(1998) 08 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO LTD — APPELLANT

Vs

Prem Parkash Mehra — RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Citation : 1998 2 CLT 327 : 1998 2 CPC 383 : 1998 2 CPJ 46 : 1998 2 CPR 17

Hon'ble Judges : S.C.SEN , R.THAMARAJAKSHI , S.P.BAGLA , C.L.CHAUDHRY , J.K.MEHRA J.

Judgement

1. SHRI Prem Prakash Mehra, Proprietor of M/s. Prem Prakash Mehra Jewellers, is carrying on business for about fifteen years and has an insurance policy against loss issued by Oriental Insurance Co. Ltd., Amritsar known as "Jewellers Block Insurance Policy. On the 5th July, 1993, Rajesh Mehra, son of Prem Mehra and Manager of the business carrying gold ornaments weighing 1657.500 grams in VIP suitcase boarded a train for going to Gaya on business. At about 6.00a.m. when he reached the Railway Station, he was allotted seat number 67 in the Chair Car, Compartment No. C2 of the train. He placed his suitcase on the seat and went to say good -bye to his father who had come to see him off. When he came back, he found his suitcase was missing. He immediately stopped the train but failed to locate the suitcase. He lodged an FIR with police at about 8.30 a.m. Later on he informed the Insurance Company about his loss. The Insurance Cover was to the extent of Rs. 10 lakhs. The claim on account of loss of ornaments was limited to Rs. 6,87,862/ -. The total claim came to Rs. 7.56.648/ -.

2. THE Insurance Company declined to pay the claim lodged by the Jeweller on the following grounds (i) The claimant''s case was that he was carrying 1657.500 grams of gold ornaments. The Surveyor, on examination of the accounts of the Jeweller, came to the conclusion that the loss was to the extent of 499.610 grams only. Thereafter, an Investigator was appointed who estimated the loss to be not more than 503.610 grams.

(ii) The improbability of the case of the complainant was also pointed out in the report of the Surveyor, S.P. Goel and Co. The claimant''s total business in the year ended 31.3.1992 to 31.3.1993 were as under: Details 31.3.1992 3.3.1993 (Fig. In lacks) Sale 11.10 12.10 Purchase 9.17 10.11 Stock 1.05 0.59

In the background of these facts, it is difficult to believe that the petitioner was about to sell Jewellery worth, approximately Rs. 7 lakhs in a solitary transaction in 1994.

3. MOREOVER , it was pointed out that the stock register of the petitioner showed the petitioner''s holding of gold ornaments on the relevant dates as under: Date Quantity 15.6.1993. 503.6100 gms 1.7.1993 503.610 gms 2.7.1993 1661.800 gms 3.7.1993 4.000 gms

4. THE petitioner stated that it had reached an agreement with the M/s. Kankaliya Jewellers at Gaya for sale of Jewellery on 2.7.1993 and was about to deliver the jewellery to Kankaliya Jewellers. The jewellery, however was lost in transit as stated herein above. This was the petitioner''s first ever transaction with Kankaliya Jewellers. If the petitioner''s case is to be believed he purchased gold on 2/3 July, 1993 and set out for Gaya on the 5th July with gold ornaments weighing 1657.500 Cms. of gold ornaments.

5. THE Surveyors disbelieved the claim of the petitioner. Doubts were expressed about the genuineness of the transactions immediately preceding the loss of the ornaments. According to the survey report loss, if any, was to the extent of 499.610 grams. According to the Investigator who investigated the claim, the loss was not more than 503.610 grams of gold ornaments. Both the Surveyor and the Investigator came to the conclusion that some of purchase vouchers were manipulated and were actually prepared after the ornaments were actually lost. This finding of Investigator and the Surveyor was rejected by the State Commission on the basis of affidavits of the complainants and some of witnesses relied upon by the petitioner. The prayer for cross -examination of the witnesses was rejected by the State Commission on the ground that this case will have to be disposed of within 90 days'' time. The State Commission did not think it proper, in the facts of the present case, to summon the witnesses on whose affidavits reliance was being placed, for cross -examination.

6. IN the facts of this case, this was a very unusual decision by the State Commission. Serious doubts were raised about the entries made in the books of accounts. The sellers from whom the gold ornaments were purchased immediately on the eve of the theft of the gold ornaments should have been allowed, specially in view of the fact that a very large transaction of sale of gold ornaments was taken place which was quite out of proportion to the pattern and quantum of business done by the appellant over the last three years. There is another unsatisfactory feature of the way the case was disposed of by the State Commission. It was argued that the respondents were callous in the way the gold jewellery was carried. The suit -case containing the gold jewellery worth nearly seven lakhs, was left unattended by Rajesh Mehra when he went out of

the compartment to speak to his father. In the judgment under appeal it has been pointed out that putting the Jewellery articles in a VIP suitcase itself was a proper precautionary measure while travelling in a train. It was pointed out that usually suitcase etc. are not chained with the seats. In the moving train or when the train is about to start the passenger is coming to door to see off their relations is another feature. The passenger is not expected to carry his luggage with him to the entrance door when they come to see their relations.

7. WE are of the view that the approach of the State Commission is erroneous. The complainant was carrying gold ornaments valued at Rs. 6,87,862/ - which is more than 50% of his total transactions of the two previous accounting years. It is surprising that such a huge quantity of gold ornaments were left unattended in a VIP suitcase when Rajesh Mehra, came out to see his father. A VIP suitcase can be picked up by anybody. That is what happened in this case. Another surprising feature which has been pointed out by the Surveyor and the Investigator is that no complaint was lodged with the Railway Police or any authority at the Railway Station. After the loss of suitcase was discovered Rajesh stopped the train, went back home with his father and lodged an FIR with the Police nearly two hours after the event, at about 8.30 a.m. However, we are of the view that the negligence of the complainant was not so gross as to decreatible him from any compensation at all.

8. ALTHOUGH , on behalf of the Insurance Company our attention was drawn to the police report doubting the story of the theft, we are not going into that aspect of the matter because this aspect was not agitated before the State Commission. The factum of theft was not doubted. The only points that were urged that the goods were not stolen from the custody of the complainant, secondly, the complainant failed to take proper measure against the theft of the goods and thirdly, about the quantum of the goods. Having considered the facts of the case from all aspects we are of the view that the State Commission has overlooked the principle that the complainant was to prove his case. Affidavits filed by Gurmit Kumar, Rakesh Mehra, Kashmiri Lal and Prem Prakash Mehra were accepted without allowing them to be examined by the Insurance Company. We are of the view that this self -serving affidavits should not have been readily accepted by the State Commission in the facts of the case.

9. BUT , according to the survey report loss was to the extent of 499.610 grams. According to the Investigator the loss was not more than 503.61 Ograms. In the facts of this case we have decided to give benefit of the higher report given by the Investigator and fix the quantum of loss to be 503.600 grams of gold ornaments. The survey report has quantified the amount of loss to be Rs. 2,90,828/ -. Since we are accepting the higher figure indicated in the investigation report we direct the Insurance Company to pay to the complainant a total sum of Rs. 3,00,000/ - as compensation. This sum is fixed inclusive of interest. However, if the amount is not paid within a period of 30 days from the date of receipt of a copy of this order, further interest at the rate of 18% till the

date of payment will have to be paid by the Insurance Company. The appeal is disposed of as above. Appeal disposed of.