(1994) 09 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

New India Assurance Company Ltd. APPELLANT

Vs

BUILTWELL INDIA (P) LTD. RESPONDENT

Date of Decision : 12-09-1994

Acts Referred:

Citation : 1995 1 CPJ 382 : 1995 2 CLT 151

Hon'ble Judges : A.K.Bhattacharjee , Sunil Kanti Kar J.

Final Decision : Appeal dismissed

Judgement

1. IT is the case of the opposite party who was the complainant in C.D.F. Case No. 80 of 1993 that one of their employee named Binoy Singh took some money from the office 13.9.1990 and went to Hongkong Bank at about 11.30 a.m. He withdrew Rs. 5,000/- from said Hongkong Bank at Theatre Road and approached to the Bank of Baroda at Camac Street at a very small span of distance for preparation of draft. In between, the employee of the opposite party fell into the clutch of a group of "Kapemari". In usual Way some obnoxious material was thrown on his shirt and it was pointed out to him about such obnoxious materials on his shirt and indicated him to wash it in a tubewell nearby. When the said employee of the opposite party approached to the tubewell and keeping the back by its side arranged to wash that obnoxious materials from his shirt, one of the miscreants of the party of Kapemari group snatched the bag and went away. The contention of the appellant is that as per terms of the Insurance policy, the money has to be carried in direct transit by the authorised employee of the insured public transport or taxi within a radius of 5 Km. During 9. a.m. to 5.p.m. from insured''s office at Debendralal Khan Road to bank and vice versa.

2. IT is admitted that the employee of the complainant/opposite party took money of about Rs. 15,000/- from its office at Debendralal Khan Road to Hongkong Bank at Threatre Road, within the range of 5 Km. then he withdraw the sum of Rs. 5,000/- from such Hongkong bank and approached to Bank of Baroda at Camac Street located nearby for preparation of a bank draft there from but as he failed at the clutch of a group of Kapemari his money was

snatched by them. From the above facts, it appears to us that the condition of the insurance agreement is not violated in the sense that the money was carried in a rexine bag from the office of the opposite party to the Hongkong Bank and then from Hongkong Bank to the Bank of Baroda located nearly for the purpose of preparation of a draft and to come back to the office. The contention of the appellant that the employee of the insured did not carry the money from the office to Bank or vice versa but he was carrying money from one bank to another which is not covered by the terms of the policy. But to us the said contention of the appellant does not carry any weight in the sense that an employee of the opposite party took money from its own office and then took further sums of Rs. 5,000/- from one bank and then approached to another bank located nearby for preparation of a draft does not effect the tune of the insurance agreement. Further, the contention of the appellant is that the authorised employees of the insured was to go in bank or in office of the opposite party directly in public transport and /or taxi but that does not mean that the public transport or taxi shall reach inside the office of the opposite party or inside the Counter of the Bank, because the public transport or taxi generally goes up to turning point of the main road and beyond that it cannot go. Thereafter, the short distance have to be covered by walking up to the gate and/or counter of the bank, similarly on return to the office of the opposite party by walking up to the gate and/or office of the opposite party. So the contention about the approach of the public transport or taxi upto the gate and or office of the bank and vice versa is practically impossible and as such the said contention is not accepted by us as because every aspect of the matter is to be considered from the point of realistic and pragmatic approach. In our opinion this is a clean case of Kapemari to which the employee of the opposite party became innocent 00000000victim. It cannot be said to have any collusion in the matter. Moreover, police report to this effect completely corroborates the case of the complainant/opposite party that the money bag was snatched by a group of rogues in a style of Kapemari. Therefore, the appellant/insurer cannot avoid their liability by subterfuge.

Hence the appeal fails on contest.

3. WE affirm the judgment and order dated 7.10.1993 passed by the Ld. C.D.F. in C.D.F. Case No. 80 of 1993 and direct the appellant to pay the awarded sum of Rs. 20,000/- with 12% interest accrued thereon from 13.9.1990 until payment along with compensation of Rs. 2,000/- within 3 weeks from the date of communication of this order. Considering the facts and circumstances of the case, there will be no order as to the cost for this proceeding.

4. MR. Justice A.K. Bhattacharjee, President-The appeal arises out of a claim in respect of a money in transit insurance for an amount of Rs. 20,000/- which an employee of the complainant company was carrying for obtaining a bank draft from the Bank of Baroda. The employee concerned fell a prey to a Kepmary gang who drew the attention of the employee to some dirt on the back of his shirt. As usual the trickery practised was an easy success. The poor man engaged himself

in washing his shirt in a tubewell assisted by a person and the bag vanished. The man pumping the tubewell was caught and taken to police station and an F.I.R. was lodged against him. But the case was ultimately filed as true. A claim was made to the Insurance Company for the money insured, but the claim was repudiated by the company. A complaint was filed before the Calcutta District Forum who allowed the claim of Rs. 20,000/- with a compensation of Rs. 2,000/- and an interest at the rate of 12%. From the copy of the Insurance policy filed before the lower Court, it appears that the main conditions for the insurance were complied with, namely, the maximum amount allowed in transit, the hour of transit, the distance between the office and the bank etc. The Insurance Company, however, repudiated the claim of the complainant for alleged violation of the following conditions (i) There was a break-in-transit since employee concerned kept the bag containing the money on the ground in the open footpath. (ii) The money was not carried from bank to office but was carried from bank to bank. (iii) The money was not being carried through public transport.

As regards the ground No. (i) it is not a specific conditions of the policy. The broad fact is admitted that the money was being carried in a bag. The circumstances under which the bag was left on the ground do not tend to show that it was abandoned in utter negligence. It was kept on the ground with no intention of leaving possession and it was very much in his possession. So this does not appear to be a strong ground for repudiating the claim.

5. AS regards ground No. (ii), it is for force fully argued that the money was lost during transit from the Hongkong Bank to the Bank of Baroda and that the condition for transit from office to bank was violated. The cases of the parties as stated in the written objection and from a rejoinder to the said objection reveal that the employee Benoy Singh carried an amount of Rs. 15000/- from the office and added a sum of Rs. 5000/- to it by encashing a bearer cheque of Rs. 5000/- from the Hongkong Bank, Theatre Road. Any addition to the amount initially carried from the office does not by itself change the nature of the risk if the other conditions of the policy are complied with. Thus if the total money used for transit does not exceed Rs. 20,000/- at a time, if the distance is not changed and if the transit is completed within the risk hours it should be covered by the risk. Should this additional amount of Rs. 5000/- be taken back to office and then carried back to bank for fulfilling the insurance contract? Considering the banking hours observed in the country and the purpose of a transit insurance it would seem to be a useless formality. We are, therefore, not impressed by the argument that it was a transit from bank to bank and not from the office to bank and that the conditions of policy have been violated thereby.

6. AS regards the ground Nos. (iii) namely, that the money was not being carried by public transport or taxi we also do not think that it is an essential condition of the policy. The complainant''s case is that the employee was going to hire a taxi and was robbed of the money in the meantime. In fact, it is not a material condition of the policy that the money must be carried in a taxi or in a public

transport. The learned Advocate for the appellant Insurance Company lays stress on item No. 5 of the proposed Form which reads as follows- 5. What means of transport do the person conveying the money use? -Public transport, taxi." The question only relates to the mode of conveyance of the money generally adopted by the person conveying the money. For one thing a public transport runs only along some specified routes on the public thoroughfare. Does the carriage of the money upto such public thoroughfare remain outside the coverage of the insurance ? A taxi may not also be available at the door of the office or the bank. The conditions of the policy do not indicate that money should not be taken to bank and vice versa if such transport is not available on the spot. If any taxi is not available can it not be approached at some distance ? On a consideration of all prudent possibilities we are of the opinion that the carriage of the money in a public transport or in a taxi at any rate was not an essential condition for covering the risk in the policy. The man apprehended on the spot was apprehended and made over to the police. The police, however, filed the case as true. It is not understood why the case did not end in a charge sheet. Possibly proper investigation was not made in the matter. However, there is no suggestion from any quarters that the claim of the complainant was a fake one.

The Insurance Company at one time wanted to pay Rs. 10,000/- out of compassionatal ground. On that ground it is argued that there was a dispute as to the amount payable and that it attracted the arbitration clause. But essentially it is a repudiation of the claim and no arbitration clause is applicable here.

7. JUDGING from all angles therefore, I am in agreement with the views expressed by Prof. Kar and I endorse the view that the appeal should be dismissed. There shall, however, not be any order for costs. Before closing I must refer to another disturbing element. The judgment in this appeal was written by Prof. Kar and before this was considered and signed by others it was published in a local daily named ''Ajkal'' stating that the judgment was delivered by the President and the Members of the State Commission. The Learned Advocate for the appellant drew our attention to the relevant news item of Ajkal. All that we can say is that the published news was a false and irresponsible, one. But at any rate we have to put up with such type of journalism in our country. Appeal dismissed.

