(1996) 08 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. APPELLANT

Vs

UDAIPUR SAHAKARI UPBHOKTA THOK BHANDAR LTD. RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Citation : 1996 3 CPJ 97 : 1997 1 CPR 182

Hon'ble Judges : N.C.Sharma , Subhash Purohit , Firoza Bano J.

Final Decision : Appeal allowed with costs

Judgement

1. THIS appeal has been filed by the National Insurance Company Ltd. against the order of the District Forum, Udaipur dated 17.9.94 allowing the Complaint Case No. 149/92 filed by the complainant and directing the opposite party-appellant to pay to the complainant the claim amount of Rs. 10,000/- alongwith interest at 18% p.a. and Rs. 500/- as costs.

2. COMPLAINANT before the District Forum was Udaipur Sahakari Upbhokta Thok Bhandar Ltd. The complainant had obtained a Fidelity Guarantee Policy No. 780082 from the opposite party. The Insurance Company, subject to the terms and conditions contained in the Fidelity Guarantee Policy, agreed to indemnify the insured complainant against all the direct pecuniary loss which the insured would sustain by act of fraud or dishonesty of any employee named or otherwise. Ram Singh Chauhan was a sales-man employed in the complainant Upbhokta Bhandar and it was alleged in the complaint that the said employee misappropriated an amount of Rs. 25,012.16 of the Bhandar. A First Information Report was lodged with the police on 17.11.88. The complainant claimed the guarantee amount of Rs. 10,000/- from the Insurance Company under the above Fidelity Guarantee Policy. The National Insurance Company repudiated the claim of the complainant by its letter dated 8.9.89 on the ground that their Competent Authority had observed after perusal of the documents that Ram Singh Chauhan was earlier involved in a case in 1983 and his annual increment was stopped. It was stated that as per terms and conditions of the policy, it was second default of the same employee. The insured had concealed material information regarding this and the

authority has repudiated the claim.

The relevant condition is Condition No. 4,incorporated in the Insurance Policy. It provides that unless the Company be advised and its written approval be obtained the Company should not be liable hereunder in the event of any change in the nature of the business of the employer or in the duties and condition of the service of the employee or if the remuneration of the employee be reduced or its basis altered or if the precautions stated by the employer with regard to accounting be not duly observed or if the employer shall continue to entrust the employee with money or goods after having knowledge of any material fact bearing on the honesty of the employee.

3. IT appears that the complainant had conducted an enquiry as against its employee Ram Singh Chauhan with regard to the misappropriation of the amount of Rs. 25,012.16 and after enquiry the complainant had imposed penalty of dismissal upon the said employee by order dated 12.11.88. In this order of the complainant-Bhandar there is mentioned that previously also in the year 1983 Ram Singh had been guilty of misappropriating of the amount of Rs. 11,572.09 and in connection with that misappropriation by order dated 29.7.83, his annual increments had been withheld with cumulative effect. IT was thus clear that Ram Singh Chauhan had also previously misappropriated an amount of Rs. 11,572.09 of the complainant-Bhandar and he was departmentally punished for that misappropriation. The District Forum, Udaipur brushed aside this misappropriation by only stating that the said misappropriation was of a time prior to the commencement of the Fidelity Guarantee Policy. The District Forum, therefore, held that there was no violation of the above condition. The District Forum also held that the previous incident was not considered to be serious by the complainant and no report in the police was made of the previous incident. In our opinion, the view of the District Forum, Udaipur is wrong. It was an essential condition of the Fidelity Guarantee Policy issued by the opposite party that unless the Company be advised and its written permission obtained, the Company shall not be liable under the policy if the employer shall continue to entrust the employee with money or goods after having knowledge of any material fact bearing on the honesty of the employee. The complainant-Bhandar had full knowledge of the fact that Ram Singh Chauhan had, in the year1983, misappropriated an amount of Rs. 11,572.09 of the Bhandar and in the departmental enquiry, the Bhandar found him guilty and imposed punishment of with-holding increments with cumulative affect. Despite that knowledge and without informing the Insurance Company and without obtaining its written permission, the complainant-Bhandar continued to entrust the same employee with money after knowing that previously the employee had committed misappropriation of amount. There was thus clear-cut violation of Condition No. 4 of the policy and the Insurance Company was not liable. The opposite party, therefore, rightly repudiated the claim of the complainant-Bhandar and there was no deficiency in service.

4. THIS appeal is, therefore, allowed, the order of the District Forum, Udaipur dated 17.9.94 is set aside and Complaint Case No. 149/92 is dismissed. The complainant-respondent will pay Rs. 500/- as costs to the opposite party. Appeal allowed with costs.