

(2012) 07 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

New India Assurance Co Ltd

APPELLANT

Vs

L K P Merchant Financing Ltd

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 392 : 2012 4 CPJ 206

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Advocate : S.M.Tripathi , Jos Chiramel

Judgement

1. AGGRIEVED by the order dated 19.07.2007 passed by the Delhi State Consumer Disputes Redressal Commission (in short, "the State Commission") in Appeal No.A-194/03, New India Assurance Company Limited (opposite party in the complaint) has filed the present petition purportedly under section 21(b) of the CP Act, 1986 (in short, "the Act"). The appeal before the State Commission was filed by the unsuccessful complainant L.K.P.Merchant Finance Limited against the order dated 01.11.2002 passed by the District Consumer Disputes Redressal Forum, New Delhi, in complaint no.OC/302/2001 by which order the District Forum had dismissed the complaint without any order as to costs.

2. IN nutshell, the case of the complainant is that it is a licensed foreign exchange dealer having its registered office at Nariman Point, Mumbai and regional office at M-56, Connaught Circus, New Delhi. It had obtained Miscellaneous Accident Insurance Policy also described as "Cash in Transit / Cash in Safe Policy" having a coverage of maximum of Rs.50 crore, i.e. in transit coverage upto Rs.1.5 crore covering foreign currency / Indian currency / TC cheques etc. by any authorised employee of the Company from Anywhere in India to anywhere in India from the above referred regional office and vice versa including the risk of riot and strike / FG and terrorism. For cash in safe upto to Rs.5.00 crore and at counter upto Rs.30 lakh. The policy was valid from 29.11.99 to 28.11.2000. On 23.12.99, the employees of the complainant, namely, K.Sanjeev, Rajiv Parmar and Arin Chadha carried a sum of Rs.3,16,468.80 in a suitcase in a maruti car for transacting business at Oberoi Hotel Maidens, Sant

Ruhani Kirpal Ashram and at other places. After dropping Rajiv Parmar and Arin Chadha at Sant Ruhani Kirpal Ashram with the said amount of Rs.3,16,468.80 for transacting business, the car proceeded to other destination (s). The above named two persons thereafter started transacting the business at the counter provided by the management of Sant Ruhani Kirpal Ashram. It is alleged that between 11.30 A.M. to 12.15 P.M., some miscreants attacked Arin Chadha and took away a sum of Rs.3,12,268.80 and one US 100 dollar note about which an FIR was lodged at PS Model Town, Delhi and the insurance company was also informed about the accident and the loss of the said amount. Insurance Company appointed M/s Alka Gupta and Associates as the Surveyor and the complainant furnished necessary documents and extended cooperation but ultimately the insurance company repudiated the claim on the ground that the cash in transit policy issued covered only the cash at the counter office of the regional branch of the complainant at M-56 Connaught Circus, New Delhi and since the loss was occasioned at a different place i.e. at a counter at Sant Ruhani Kirpal Ashram, the said destination / place was not covered. The complaint was resisted by the insurance company on the same ground. District Forum on a consideration of the matter and more particularly going by the recitations in the policy document came to the conclusion that insurance company has not committed any deficiency in service by rejecting the claim of the complainant and accordingly dismissed the complainant by observing as under: "There is no denial of the fact that there occurred a loss of Rs.3,16,468.80 on 23.12.99 at the cash counter opened in the premises of Sant Ruhani Kirpal Ashram. While, the complainant's plea is that this loss is covered under the policy obtained by him for cash in transit, the stand of the OP is that this is not covered under the provisions of the policy as this loss did not take place while in transit. Therefore, the short issue to be decided by us is whether the said loss can be said to be covered under the terms of the policy or not. The surveyor's report has mentioned that the complainant's view point that since the cover was from "ANYWHERE in India to ANYWHERE in India"

(from above branch), hence it is covered under "Cash in transit Policy", while the other view point that considering the dictionary meaning of transit "It is the passage through or across" and the cash in transit means the process of cash being transported from one place to other hold equal weightage. Therefore, be left it to the O.P. to exercise their discretion while settling the claim. During the course of detailed arguments before us the view point of the complainant was that business of the insured is to buy foreign currencies from the hotels, tourist and other places and they move around throughout the day to buy and sell the currency and in the evening deposited in their cash office. It further added that they were not having a regular cash counter at the premises of the Ashram but they used to go there every day to do the business and come back and, therefore, the loss should be said to have been occurred as loss of cash in transit. As it is clear from the facts of the case the complainant had obtained a temporary money change's license from the Reserve Bank of India valid from

15.12.99 to 2.1.2000 for the 19th International Human Unity Conference at Sant Ruhani Kirpal Ashram and they were supposed to submit a separate report in the form of FLM statement to the Reserve Bank for the said period. This clearly shows that since a separate license was obtained, it shall be deemed to be a temporary cash counter for doing the business. During transit no business is done and secondly during transit no special permission is obtained from the Reserve Bank which was obtained from the premises of Ashram. Therefore, even though the occurrence of the incident is unfortunate the loss of the amount cannot be said to be covered under the provisions of the policy of cash in transit and in any case it is also not covered under the policy cash in safe because the said premises were not insured under the terms of the policy. Therefore, there is no deficiency in service on the part of the OP in rejecting the claim of the complainant. The case is accordingly dismissed with no order as to costs.

3.AGGRIEVED by the said order, the complainant filed appeal before the State Commission and the State Commission allowed the appeal and directed the insurance company to pay an amount of Rs.3,16,468.80, the loss in dispute and Rs.10,000/- as cost of litigation. The above order of the State Commission was based on the following observations / findings: "Now the question arises whether cash taken by the employee of aforesaid company from the premises of the office of the appellant to the counter opened temporarily at the premises of Sant Ruhani Kripal Ashram falls within the "cash in transit" or not. Let us assume that counter was temporarily opened and was not mentioned in the insurance policy but the circumstance of the cash having been collected by the employee of the appellant from the insured premises for being deposited in the bank itself shows that the cash was in transit even if the employee had short stay on the way at Sant Ruhani Kripal Ashram for five or ten minutes. It was not the case that cash amount was kept unattended nor was there allegation of negligence, connivance of the employee of appellant - company. The employee was attacked and injured and money was robbed. Loss is loss, may be by any means. In the context of the insurance policy, loss of cash in transit through person or employee who is carrying the cash for depositing in the bank is loss of "cash in transit". Even if we assume that the cash counter at Sant Ruhani Kripal Ashram was opened without the permission of RBI, but the fact remains that the cash was going to be deposited in the bank on the day. In whatsoever way we may examine the matter the claim can be repudiated by the respondent only when there has been a break of a day or so in the transit. It was a case of direct transit from the counter or from the premises to the bank. Even if cash is collected by the employee and taken to his house for a while to be deposited with bank, still it amounts cash in transit".

4.WE have heard Mr.S.M.Tripathi, Advocate, learned counsel for the petitioner-insurance company and Mr.Jos Chiramel, Advocate, learned counsel for the respondent-complainant and have given our thoughtful consideration to their respective submissions. Before we advert to the ground of challenge on which the insurance company seeks to assail the impugned order, it is necessary to

extract the recitations appearing in Miscellaneous Accident Insurance Policy which are to the following effect: Miscellaneous Accident Insurance Policy INSURED : M/s LKT Merchant Policy No.48/6976 Financing Ltd. ADDRESS : M-56, Connaught Place Issued at : New Delhi New Delhi - 110001 BUSINESS ADDRESS : M-56, Connaught Place Date : 29.11.99 New Delhi-110001 PERIOD OF INSURANCE FROM: 29.11.99 TO 28.11.2000 CASH IN TRANSIT / CASH IN SAFE Cash in Transit : S.I. Rs.50.00 crores maximum and in transit Rs.1.50 crores covering foreign currency / Indian currency / TC cheques in locked suit case / Bags/brief case by car /tax/air/train by authorised employees of the Co. - Anywhere in India to anywhere in India from above branch and vice versa including the risk of riot and strike / FG and terrorism. Cash in Safe : S.I. = Rs.5.00 crores - in (at counter = Rs. 30.00 lakhs) Make : Godrej Defender 61" Including the risk of hold up and Fixed to Floor robbery and theft. Risk 10% of SI of WEight = 1385 kg. Rs.5.00 crores i.e.50 lakhs) Subject to Condition : CT and Cash in safe conditions.

5.MR.Tripathi referring to the above recitations strongly contended that the circumstances in which the loss has been allegedly occasioned to the complainant is not covered under the insurance policy. The basis of his submission is that the loss of the currency to the above extent has neither taken place during transit under the first heading "cash in transit" or from the counter of the regional Branch Office of the complainant at M-56, Connaught Circus i.e. under the second clause and had taken place at a different place i.e. counter which according to the complainant was specially opened by it at Sant Ruhani Kirpal Ashram. On the other hand MR.Jos Chiramel, Advocate, learned counsel for the respondent-complainant vehemently argued that the loss occasioned to the complainant in the above circumstances is fully covered under the insurance policy in question and the insurance company must indemnify the complainant for the loss occasioned to it.

6.THE facts and circumstances in which the loss of currency was caused to the complainant have already been noted. THERE is no serious dispute about the same. THEREfore, our consideration is limited as to whether on the face of the recitations appearing in the policy document, the insurance company was justified in repudiating the claim on the ground that loss occasioned to the complainant in the above noted circumstances is not covered under the policy. A bare reading of the recitals of the policy (supra) should not leave any doubt that the policy intended to cover loss arising in three different situations: i.e. firstly; the loss which was occasioned to the complainant during the course of transit through the territory of India and traveller cheques upto the value of Rs.1.5 crore kept in locked suit case/bags/brief case by car/taxi/air/train by authorised employees of the company from the regional branch office of the complainant AtM-56, Connaught Place, New Delhi to anywhere within the territory of India or vice versa including the loss occasioned due to the riot, strike, FG and terrorism. THE second coverage was in respect of the cash not exceeding Rs.5.00 crore stored in a steel safe of Godrej make with a defender of 61" and third coverage

was for currency upto Rs.30 lakh at the counter. Admittedly, the currency amounting to Rs.3,16,468.80 was not lost at the counter of the complainant's branch office at M-56 Connaught Circus but was lost at the special counter opened at Sant Ruhani Kripal Ashram, Delhi. According to Mr.Tripathi loss occasioned at the counter of the branch office alone was covered and loss occasioned to the complainant on account of the theft / robbery at Sant Ruhani Kripal Ashram or at any other counter / place of business was not covered, going by the strict interpretation of the above recitals of the policy. Per contra Mr.Jos Chiramel strongly contended that going by the nature of the business of the complainant i.e. the business of foreign exchange under the license granted by the RBI, not only the loss occasioned to the complainant at its business counter at M-56 Connaught Circus was covered but any loss occasioned at any other counter including the counter at Sant Ruhani Kripal Ashram will be deemed to have also been covered. In this regard, he seeks support from certain observations made by the Surveyor Alka Gupta in its report as also on the doctrine of contra proferentem rule. In the report, above named surveyor had observed as under: "It is apparent from the facts that they were carrying their computer, had their own lock and key to secure their business place. RBI does not issue licence for any other place like hotel or bank, where the currency dealing takes place - it issued it only for the business premises. THE RBI has to be informed about its closure also which is not the case with other hotels, banks or tourist spots. At this business address, cash in safe was not kept - but at the same time it cannot be termed as "Cash in Counter" - because this address has not been notified anywhere in the proposal form. Although both the points of view hold equal weightage. We leave it for the underwriters to exercise their discretion while settling claim".

7.MR.Chiramel then invited our attention to the letter of repudiation dated 02.11.2000 wherein the insurance company had repudiated the claim by citing the following reasons: "The cash in Transit Policy issued to you covers cash counter of Office situated at M-56, Connaught Circus, New Delhi. In view of the above our Surveyor Loss Assessor M/s Alka Gupta and Associates had opined that the loss of cash at this specifically opened counter does not fall within the purview of the policy. The file was put up to the Competent Authority who have concurred with the opinion of the surveyor loss assessor. In view of the above we express our inability to entertain the above claim".

8.IT is contended that above grounds set out by the insurance company is not correctly reflected in this letter and rather it was contrary to the opinion of the surveyor. Even if it is assumed to be so, complainant cannot derive any benefit out of this because any observation made and / or recommendations made and findings given by the surveyor are recommendatory in nature and not binding on the insurance company and insurer is free to take a view in the matter going by the said report and overall appreciation of the entire facts and circumstances and other material as also the interpretation of the terms and conditions of the policy and the legal position settled by a catena of decisions. According to Mr. Tripathi in

the recitation of the policy, the business address of the complainant is clearly mentioned as M-56, Connaught Circus and, therefore, the counter referred to in the second clause will necessarily mean a counter at the aforesaid premises only and not the counter at any other premises.

9.MR.Jos Chiramel, counsel for the respondent - complainant strongly urged that this is a fit case where the rule of contra proferentem should be applied and in case of any ambiguity or doubt in the meaning of words mentioned in the policy, the same ought to be interpreted against the insurance company rather than in its favour. In this regard he seeks support from the following decisions: 1. United India Insurance Company Ltd. Vs. Great Eastern Shipping Company Limited (2007) 7 SCC 101; 2. Satyanarayan Jivanram Vs. National Insurance Company Ltd. II (2006) CPJ 58 (NC); 3. NATIONAL Insurance Company Limited Vs. National Cooperative Consumer Federation of India Ltd. MANU/DE/0572/2009. In the first case, the Supreme Court has considered the question as to the extension of the coverage in insurance policy as also the principle of rule of contra proferentem by referring to a number of Indian and English decisions. The Apex Court referred to its earlier decision in the case of Life Insurance Corporation of India Vs. Raj Kumar Rajgarhia and Anr. AIR 1999 SC 2346, wherein the following rule of law was laid down: "It is not always possible to be guided by the meaning of the words as found in the dictionary while resorting to interpret the actual meaning of a word found in an agreement between the parties. While construing the meaning of a particular word found in an agreement between the parties the intention of the parties to the document in question will have to be given necessary weightage and it is not possible to give a wider and liberal meaning merely because of the parties to the said agreement is a public authority. While interpreting the terms of the insurance policies if two views are possible, courts will accept the one which favours the policy holders".

The other decision considered by the Supreme Court was the case Polymat India (P) Ltd. And Anr. Vs. National Insurance Co Ltd. and Ors. AIR 2005 SC 286 wherein it was held that: The expression "Factory-cum-Godown" occurring in the policy has to be read in the present context with the other conditions which appear in the Policy document. In fact the Clause 8 of the policies concerned specifically made a query as to whether the goods were stored in open or there was a kuccha shed or timber built or thatched roof building within 15M (50ft.) of the property asking for details in this regard. But no details were given and the query in clause 8 was answered in the negative. Therefore, what was sought to be insured was the plant and machinery. It is admitted that there was no godown. Therefore, it is clear that the goods lying outside the plant were not insured. Had the intention of the parties been otherwise, then they would have answered the query in Clause 8 in positive terms, which details. But it was answered in the negative. Therefore, the documents have to be construed in the manner they are presented and a different interpretation cannot be given goods the context. In the celebrated decision of Supreme Court i.e. General Assurance Society Ltd. Vs Chandumull Jain and Anr. (1966) 3 SCR 500, the Hon'ble Apex

Court held as under: "In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e., good faith on the part of the assured and the contract is likely to be construed contra proferentem that is against the company in case of ambiguity or doubt. A contract is formed when there is an unqualified acceptance of the proposal. Acceptance may be expressed in writing or it may even be implied if the insurer accepts the premium and retains it. In the case of the assured, a positive act on his part by which he recognizes or seeks to enforce the policy amounts to an affirmation of it. This position was clearly recognized by the assured himself, because he wrote, close upon the expiry of the time of the cover notes, that either a policy should be issued to him before that period had expired or the cover note extended in time. In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Looking at the proposal, the letter of acceptance and the cover notes, it is clear that a contract of insurance under the standard policy for fire and extended to cover floor, cyclone etc. had come into being".

10.THERE cannot be any quarrel with the above proposition of law but the crucial question is as to whether the terms of the insurance policy in the case in hand are ambiguous in any way or capable of more than one interpretations i.e. one favouring the insurer and the other to insured. Mr. Chiramel contended that phrase "at the counter" is not suffixed with the words "at M-56, Connaught Circus, New Delhi" and therefore, the counter referred to in the policy will mean any counter at any other premises also. The words used in the policy are to be construed in the plain, ordinary and popular meaning and no attempt should be made to give any extended meaning to the plain words. Phrase "at the counter" being very specific and following the term "Safe" would necessarily mean a reference to the counter at the address of the respondent i.e. M-56, Connaught Circus, New Delhi, and no other counter. Had it been otherwise then either the location of the said counter would have been specified or made clear by using the word counter in plurality i.e. counter (s). At the time of issuing the policy in question, the insurer was not informed that the complainant was carrying business transactions at other places / counters other than M-56 Connaught Circus, New Delhi.

11.WE may also like to observe that the finding of the State Commission holding that the loss was occasioned to the complainant during transit based on certain reasoning is not acceptable to this Commission. In the case in hand, as per the complainant's own showing, the loss having been occasioned to the complainant at the counter of Sant Ruhani Kripal Ashram where it used to transact the business through its employees, the complainant cannot be allowed to take a somersault to assert that the loss of the currency was occasioned during transit. WE do not know from where the State Commission has inferred that the cash

was being taken for deposit in the bank and stop over at Sant Ruhani Kripal Ashram was only temporary and can be considered as part of the transit. In our view as soon as Rajiv Parmar and Arin Chadha left the maruti car and entered the counter of Sant Ruhani Kripal Ashram, the transit will be deemed to have come to an end. So far as inward journey was concerned, the complainant was not expected to conduct the business of foreign exchange during transit. That would be an additional risk / hazard which insurer cannot be said to have intended to cover.

12.THUS having considered the matter from various angles, we are of the clear view that State Commission has committed grave error of facts as well as in law by upsetting the well reasoned order of the District Forum and allowing the appeal. The impugned order is legally unsustainable and is liable to be set aside.

13.IN the result, revision petition succeeds and is hereby allowed and the impugned order is set aside and consequently complaint is dismissed, leaving the parties to bear their own costs.