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(1998) 04 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

SANGRUR CENTRAL CO-OPERATIVE BANK LTD. RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Citation : 1998 1 CPC 638 : 1998 2 CLT 71 : 1998 2 CPJ 222

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is by New India Assurance Company challenging order of District Forum, Sangrur of November 19, 1996 directing the appellant- Company to pay a sum of Rs. 28,500/- alongwith 12% p.a. interest thereon w.e.f. November 9,1987 till payment and Rs. 500/- litigation expenses to the complainant-the Sangrur Central Co-operative Bank Limited, Sangrur.

2. THE important question involved in this appeal is about interpretation and applicability of a clause in the insurance policy known as Excess Clause. The complainant-Bank is a Co-operative Registered Society doing banking business in different villages in the State of Punjab having its head office at Sangrur. The branch offices after doing banking business in the villages used to send the cash to the head office for deposit. The Bank had taken insurance policy commencing from July, 1987 for a year covering risk of theft etc. being Banks'' money in the hands of the employees of the Bank and even in transit. In the present case, the employees of the Bank were taking cash amount of a branch of Village Chanawal and going to the head office on November 9,1987. They were travelling in a bus. They were Rajinder Kumar, Senior Clerk and Jasbir Singh, Peon. They had cash of Rs. 3,13,000/-. They had covered about a half a kilometer away from bus stand, Chanawal that two un-identified persons/terrorists who were travelling in the same bus threatened them at the gun point to hand over the bag containing cash. Thus, under the threat, the bag containing cash was handed over to them who, at some distance, got down from the bus. The matter was reported to the Police and a sum of Rs. 2,75,000/- was recovered. Claim was lodged with the

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Insurance Company for the remaining amount of Rs. 38,000/- which was repudiated by the Insurance Company that the Bank approached the District Forum. The Insurance Company submitted its version alledging that the repudiation was legal on the basis of Excess Clause vide which upto 2% of loss suffered upto Rs. 50,000/-, was to be borne by the Bank and not by the Insurance Company. According to them, the total loss being Rs. 3,13,000/- and 2% thereof the Bank was to shoulder the responsibility and not the Insurance Company. The District Forum did not accept the stand of the Insurance Company holding that in view of the Excess Clause, 2% of the loss claimed i.e. Rs. 38,000/- was only to be borne by the Bank and the remaining amount was payable by the Insurance Company and thus the Impugned Order was passed directing the Insurance Company to pay Rs. 28,500/- along with 12% p.a. interest w.e.f. November 9, 1987 till payment with Rs. 500/- litigation expenses.

The clause as contained in the insurance policy reads as under : "Excess : Insured shall bear the first 25% of each loss items A to E or 2% of the basic sum Insured which is higher but not exceeding Rs. 50,000/-. Each loss in respect of each dishonest or criminal act shall be treated as a separate loss. This Excess will however not apply to loss or damage arising out of Fire, Riot & Strike, Burglary and House- Breaking risks. In respect of Items F, G & H of the policy (i.e. registered postal sendings, Appraisers and Janta Agents etc.) the deductible applicable will be 25% of the claim amount".

3. THE question for consideration is as to what was the loss of the complaint of which 2% was to be borne by the complainant. THE contention of Counsel for the Insurance Company is that the loss was as occurred on the day of theft i.e. Rs. 3,13,000/- and not Rs. 38,000/-, the remaining amount after the Police had recovered Rs. 2,75,000 /-. THE contention of the Counsel for complainant, on the other hand, is that the loss for which the claim was made before the Insurance Company is only to the tune of Rs. 38,000/- and not the other amount of theft which had already been recovered and delivered to the complainant under orders of Magistrate. After hearing Counsel of the parties, we hold that the approach of the District Forum in applying the Excess Clause is correct. It is the actual loss for which the claim is made that the Excess Clause would have operated and not the expected loss or in the given case anticipated loss. It is the actual loss for which the Insurance Company was to be approached for reimbursement under the terms and conditions of the policy and the actual loss was only to the extent of Rs. 38,000/-. THE complainant could not make claim of Rs. 2,75,000/-, the amount which had already been recovered by the Police and handed over to the Bank. Finding no merit in the appeal, the same is dismissed. The order of the District Forum is affirmed. We leave the parties to bear their own cost in this case. Appeal dismissed. _______________

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