(1994) 07 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

New India Assurance Co. APPELLANT

Vs

TANDON EMPORIUM RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Citation : 1995 3 CPJ 145 : 1995 3 CPR 315 : 1996 1 CLT 407

Hon'ble Judges : V.K.Mehrotra , Banarsi Das J.

Final Decision : Appeal dismissed

Judgement

1. IN this appeal the decision of District Forum, Kanpur in Complaint Case Number 325 of 1989-90 has been challenged by the New INdia Assurance Company Ltd. which has been directed to pay to the complainant a sum of rupees nine thousand with interest at the rate of fifteen percent per annum with effect from 8 September, 1987. The decision is dated 25 September, 1992.

2. THE complainant obtained a shopkeeper''s Insurance Policy from the Assurance Company which was valid for the period between 15 January, 1987 and 14 January, 1988. It covered loss o money as well thus: "Section III - Money Insurance. THE company will indemnify the insured in respect of (a) loss by accident or misfortune whilst the insured''s money is in his hands, or in the hands of his employees in transit between any two places within a radius of fifteen miles from the insured''s premises. (b) (c)

The case of the complainant, which has been awarded by the District Forum after due appraisal of the documentary and oral evidence on record, is that on 8 September, 1987 a partner of the complainant-Firm was on his way to the Indian Overseas Bank in his car from his shop with a sum of rupees nine thousand in cash for depositing it in the Bank when he suddenly remembered that there was a case fixed in the District Court that day which was to be attended to. He went to the Court premises, before going to the Bank, and parked his car near the other parked cars opposite the police office. He went to the Court, leaving the cash amount in the car as he did not consider it safe to carry the amount to the Court house. The money was concealed by him by placing it under the format in front of the driving seat. After waiting for the case to be called out till the lunch time when he came out he found the car missing. He was very upset and after getting the case adjourned went to Police Station, Kotwali and lodged a report about the theft of the car. In the confusion and tension, after the theft of the car he forget to mention about the loss of money in the car. When he went back, after lodging the report, he was reminded by his son about the money. He immediately went back to the Police Station & lodged a second report about the loss of the money because the Police Station Incharge refused to incorporate it in the first report. The second report was made in writing within twenty minutes of the first report.

The District Forum has found that the complainant had the amount of rupees nine thousand available with him on the date of the incident for being taken to the Bank for deposit and that the story of loss of the money was not an after-thought as pleaded by the Assurance Company. This finding has been recorded after considering the available evidence on the record. We have ourselves considered the evidence and agree with the conclusion of the District Forum.

3. ON the findings of fact in this case the question for consideration is whether the Assurance Company can be held liable for reimbursing the amount under the terms of the policy. The answer, we feel, can only be in the affirmative. We have extracted the relevant term of the policy earlier. Under it, the Company has to indemnify the assured person in respect of loss of money......"whilst, the......money is in his hands.-.in transit between any two places...." The money was in transit between the shop and the Bank. It would be deemed to be in "the hands of the assured person even when it was in the car in which it was being taken to the Bank. The words "in hand", according to Websters Third New International Dictionary, mean "in one''s possession"; "in control"; "under effective control" (See page 1026 Vol. II). "Possession", according to the same Dictionary, means "something owned or controlled"; "the condition of having in one''s control or holding at one''s disposal". (See page 1770 Vol. II). Thus viewed, the amount though kept in the car under the lock and key of the complainant, the insured, was in the hand of the insured when its loss occured due to the theft of the car. The Assurance Company was rightly held liable to indemnify the insured for the loss.

4. THE appeal has no merit and is dismissed with costs which we assess at Rupees five hundred. Let a copy of the order be made available to parties as per rules. Appeal dismissed.

