

(2004) 10 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

National Insurance Company Ltd.

APPELLANT

Vs

SURESH GUPTA

RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Citation : 2005 1 CPJ 436

Hon'ble Judges : J.D.Kapoor , Rumnita Mittal , Mahesh Chandra J.

Final Decision : Appeal partly allowed

Judgement

1. THE only dispute arising in this appeal directed against order dated 15.4.2002 is with regard to the amount of loss suffered by the respondent in respect of the articles or goods stolen from the shop which was duly insured by the appellant for Rs. 10,00,000/-.

2. THOUGH the appellant has raised a plea that the shop of the respondent was insured only for theft whereas the shop was insured against burglary yet the fact remains that the articles were stolen from the shop of the respondent the price of which was assessed by the Surveyor appointed by the appellant to the tune of Rs. 86,000/- whereas the respondent assessed the loss of Rs. 1,53,400/-. Theft is the genesis of every other crime namely robbery, dacoity, hijacking or burglary. "Theft" as per dictionary meaning is an action or crime of stealing and for penal purpose is defined under Section 378 of I.P.C. which reads as under: "Section 378. Theft.-whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

The dictionary meaning of word "burglary" is act of entry into a building illegally with the intent to commit theft. Thus they have an essential and generic element or ingredient in all the above crimes namely robbery, dacoity or burglary. Therefore, to say that loss by way of theft is not covered by the insurance policy is not correct. The repudiation of the claim of the insured on these grounds is entirely misconceived and amounts to frustrate and defeat the rightful claim of the insured.

3. THERE is a difference in the prices of the goods assessed by the Surveyor and that assessed by the respondent. By giving due weightage to both sides we assess the loss at Rs. 1,00,000/-. Compensation of this amount, in our view, would meet the ends of justice. The appeal is partly allowed to the above extent.

4. A copy of this order as per the statutory requirements, be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to record room. Appeal partly allowed.