

(2004) 08 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED

APPELLANT

Vs

JAGESHWAR PANDEY

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Citation : 2004 4 CPJ 601 : 2005 1 CLT 458

Hon'ble Judges : Palok Basu , R.N.Prasad , Vinod Shankar Chaubey J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter called the "Act") against the judgment and order dated 15.12.1994 passed by District Consumer Forum, Unnao in Complaint Case No. 49 of 1994.

2. INITIALLY a complaint under Section 12 of the Act was preferred with the allegation that the shop in question was insured with the opposite party, National Insurance Company Limited (hereinafter called the "Insurance Company") for the period 15.12.1988 to 14.12.1989 and the theft took place in the night of 16.17.2.1989. Subsequently, the matter was reported to the police by way of First Information Report (for short F.I.R.). Although consequent to the investigation a final report under Section 179, Cr.P.C. was submitted with the conclusion that the alleged F.I.R. was false and frivolous, yet the complainant being aggrieved moved a petition before the learned Magistrate who consequently ordered for re-investigation in exercise of powers conferred under Section 173(8), Cr.P.C. The learned District Forum after taking into consideration the written statement and the complaint and hearing the submissions, passed the impugned order directing the opposite party No. 1 to pay Rs. 20,800/- within a period of one month along with interest @ 12% per annum.

Aggrieved against the same, present appeal has been preferred.

3. DURING the course of hearing, certain documents were filed which may be kept on record. The main contention of Sri Rajesh Nath, Counsel for the Insurance Company has been that the learned District Forum while passing the

impugned order did not exercise its judicial mind and passed an order on his own whims which is untenable in the eyes of law. In support of his argument, he submitted that in the instant case after the matter of theft being reported to the Insurance Company, the Surveyor was deputed who made the survey with the observation that ultimately the theft as reported was found false and fabricated one and even no cooperation, which was expected least of the complainant, was extended to the Surveyor. It was argued by Mr. Nath that this fact altogether was ignored by the learned District Forum. Mr. S.S.L. Srivastava, Counsel for the complainant in support of the impugned judgment and order with a view to counter the arguments of Mr. Nath submitted that in view of the Magistrate's report, another report of the investigating officer is still awaited.

4. WE have given our anxious consideration over the arguments raised at the Bar but we are impressed for the reasons detailed hereinafter that the appeal has force and the impugned order was passed by the officer of the learned District Forum, based on no law and a very arbitrary and illegal approach has been made. It is a settled position that once a shop is subject matter of insurance, the liability of indemnification of the Insurance Company comes only when the claimant is in a position to prove conclusively that the theft in the shop in question, which is a subject matter of insurance, has taken place. For that, it is true that the F.I.R. was lodged but on investigation it was found that the averments so made in the F.I.R. was only forged and frivolous and no theft had taken place. Even if the argument of Sri Srivastava is accepted that re-investigation has been ordered and initiated even then no useful purpose will be served. The theft in question took place in the night of 16/17.2.1989 and even if re-investigation takes place, no useful purpose will be served. It was expected from the learned District Forum specially when there was a complete paucity of the evidence of theft, theft report has been found false and the police report as well as Surveyor's report do not support the complainant's case, to have dismissed the complaint but the same has not been done. That being so, we are left with no option but to set aside the impugned judgment and order. ORDER The appeal succeeds. The judgment and order is set aside and the complaint is dismissed. However, in the circumstances, the parties will bear their own costs of the proceedings. Let copy of this order be made available to the parties as per rules. Appeal allowed.