
(2000) 03 GAU CK 0003
In the Gauhati High Court
Case No : Consumer Appeal No. 143 of 1997

New India Assurance Co.Ltd.

APPELLANT

Vs

Lalit Kumar Patni

RESPONDENT

Date of Decision : 25-03-2000

Acts Referred:

Citation : (2000) 1 GLJ 624

Hon'ble Judges : J.N.Sarma, J and D.Dutta, J

Bench : Full Bench

Advocate : P.K.Barman, D.Choudhary, Advocates appearing for Parties

Judgement

J.N. Sarma, Member.

1. This appeal is directed against the judgment and order dated 31.7.97 of District Consumer Disputes Redressal Forum, Nalbari (for short, District Forum) in CP Case No.2 of 1995.

2. To state briefly the facts of the case are as follows: The complainant (the respondent herein), the proprietor of M/s Associated Drugs and Trade Agency with his wholesale shop at LN Bezbaruah Road, Nalbari Town, took a Cash Transit Insurance of the appellant, New India Assurance (OP in the original complainant) with insurance coverage for different items including cash transit for any one carrying to the extent of Rs.20,000 (Rs twenty thousand only). On payment of the due premium the OP insurance company (appellant herein) issued Policy No. 48/01190 for the period from 26.12.90 to 25.12.91. This is a renewal policy of his insurance since inception of the shop in 1984. On. 9.10.91 at about 10.30 AM the complainant/respondent gave a packet containing Rs.21,322 to his employee Sri Umesh Sarma to deposit the amount in his Bank A/c at Assam Cooperative Apex Bank, Nalbari. After putting the packet in the carrier (basket) of his bicycle Shn Umesh Sarma turned to the complainant who was sitting in the chair inside the shop to have clarification about denominations of the currency notes in the packet. At that very moment the packet containing the aforesaid amount of cash

was snatched away by some one. Hue and cry was raised. But in the meantime the thief who stole the money escaped from there. The complainant filed FIR in the Nalbari Police Station and the Case No. 2040/91 dated 9.10.91 was registered and investigated by the police. The culprit could not be traced and ultimately the case ended in final report. The complainant lodged his claim before the OP insurance company for the loss of Rs.21,322 (Rs twenty one thousand three hundred twenty two only) on transit.

3. As the appellant insurance company after long three years closed the case as "No claim" the complainant (respondent herein) being aggrieved filed the complaint in the District Forum claiming Rs. 49,396.00 in total from the insurance company including Rs. 13,074.00 as interest and Rs. 15,000.00 as compensation for business loss, injuries and personal sufferings. The complainant examined two witnesses, namely himself and his employee Sri Umesh Sarma apart from filing the relevant documents.

4. The opposite party insurance company (appellant herein) contested the claim of the complainant filing written version and examining Sri Arun Kumar Sarma, the Branch Manager, as their witness. Some documents have also been filed. The OP repudiated the claim as according to them the occurrence of the theft of the cash on transit could not be believed in view of the contradiction in the complainants' version at different stages as also the observation of the Chief Judicial Magistrate while accepting the final report. Besides in the instant case clause 3 of the terms and conditions of policy was violated.

5. After considering the evidence on record and hearing both the parties the learned District Forum allowed the complaint and passed the impugned order directing the OP insurance company to pay the insured amount of Rs.20,000 along with interest at the rate of 18% per annum with effect from 1.4.94 till the date of order. The present appeal is against this order.

6. We have heard the learned Advocate Sri PK Barman for the appellant and Sri D. Choudhury for the respondent, we have perused the memorandum of appeal. Besides we have gone through the complaint and the written version as also all the relevant papers filed by both the parties available in the original case record of the District Forum. We have taken into consideration the order of the National Commission reported in 1993 (2) CPR 111 (M/s Shadiram Raghubir Sharen vs. National Insurance Co Ltd) referred to by the learned counsel for the respondent.

7. On perusal of the evidence on record we find that the learned District Forum failed to appreciate the evidence properly. It is wrong to ignore the discrepancies in different versions of the incident put forward by the complainant at different stages. We are not inclined to agree with the District Forum that this difference or discrepancy is due to giving the details in one version. Besides, the observations of the learned Judicial Magistrate while accepting the FR can not be brushed aside. We find that the District Forum ignored the evidence of witness Sri Aran Sarma, the Branch Manager of OP insurance company. He stated it

specifically that the instant case was covered by the clause 3 of the General Conditions laid down in the policy itself, we have gone through Ext 1, the "shop " keepers" insurance policy clause which is attached to and forming part of the policy. The clause 3 with the caption "Reasonable care" reads as follows :

?The insured shall take reasonable steps to safeguard the property insured against any loss or damage. The insured shall exercise reasonable care that only competent employees are employed and shall take all reasonable precautions to prevent all accidents and shall comply with all statutory or other regulations.?

8. We find force in the appellants" contention that the instant case came within the purview of aforesaid clause 3. We are convinced from the facts and circumstances of the case that reasonable care was not taken by the complainant and his employee to safeguard the cash, as required under clause 3 of the aforesaid document (Ext 1).

9. In the complaint petition it is stated that the packet containing the cash was snatched by somebody from the carrier or basket of the bicycle which was held by the complainants" employee Sri Umesh Sarma in the premises of the shop. He repeated this is his deposition before the District Forum. But in his affidavit Ext A produced by the OP before the Forum it is clearly stated by the complainant that he sent his employee to deposit a sum of Rs. 2.13,121 in the Bank and that while he was proceeding towards the Bank some miscreants snatched the money from his possession. This statement is apparently different from what he stated in the complainant and in his oral testimony. It is difficult to rely solely on the oral testimony and statements of the complainant (PW 1) and his employee (PW 2). Although the time of alleged occurrence was 10.30 AM and there was hue and cry the complainant has not adduced evidence of any independent witness who might have witnessed the incident. It is rather risky to rely on the corroborative evidence of PW 2, the employee, who is under influence of the complainant and an interested party. We, therefore, find that the discrepancy is glaring and the insurance company has rightly repudiated the claim on this ground also. Although the Chief Judicial Magistrate"s remark expressing doubt about the incident while accepting the FR is not a piece of concrete evidence the appellant insurance company rightly took into consideration this remark while repudiating the claim. The insurance company is not bound to accept the Survey Report which is subject to several conditions. We do not think the Survey Report helps the complainant in view of what is stated above in respect of discrepancy in the complainant"s versions of the alleged incident of theft at different stages as also the violation of the aforesaid clause 3 of Reasonable care.

10. We find that the facts and circumstances of the case reported in 1993 (2) CPR 111 cited by the learned counsel for the respondent are not similar to those of the instant case and therefore the decision of the National Commission therein is not applicable here. This decision does not help the respondent in any way.

11. We, therefore, come to the conclusion that the learned District Forum failed to appreciate the evidence on record correctly and the impugned judgment is brought with infirmity and illegality. In view thereof the appeal is allowed and the judgment and order dated 31.7.97 of District Forum in CP Case No.2 of 1995 is set aside.