises described in the schedule thereto due to Burglary or House Breaking (theft following upon an actual forcible and violent entry of and/or exit from the premises). (b) Damage caused to the premises to be made good by the insured resulting from burglary and/or house breaking or any attempt threat any time during the period of insurance : Provided always that the liability of the Company shall in no case exceed the sum insured stated against each item of Total Sum Insured stated in the Schedule."

In the grounds of appeal before the State Commission it was stated by the

insurer that there was no forcible entry in the premises. Further that there was no evidence of any violence. In the grounds of revision before us it has been stated that the Surveyor appointed by the insurer reported that there was no forcible or violent entry in the premises from where theft took place. It was pleaded that since there was no forcible or violent entry which had been proved, there was no burglary or house-breaking. It would be thus seen insurer itself understood the term burglary or house breaking, in the clause quoted above, that there has to be forcible or violent entry in the premises. Complainant submitted that the words "theft following upon an actual forcible and violent entry" as appearing in the bracket portion after the word house breaking in the clause applied only to house breaking and not burglary. According to Insurance Company itself, the entry to the premises has either to be forcible or violent. It was contended by the insurer that there was no evidence that there was forcible entry into the premises of the complainant for the purpose of making theft and since no burglary was committed the insurance policy did not cover a simple theft. We do not find insurer is right in its mission. In common parlance burglary is understood as theft. We have not been told if there was any separate policy for theft. If we draw on our knowledge as to what has happened in normal course of events, which we can do in these proceedings, it can safely be assumed that complainant asked for insurance cover for theft and the Insurance Company did insure the property against theft by giving the policy name Burglary and House Breaking. Question is what does a common man understand by the term burglary when he goes for insurance to cover the case of theft ? We do not have to go for any legal terminology of the word or strict meaning of the term in English Dictionaries. Even these dictionaries give different meaning to the term burglary. If we refer to the Concise Oxford Dictionary (10th Edition), burglary is defined as "illegal entry into a building with intent to commit a crime such as theft". In the Long man Dictionary of Contemporary English, burglary is a "crime of entering a building by force with the intention of stealing". In the New Webster's Dictionary of the English Language (College Edition), burglary is "the crime of breaking into the house of another at night with felonious intent, sometimes extended by statute to cover the breaking and entering of any of various buildings by night or day".

5. IN *Dino Services Ltd. v. Prudential Assurance Co. Ltd.*, (1989) 1 All.ER 422 (CA), goods were stolen from the premises of the insured by thieves who had stolen the keys to the premises from the insured's car and then entered the premises at night by simply using the keys in the normal way to unlock various doors, without causing any physical damage to the locks or to the doors. The insurer repudiated the claim on the ground that loss or damage had to occasion from theft involving "forcible and violent" means of entry to the premises. Trial Court held on these facts there had been entry to the premises both by forcible and violent means within the meaning of the policy. On appeal filed by the insurer it was not disputed the opening of the doors with stolen keys constituted forcible entry within the meaning of the policy and the only issue before the

Court of Appeal was whether the entry had also been violent. IN the context of the policy of insurance against theft from the premises by forcible and violent means of entry, the Court said that the word "Violent" is to be construed according to ordinary meaning and meant entry by the use of any force which was accentuated or accompanied by a physical act which could properly be described as violent in nature and character. Since there was no evidence of any violence, the Court held that policy did not cover the loss sustained by the insured.

6. IN the present case since the stand of the insurer has itself been that the entry to the premises has either to be forcible or violent and in view of the aforesaid decision of Court of Appeal in the case of *Dino Services Ltd. v. Prudential Assurance Co. Ltd.*, it can be said that entry to the premises was forcible and thus covered under the policy for loss by theft. IN common parlance burglary will certainly mean theft. We have not been told or shown if there is any separate policy for theft if, according to the INSurance Company, burglary does not include simple theft. We are thus of the opinion that the claim of the complainant was justified under the insurance policy and repudiation of the policy by the petitioner-insurer was wrong. We, therefore, uphold the order of the State Commission and dismiss this petition. Petition dismissed.