(1996) 01 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD. APPELLANT

Vs

ADARSH BAZAR WHOLESALE AND RETAIL COOPERATIVE CONSUMER STORE LTD., PATNA RESPONDENT

Date of Decision : 20-01-1996

Acts Referred:

Citation : 1996 0 NCDRC 43 : 1996 1 CPC 229 : 1996 1 CPJ 286 : 1996 1 CPR 44

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : S.K.PAUL , SALIL PAUL , S.K.SHARMA

Judgement

1. THIS First Appeal by New India Assurance Company Ltd. is directed against the order 2.4.93 of the Bihar State Commission at Patna allowing the complaint and directing the Insurance Company to pay a sum of Rs. 1,54,358/- alongwith interest at the rate of 18% per annum from 1.1.88 till the payment of the amount by the Insurance Company to the complainant and a further sum of Rs. 40,000/- as compensation for the loss caused to the complainant in its business.

2. THE appeal has been filed delayed by 11 days with an application for condonation of delay. The reasons for delay are set out in the application supported by an affidavit. It discloses sufficient cause besides the delay is not intentional or deliberate. We condone the delay and entertain the appeal. The facts in brief are these : The complainant had obtained a Shopkeepers Policy No. 53522-00084 for the period 19.5.87 to 19.5.88 covering the risk of theft, burglary and house- breaking of the insured stock lying at the showroom of Adarsh Bazar Wholesale and Retail Cooperative Consumer Store Ltd., Patna. On the night of 31st July, 1987/lst August, 1987 a theft/ burglary took place at the complainant''s show-room. The complainant lodged at F.I.R. No. 833 dated 1.8.87 under Sections 457/380 IPC with P.S., Gandhi Maidan, Patna and also promptly intimated about the said burglary to the Insurance Company claiming a loss of goods and articles worth Rs. 1,70,000/-. On the receipt of the

information, the Insurance Company appointed a spot Surveyor, M/s. K. Prasad and Co., Surveyor and Loss Assessor who visited the insured store on 1.8.82 and confirmed the burglary and loss. There is no dispute about these facts.

3. ACCORDING to the Insurance Company due to non-availability of complete information/documents the quantum of loss could not be assessed at the spot. It appointed second Surveyor, namely, Dr. A.C. Dugar, Surveyor and Investigator who visited the complainant''s showroom and made physical verification of stock from 15.4.88 to 18.4.88 and also called upon the complainant to make available various documents but the complainant failed to furnish the requisite documents and information and so the claim could not be settled. On the other hand, the complainant alleged that it had furnished all documents and information sought by the Insurance Company and sent several reminders to settle the claim, but the Insurance Company neglected and failed to settle the claim and that the Insurance Company unreasonably asked the complainant to produce the stolen articles recovered and seized by the Police as it is not possible to get delivery before the conclusion of trial besides those seized articles had become useless for sale. As the Insurance Company did not settle the claim, the complainant alleged deficiency in service and filed the complaint.

4. NOTICE was issued to the appellant herein to file its counter version which was filed on 29.11.90 stating, inter alia, that the claim of the complainant was unjustified and that the complainant may be directed to produce the documents mentioned therein before the State Commission. The complaint remained pending and ultimately on 25th November, 1992 a final written statement on behalf of the Insurance Company was filed before the State Commission alongwith the survey report dated 23.11.92 prepared by one Shri A.K. Rungta informing the State Commission that though the complainant had not produced or shown any documents, the cairn of the complaint had been settled at Rs. 89,336.10ps. The State Commission in the impugned order examined the material on the record including the survey report of Shri A.K. Rungta. It was found that Shri A.K. Rungta had assessed the loss at Rs. 1,54,358/- but made a deduction therefrom of Rs. 34,756/- as the value of the goods recovered/seized by the Police during investigation and Rs. 29,778.60 ps. had been further deducted therefrom on the ground of non-availability of papers. The State Commission found and, in our view, rightly that these deductions are arbitrary and unjustified and found that the loss sustained by the complainant due to the theft was Rs. 1,54,358/- as found by the Surveyor of the Insurance Company. There was no basis for the Surveyor to deduct Rs. 34,756/- being the value of the seized goods in Police custody. The affidavit of the complainant was that those seized articles had become useless for sale after an expiry of a period of over 5 years from the date of the loss 31.7.87/1.8.87. The Insurance Company can take the salvage (the goods seized by the Police) on the conclusion of the trial of the criminal case when the goods are released. The State Commission''s approach is perfectly correct and we uphold the finding of the State Commission assessing the quantum of loss at Rs. 1,54,358.71.

5. THE State Commission, however, erred in directing the Insurance Company to pay Rs. 40,000/- as extra compensation on account of loss to the complainant in its business. The complainant did not lead any evidence or had laid any factual foundation to establish the actual loss caused in the business of the complainant or expected future loss of business, much less to the extent of Rs. 40,000/-. The grant of interest at the rate of 18% per annum on the amount of actual loss suffered is sufficient compensation. There is no warrant to grant additional compensation of Rs. 40,000/- as business loss on account of nonpayment of the claim to the complainant expeditiously.

6. IN the result, the appeal is partly allowed. The grant of compensation of Rs. 40,000/- is hereby set aside and the order of the State Commission directing a payment of Rs. 1,54,358/- on account of loss suffered by the complainant covered by the risk insured under the said policy of insurance together with interest at the rate of 18% per annum from 1.1.88 till payment of the amount by the Insurance Company to the complainant is upheld. The parties shall bear their own costs of this appeal.