(1998) 11 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

SHRAVAN KUMAR RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Citation : 1999 2 CPC 298 : 1999 2 CPR 64 : 2000 1 CPJ 441

Hon'ble Judges : S.K.Dubey , Saroj Rajwade J.

Final Decision : Appeal dismissed with costs

Judgement

1. NEW India Assurance Company Ltd. aggrieved of the order dated 16th September, 1997 passed in Case No. 9/97 by the District Consumer Disputes Redressal Forum, Hoshangabad (for short the ''District Forum'') has filed this appeal under Section 15 of the Consumer Protection Act, 1986 (for short the ''Act'').

2. THE facts giving rise to this appeal are thus that the complainant carries on business of sale of goods and medicine items at Jawahar Market, Itarsi in the name and style as "M/s. Kohli General Store". In Jawahar Market he had two shops, shop No. 49 and shop No. 50. In between the shops there is a brick wall. THE two shops had two separate shutters. THE actual sales are organised in shop No. 49 from the counter existing in the shop while shop No. 50 is used as godown to keep the stocks only. THE appellant took a Shopkeepers'' Insurance No. 4845010302345 covering the fire and perils, burglary and house breaking money and baggage insurance commencing from to 16.2.1993 which was issued after acceptance proposal form-cum-schedule attached to part of the policy. In the column of recitals insured description against the name of proposer in full and full Business (Shop) address is given as "Central Bank of India, Itarsi A/c Kohli General Store, Jawahar Market, Itarsi". In the body of the policy in Section I which relates to fire and allied perils of which category A relates to building was not covered with insurance while Category B relates to contents (excluding money/valuables) the insurance was of, (1) furniture, fixture, fittings of value Rs. 25,000/- and (2) Stock in trade consisting of general goods and medicine items

was insured to the extent of Rs. 1,50,000/-. Because of the fire the stock was burnt on 11.2.1993 at about 6.00 a.m. THE claim was lodged with the Insurance Company. On this, preliminary survey was made by Shri Bhimji Bhai Patel on 11.2.1993 at 9.00 a.m. THE survey report is dated 12.2.1993 (Ex. P/3). THE final survey was made by Shri Chandra Mohan. THE survey report is dated 14.5.1993. THE burnt stock was of Rs. 82,364.10 paise while saved stock was of Rs. 50,302.35 paise in both the shops. THE total value of the stock was Rs. 1,32,666.45 paise out of which burnt stock was within the sum insured of Rs. 1,25,000/-. In the report a special note was given that the sales were organised by shop No. 49 while shop No. 50 was used to keep stock only. THErefore, as per existing Shopkeeper''s Insurance Policy, the loss to the stock burnt in godown does not come under the scope of the policy hence, it is a no claim case. On this report the appellant repudiated the claim. THErefore, insured filed the complaint under Section 12 of the Act. THE defence version was in line with the Surveyor''s report that is risk of stock kept in godown i.e. shop No. 50 was not covered. The District Forum after recording of evidence and after considering the material on record held that the shop where the contents are kept was not specified in the insurance policy, the stock in trade consisting of Rs. 1,25,000/- of general goods and medicine items was insured, the shop No. 50 was in possession of the insured since last 8 years where he used to keep the stock for carrying on its business. In the circumstances the repudiation of the claim was without application of mind and arbitrary. Therefore, order for payment of Rs. 82,400/- the loss as assessed by the Surveyor with its interest from 1.1.1994 @ 12% p.a. and costs of Rs. 300/-. We have heard Mr. S.K. Menon, learned Counsel for the appellant and Mr. R.M. Bhatt, learned Counsel for the respondent and perused the record.

The only question for our consideration is whether the stock kept in shop No. 50 for sale by the sinsured was covered by the Shopkeepers'' Insurance Policy. From the facts stated above, it would be evident that in recitals in the heading of the Full Business (Shop) Address, no shop has been specified. The address given is "Central Bank of India Itarsi, A/c Kohli General Store, Jawahar Market, Itarsi". In the body, Section I relates to fire and allied perils. In the Description of Property Category A relates to building, shop owned by insured solely occupied/partially occupied has been kept blank. Category B relates to contents wherein furniture, fixtures and fittings have been insured of the value of Rs. 25,000/- while stock in trade consisting of general goods and medicine items was insured of the value of Rs. 1,25,000/-. It is not disputed that the stock kept in adjoining shop was of the insured. It is also not in dispute that the insured kept the goods and other medicine items as stock in trade. It was the stock in trade of the value which was covered for the risk of "Fire and Allied Perils".

3. THE words ''stock'' and ''stock in trade'' occurring in the policy are not used in any technical sense. In the absence of the user of the words in technical sense, the words used in the policy describe the risk are to be construed liberally carrying their plain and ordinary meaning. Black''s Law Dictionary, Sixth Edition

at page 1415 the words "stock" means the goods and wares of a merchant or tradesman, kept for sale and traffic. In a larger sense, the capital of a merchant or other person, including his merchandise, money, and credits, or, in other words, the entire property employed in business. At page 1418 "Stock in trade" is defined to mean the inventory carried by retail business for sale in the ordinary course of business. Also the tools and equipment owned and used by a tradesman.

4. P. Ramanatha Aiyar, in Law Lexicon, 1997 Edition at page 1807 defines "Stock in Merchantile Law" as stock is the capital of a merchant tradesman or other person, including his merchandise money, and credits. The goods and wares he has for sale and traffic. In Column 2 at the same page "Stock in Trade" has been defined as comprises all such chattels as are acquired for the purpose of being sold, or let to hire, in a person''s trade. The Supreme Court in S.K. Amir v. State of Maharashtra, A.I.R. 1974 S.C. 469, a case under Drugs and Cosmetics Act, 1940 considered the meaning of "stock" and observed in para 8 thus : "8. We see no substance in this argument. Section 18(a) of the Act which lays down an injunction that no person shall ''stock'' for sale a drug of certain description. Section 18(c) which says that no person shall ''stock'' for sale a drug except in accordance with the conditions of a licence issued for such purpose and Section 27(a) which prescribes a penalty for a person who ''stocks'' for sale a misbranded drug or a drug in respect of which no valid licence is held, do not use the word ''stock'' in any technical sense. The plain meaning of the word ''stock'' in these provisions of the Act is ''to keep'' and the injunction of the law means no more than this that no person shall keep for sale a misbranded drug or a drug in respect of which a valid licence is not held. It is not necessary that the drug should be ''stocked'' in a place in order that it can be said to have been ''stocked'' for sale. If anyone keeps or carries a drug on his person in contravention of the terms of the Act and it is proved that the drug is kept or carried for sale the Act must fail within the mischief of the law under consideration. In busy commercial cities, the streets are crowded with mobile hawkers who display their wares on their person. It is neither sound commonsense nor sound law to say that such wares are not stocked for sale. What is intended for sale can as much be stocked on one''s person as in a shop or in a godown. ''Keeping'' for sale is of the essence of the matter not the mode and the manner of keeping to keep for sale is to stock for sale. The shorter Oxford English Dictionary (Third Edition P. 2025) gives the meaning of the word ''stock'' as "To lay up in store : to form a stock or supply of (a commodity) ... To keep (goods) in stocks for sale."

The Shopkeepers'' Insurance Policy in question covers the risk of ''Stock in trade'' consisting of general goods and medicine items of the value of Rs. 1,25,000/- kept for sale by the insured. Therefore, it cannot be contended that the Stock in trade of goods and medicine items kept for sale in the adjoining shop was not insured or the risk was not covered and the risk of ''stock'' kept for sale only in shop No. 49 was covered. More particularly, when the shop where the goods and medicine items are kept as Stock in trade is not specified nor the property is described where the risk of goods and medicine items kept are covered under the policy. In the circumstances, repudiation of the claim merely on the basis that it was kept in the adjoining shop in the absence of evidence that it was not the ''stock in trade'' of the insured and was not kept by him for sale is illegal and unjustified. The appellant could not have escaped its liability as repudiation of the claim was arbitrary, unjustifiable amounting to ''deficiency in service''.

5. IN the result, the appeal fails and is dismissed with costs, which are quantified at Rs. 1,000/-. A copy of this order be conveyed to parties as well as to District Forum with the record of the case. Appeal dismissed with costs.