**(2003) 08 NCDRC CK 0078**

**In the National Consumer Disputes Redressal Commission**

National Insurance Company Ltd. APPELLANT

Vs

PREM LATA AGARWAL RESPONDENT

**Date of Decision :** 22-08-2003

**Acts Referred:**

**Citation :** 2003 4 CPJ 94 : 2004 1 CPC 32

**Hon'ble Judges :** D.P.Wadhwa , B.K.Taimni , K.S.Gupta J.

**Final Decision :** Revision Petition dismissed

# Judgement

1. THIS revision is directed against the order dated 1.11.2002 of Consumer Disputes Redressal Commission, Jharkhand, Ranchi dismissing appeal against the order dated 16.8.2002 of a District Forum whereby petitioner Insurance Company was directed to make payment of Rs. 99,816/- with cost to the respondent/complainant.

2. COMPLAINT was filed alleging that M/s. Associated Enterprises, a proprietorship concern of Smt. Prem Lata Agarwal, respondent has a Branch Office at Jamshedpur. Firm is authorised transporter of TISCO, Jamshedpur. Branch Office at Jamshedpur was keeping cash-in-hand for payments to be made to truck drivers for purchase of fuel and to meet other expenses. Respondent took Insurance Policy No. 48/98/7600705 dated 13.8.1998 covering loss upto Rs. 1.00 lakh from the petitioner Insurance Company. It was further alleged that in the night intervening 19/20.4.1999 at about 2 a.m. some miscreants looted total amount of Rs. 99,816/- from the safe and table drawer from the said Branch Office. FIR No. 75 of 1999 was lodged with the Police regarding the incident. Petitioner Insurance Company was also intimated about the occurrence on 20.4.1999 and again on 22.4.1999. On failure of petitioner Insurance Company to make payment of the said amount, the respondent filed complaint before the District Forum. In the written version, the petitioner Insurance Company resisted the claim mainly on the grounds that in view of Exclusion Clause in the policy it was not liable to pay the amount allegedly robbed as it was the employee of respondent who was involved in the occurrence; that the policy did not cover

claim arising out of offence of criminal breach of trust under Section 406, IPC for which charge-sheet had been filed against Manoj Kumar, employee of the respondent. It was stated that policy in question covered the risk of burglary, house-breaking and not the theft. Main thrust of argument advanced by Mr. Atul Nanda for petitioner Insurance Company whom we heard on the point of admission, was that theft was not proved by the respondent. FIR No. 75 of 1999 (copy at pages 43-48) would show that in regard to the occurrence dated 19/20.4.1999, case was registered under Section 392, IPC against unknown persons on the basis of statement of Deepak K. Agarwal, Manager of the firm at Jamshedpur. However, Police filed charge-sheet under Section 406, IPC against Manoj Kumar, employee of the respondent in the Court of Judicial Magistrate First Class, Jamshedpur. As is manifest from the judgment dated 5.4.2002 (copy at pages 53-55) said employee was acquitted of the charge under Section 406, IPC on merits by the said Court. In the complaint filed by respondent (copy at pages 66-73), it has been specifically pleaded that a total amount of Rs. 99,816/- was looted by the miscreants in the night intervening 19/20.4.1999 at about 2 a.m. from Jamshedpur Branch Office. In support of that averment, the respondent filed her affidavit before the District Forum. Moresaid order of District Forum dated 16.8.2002 notices the contention advanced on behalf of respondent that Police did not conduct fair and impartial investigation and falsely implicated Manoj Kumar, employee by filing charge-sheet under Section 406, IPC. In this backdrop, to prove incident of robbery the respondent could not have done anything except to file the copy of FIR No. 75 of 1999 and her own affidavit in support of the averment made in complaint which we have no reason to disbelieve. Considering the two-fold evidence, we are unable to agree with the submission referred to above that respondent has failed to prove the said occurrence. To be only noted that robbery is an aggravated form of theft and it necessarily includes theft. There is no illegality or jurisdictional error in the order under challenge warranting interference in revisional jurisdiction under Section 21(b) of the Consumer Protection Act. Accordingly, revision petition is dismissed. Revision Petition dismissed.

 