

(2005) 09 NCDRC CK 0107

In the National Consumer Disputes Redressal Commission

New India Assurance Co Ltd

APPELLANT

Vs

KISSAN PLANT PROTECTION CENTRE

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Citation : 2007 2 CPJ 151

Hon'ble Judges : K.S.Gupta J.

Advocate : G.Umapathy , Jos Chiramal

Final Decision : Partly Allowed

Judgement

1. THIS revision is directed against the order dated 18. 11. 2002 of Consumer Disputes Redressal Commission Punjab, Chandigarh partly allowing appeal against the order dated 12. 11. 1999 of a District Forum and directing the petitioner/opposite party No. 1-Insurance Company to further pay towards loss of stock of Rs. 67,135 to respondent No. 1/complainant. District Forum while partly accepting complaint has directed the petitioner to pay loss of cash of Rs. 9,000 with interest to respondent No. 1.

2. IN short, the facts giving to this revision are these. Respondent No. 1 purchased three Shopkeepers Policies covering the total risk on stocks of Rs. 10 lakh, cash in safe of Rs. 9,000 and also cash in transit from the petitioner. During the currency of policies, theft took place in respondent No. 1's shop on the intervening night of 4/5. 7. 1998 for which FIR being No. 68 of 1998 under Sections 457/380, IPC was registered at P. S. A. Division, District Amritsar on 5. 7. 1998. In this occurrence Rs. 55,000 in cash and a cheque of Rs. 14,000 of Punjab National Bank, Patti were alleged to have been stolen. In another theft allegedly taking place in the intervening night of 5/6. 7. 1998, stocks worth Rs. 58,500 was stolen from the shop. On being intimated by the letter dated 6. 7. 1998 (copy at p. 23) about the incident of theft by respondent No. 1, the petitioner appointed Baldev Pathania and Co. as Surveyors. Vigilant Detective Bureau was also appointed later on as investigator by the petitioner. After receipt of reports from Surveyor and investigator, the petitioner repudiated the claim by

the letter dated 30. 7. 1999. Thereafter, complaint was filed by respondent No. 1 which was contested by the petitioner, inter alia on the ground that second theft was fabricated/concocted by respondent No. 1. I have heard Mr. Jos Chiramal for petitioner and Mr. G. Umapathy for respondent No. 1.

Controversy between the parties in this revision revolves around the claim on stocks of Rs. 67,135. This claim pertains to the theft which was allegedly committed in the night of 5/6. 7. 1998. For deciding the controversy, reference particularly to respondent No. 1's aforesaid letter dated 6. 7. 1998 to the Insurance Company, further statement of Jung Bahadur Singh, proprietor of respondent No. 1 - firm recorded by the police on 6. 7. 1998 (copy at p-68) and investigation report dated 17. 12. 1998 (copy at pp 24-29) is necessary. In the letter dated 6. 7. 1998 it is stated that on 4th July midnight some unknown persons entered the firm's shop after breaking the exhaust fan and cutting iron rods and stole around Rs. 55,000 and a bearer cheque of Rs. 14,000 of Punjab National Bank, Patti, information in regard to this occurrence was given on 5. 7. 1998 at P. S. Div. Ram Bagh ASR. It is further mentioned that after the occurrence space was closed with bricks and cement. Again on 5th midnight some unknown persons entered the shop after breaking the bricks cement wall and stole pesticides, spray pump engines and spare parts and exact quantity of stolen stock will be informed in a day. In the statement recorded by the police in case FIR No. 68 of 1998 itself on 6. 7. 1998, said Jung Bahadur Singh after affirming the theft of Rs. 55,000 in cash and cheque of Rs. 14,000, further stated that after checking the entire shop, he had found that Ridonil Fungicide medicine, Cinkuor Metribuzin, Tata fon and spray pump engines were also stolen from the shop by unidentified persons who entered the shop after cutting four saris and removal of exhaust fan. Obviously, there is inconsistency in regard to the said stocks being stolen away either in the night of 4th/5th 7. 1998 or 5th/6th. 7. 1998 in the above letter and further statement. In view of that contradiction, the investigator's report assumes great significance. Indisputably, loss of cash covered by the three policies was Rs. 9,000. Respondent No. 1 alleges theft of cash of Rs. 55,000. Loss of cash of Rs. 46,000 was, thus, uncovered. This fact was taken note of by the investigator in addition to there being no likelihood of theft being committed successively on two nights in reaching the conclusion that second theft was fabricated/concocted. To be noted that legal notice dated 15. 3. 1999 (copy at pp. 38 and 39) sent by respondent No. 1 to the petitioner refers only to the theft in the night of 4th/5th. 7. 1998. There seems to be no reason not to act upon the investigator's report. Respondent No. 1 is, thus, held to be not entitled to the loss on stock of Rs. 67,135 based on said incident of theft. Impugned order to that extent cannot be legally sustained.

3. ACCORDINGLY, while partly allowing revision, aforesaid order of State Commission in so far as it relates to award of Rs. 67,135 is set aside. No order as to cost. Revision partly allowed.