**(2004) 04 NCDRC CK 0102**

**In the National Consumer Disputes Redressal Commission**

Oriental Insurance Co. Ltd. APPELLANT

Vs

KISHORECHAND KALYANJI And CO. RESPONDENT

**Date of Decision :** 27-04-2004

**Acts Referred:**

**Citation :** 2005 1 CPJ 733

**Hon'ble Judges :** M.S.Rane , V.K.Data , R.N.Varhadi J.

**Final Decision :** Appeal dismissed

## Judgement

1. RESPONDENT-org. complainant present in response to notice before admission issued by us on 28th November, 2003 through his Advocate.

2. WE are proceeding to dispose of this appeal at the stage of its admission itself on hearing the learned Advocates for the parties as above and on perusal of the material available in the appeal paper book. (For brevity''s sake appellant-org. O.P. is referred to as ''Insurance Company'' and respondent who is org. complainant as ''complainant''). The Insurance Company has taken exception to the order dated 31st March, 2003 passed by the District Forum. Thane holding it deficient in the matter of repudiation of the claim of the complainant being not proper and so holding has ordered the benefits under the policy which findings as stated are impugned in this appeal.

It is noticed that the complainant which is a business organisation has obtained insurance coverage known as "Money Insurance Policy". It is noticed that during the course of business, complainant entrusted Rs. 1,75,000/- to one Shri K.B. Pal, employee of its sister-concern for depositing in the State Bank of Hyderabad, Thane. While, Mr. Pal was on way to the State Bank of Hyderabad, some unknown persons came to him with chilly powder, threw it in his eyes and snatched the bag containing a sum of Rs. 1,75,000/- and decamped with the said amount. The matter was reported to the police promptly as also to the Insurance Company.

3. AS money could not be recovered that the complainant lodged the claim which

Insurance Company repudiated as stated above. Repudiation was done on the ground that the person Mr. K.B. Pal was not the employee of the complainant but he was the employee of the sister-concern of the complainant and that being so, he cannot be stated to be an authorised person and as per Condition No. (2) of Exclusion Clause, Insurance Company was not liable for the said payment.

4. THE complainant explained that in the sister-concern, the partners of the complainant were also the partners and both the companies had their registered address at the same place and under the same roof and in the same premises and being supervised, controlled and managed by the partners who were common partners of both the companies. The reliance was placed to the deed known as "Memorandum of Understanding" executed between the said two companies on 24th May, 1997 and copy whereof forms part of annexure to the memo of appeal and Clause No. (5) is relevant which reads: "(5) It is agreed between both the parties that the employees of the party of the first part shall also work and look after the daily business of the party of the second part and similarly the employees of the party of the second part shall also attend the work and business of the party of the first part. However, employees shall be entitled to withdraw their salary only from the company with whom they are employed." In this respect, it is necessary to find the exclusion Clause No. (2) under which the Insurance Company has justified its repudiation reads: "(2) Loss of money entrusted to any person other than the insured or an authorised employee of the insured."

5. THE expression appearing in the said clause reading as "an authorised employee" would have to attach a significance in the sense that under the Clause No. (5) of "M.O.U." referred to hereinabove, the employees of the sister-concern of the complainant were also authorised employees in a sense of the complainant were also authorised employees in a sense of the complainant as made.

6. THAT being so, there is no deviation in the terms of policy and the repudiation on the part of the Insurance Company was not proper and we are in agreement with the findings as rendered by the District Forum. ORDER 1. No merits. 2. Appeal stands dismissed. 3. No order as to costs. 4. Copies to be furnished to the parties.

Appeal dismissed.

 