(2015) 06 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Case No : 753 of 2011

ORIENTAL INSURANCE CO LTD APPELLANT

Vs

Sunil Kumar Bajaj RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Citation : (2015) 06 NCDRC CK 0029

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Advocate : Petition allowed

Judgement

1. THIS revision is directed against the order of the State Commission Bihar in Appeal No. 31/07 dated 26.10.2010 whereby the State Commission allowed the appeal of the complainant, set aside the order of the District Forum and directed the petitioner insurance company to pay to the respondent complainant a sum of Rs.7,03,000/ - alongwith 9% interest p.a. from the date on which the cause of action arose till the date of realization besides Rs.5000/ - as litigation cost.

2. BRIEFLY put, the facts relevant for the disposal of the revision petition are that Sushil Kumar Bajaj in his capacity as director of M/s Balajee Electro Steel Ltd. filed a consumer complaint in the District Forum alleging that M/s Balajee Electro Steel Limited had obtained an insurance policy providing insurance cover against loss of money in transit or the loss caused due to robbery, theft or any other tortuitous cause. It is the case of the complainant that during the subsistence of the insurance cover, on 28.04.2003 Sushil Kumar Bajaj collected a sum of Rs.7,03,000/ - from the office of the insured company at 8.00 p.m. He was carrying money in a brief case. On the way, he stopped at Bankipore Club to negotiate a business deal with someone. After parking the car, he handed over the briefcase containing cash to the driver of the car Maksood Alam. After some time, when the complainant came back from the club, he did not find his vehicle in the parking lot. Sunil Kumar Bajaj started searching for the vehicle and he found the vehicle parked near Bihar Chambers at a distance of 500 yards from the Bankipore Club. However, the driver had absconded with the briefcase

containing cash. An FIR was lodged at PS Gandhi Maidan on the same day under section 408 IPC. The police could not trace the case. The loss of cash was intimated to the insurance company and the insurance claim was submitted but the insurance company repudiated the claim on the ground that insurance cover was not available to the petitioner under the policy conditions.

3. BEING aggrieved of the repudiation of the claim, the petitioner preferred a consumer complaint. The petitioner opposite party resisted the complaint and took the plea that insurance claim was rightly repudiated and in view of the Exclusion Clause in the insurance contract because Sushil Kumar Bajaj had entrusted the briefcase containing cash to the driver, who was not an employee authorized to carry cash on behalf of the insured.

4. THE District Forum Patna on consideration of the pleadings and the evidence did not find merit in the complaint and dismissed the complaint relying upon the Exclusion Clause in the insurance contract. Being aggrieved of the order of the District Forum, the respondent complainant approached the State Commission in appeal and the State Commission vide the impugned order set aside the order of the District Forum and allowed the complaint with above noted directions to the opposite party.

5. MR . A.K. Kaul, Advocate for the petitioner opposite party has contended that the impugned order of the State Commission is based upon incorrect appreciation of facts and in total disregard of the insurance contract and as such it is not sustainable. Expanding on the argument, he has taken us through the insurance policy particularly the Exclusion Clause, relevant portion of which reads as under: "EXCLUSIONS: The Company shall not be liable in respect of :

1. X X X X X

2. Loss of money entrusted to any person other than the insured or an authorized person of the insured.

3. Loss of money where the insured or his employee is involved as principal or accessory except loss due to fraud or dishonesty of the cash carrying employee or the insured occurring whilst in transit and discovered within 48 hours. "

6. LEARNED counsel for the petitioner has further contended that the State Commission has failed to appreciate that District Forum has discussed the Exclusion Clause threadbare and rightly dismissed the complaint.

7. MR . Prakash Kumar, Advocate on the contrary has argued in support of the impugned order and has drawn our attention to para 10 and 11 of the impugned order and submitted that from the observations in those paragraphs, it is clear that State Commission has appreciated whether or not driver Maksood Alam was employee authorized to carry cash on behalf of the insured and rightly held that Maksood Alam was the authorized person and as such the repudiation under the garb of Exclusion Clause was not justified.

8. THE short point which needs resolution in this revision petition is whether or not the Exclusion Clause referred to above is applicable in this case?

9. ON reading of the above noted Exclusion Clause, it is clear that as per the insurance contract, the petitioner opposite party was not liable in respect of any loss of money caused in transit if the money lost was entrusted to any person other than the insured or the authorised employee of the insured. It is admitted case of the complainant that Sunil Kumar Bajaj proceeded from the business premises of the insured with the subject money in a briefcase, which makes it clear that only Sunil Kumar Bajaj was authorized to carry such cash. It is also admitted case of the parties that on reaching Bankipore Club, Sunil Kumar Bajaj entrusted the bag containing money to the driver Maksood Alam and went inside the club. This means that Sunil Kumar Bajaj who was authorized to carry the cash, entrusted the cash contained in the briefcase to the unauthorsed person i.e. the driver, who absconded with the money. Therefore, in our considered view, the Exclusion Clause is squarely applicable in this case and the insurance company had rightly repudiated the insurance claim.

10. COMING to the contention of learned counsel for the respondent complainant. Counsel for the complainant has strongly contended that State Commission has rightly concluded on the basis of pay -in -slip of HDFC Bank that Maksood Alam was also a cash carrying employee because on one occasion, the money was deposited in the bank by him. This conclusion of the State Commission is fallacious. Merely because on one occasion Maksood Alam had deposited the money in the bank, it cannot be concluded that he was authorized by the company to carry the cash. No authority letter or general authorization in favour of Maksood Alam is shown by counsel for the respondent. Otherwise also, so far as cash in question is concerned, it was entrusted to Sunil Kumar Bajaj and for that purpose, he alone was the authorized person and he has parted with the money by entrusting the same to the driver, who misappropriated it. It is the case of entrustment of money to unauthorized person. Therefore, repudiation of claim was justified.

11. IN view of the discussion above, the impugned order cannot be sustained. We accordingly allow the revision petition, set aside the impugned order and restore the order of the District Forum.