
(2009) 02 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Oriental Insurance Company Ltd. and Anr.	APPELLANT
Vs	
SOUTH EASTERN COALFIELDS LTD.	RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Citation : 2009 0 NCDRC 50 : 2009 2 CPJ 60 : 2009 2 UC 1046

Hon'ble Judges : ANUPAM DASGUPTA J.

Final Decision : Appeal allowed

Judgement

1. THIS matter was last heard on 27.1.2009, when the following order was passed: Arguments heard. The appeal is allowed and the impugned order is set aside, leaving the parties to bear their own costs Reasons to follow.

The reasons are discussed below:

2. M /s. South Eastern Coalfields Ltd. (hereafter referred to as "SECL"), the original complainant and Respondent in this appeal, took out a money insurance policy with the Appellant insurance company against perils like burglary, etc., while the money was kept in the insured premises. The policy was valid for the period 31.8.1997 to 30.8.1998. In the intervening night of 9th/10th of January 1998, a burglary took place at the insured premises of the SECL at Chhal Dharam sub area where a sum of Rs. 36.60 lakh, withdrawn by SECL from the State Bank of India, Kharsia, had been kept. The security guards on duty resisted the burglars, which resulted in the unfortunate death of one security guard while the other was seriously injured. The burglars opened the room where the cash had been kept and decamped with Rs. 16.80 lakh in currency notes of Rs. 100 and Rs. 50. A complaint was lodged with the Police Station, Chhal Dharam and a claim was also filed with the Appellant insurance company. The Police investigated the matter and filed a charge sheet in the case. In course of investigations into the burglary, the Police also recovered a sum of Rs. 2.67 lakh out of the stolen money. Thus, the net cash loss was of Rs. 14.13 lakh. 2(i) The Insurance Company appointed the Surveyor to assess the loss. The Surveyor, in its detailed report, concluded as under:

On the basis of the facts and circumstances of the loss stated above, we are of the opinion that the cash was not lying in the safe and therefore the loss falls under the specific exclusions of the policy and, thus, is not payable by the underwriters.

This report is issued without prejudice.

(ii) On this basis, the Insurance Company repudiated the claim of SECL by its letter dated 30.11.1999, stating as under:

With reference to the above claim, we have to inform that the Competent Authority have repudiated the above said claim on the following grounds as per exclusion No. 4 of the policy:

The Company shall not be liable in respect of loss occurring on the premises, after business hours, unless the money is in a locked safe or strong room.

Aggrieved by this, SECL filed a consumer complaint with the Chhattisgarh State Consumer Disputes Redressal Commission (hereafter, "the State Commission"). The State Commission, by its impugned order, allowed the complaint and directed the insurance company as under": Accordingly, the complaint is allowed. It is directed that opposite party shall pay Rs. 16.80 lacs (Rupees sixteen lacs, eighty thousand) to the complainant with interest @ 12% per annum thereof from 10.4.1998 i.e. 3 months after the date of incident which is a reasonable period for processing and deciding the claim, till payment of the said amount. The cost of the complaint quantified as Rs. 5,000 (Rupees five thousand only) shall also be paid by the Insurers opposite parties to the complainant.

Against this order, the Insurance Company came up before us in this appeal.

3. WE heard Ms. Deepa Chacko, Learned Counsel appearing for the Appellant Insurance Company and Mr. Aishwarya Sinha Learned Counsel appearing on behalf of the Respondent and also considered the documents on record.

4. AT the outset, it has to be noted that the money insurance policy in question taken by SECL was to indemnify "the insured SECL against loss of money in transit by the insurer or insurer's authorised employee(s), occasioned by robbery, theft or any other fortuitous acts" and also against "loss of money by burglary, house breaking, robbery or hold up. whilst money is retained at the insured's premises, in safe(s) or strong room, more particularly described in the schedule". The said insurance policy had several specific exclusions. Clause No. 4 of the said exclusion stipulated: "The company shall not be liable in respect of loss occurring on the premises, after business hours, unless the money is in a locked safe or strong room". Ms. Chacko has (sic) attention in this context to SECL's proposal for this insurance policy submitted to the Appellant Insurance Company. The said proposal clearly reflects that the sum assured at the Chhal Dharam sub area office (to quote, "whilst on the premises during the business hours or whilst secured in locked safe(s) or strong room, on the insured's premises, outside business hours, against the risks of burglary, house breaking,

dacoity, robbery and hold up") was Rs. 50 lakh. Under item No. 10 of the said proposal, SECL had specifically stated the details of the safe(s) and/or strong room in which the money was to be kept outside business hours by recording "as per enclosed sheet". Giving further details of the safe, the proposal reiterated, "as per Annexure SI. Nos. 5(a) and 5(b)", embedded in the wall. The proposal was accompanied by an annexure, as stated in the said proposal, which gave the full details of the safe in which, it was stated, that the money would be kept outside business hours; the description included the makers' name (Godrej), model (POP -22), inside and outside dimensions as well as the identification numbers of the keys. In other words, it was a complete description of a single safe in which, according to the proposal itself, the cash was expected to be stored outside business hours in order to be covered by the insurance policy in question. The resultant insurance policy incorporated the same details. It may also be noticed at this stage that there was no mention of any strong room in the proposal nor was a strong room mentioned in the insurance policy. 6(i). The undisputed facts of the case clearly show that the burglary, leading to the loss of cash mentioned above, took place outside business hours. In order to be covered by the insurance policy, the money had, therefore, to be kept in the safe described in the policy following SECL's own proposal in this behalf.

(ii) Ms. Chacko has also drawn our attention to two important documents on record before the State Commission:

(a) One of them was a handwritten statement of the cashier of SECL (given to the Surveyor, M/s. S.K. Kaul and Company) who was on temporary duty at the time of the burglary. The Executive Manager, Chhal sub area of SECL, Raigarh area, also countersigned this statement. The statement reads as under:

M/s. S.K. Kaul and Company, Delhi When I was assigned to work as cashier on 20.12.97, in the absence of.... cashier for 5/ 6 days. But the cashier did not return to resume his duty, so I am continue for cash work till his return. One to two days before the incident safe lock was not working properly. So on the date of incident, cash was not lying in the safe.

This document clearly showed that at the time of the incident, the lock of the safe described in the policy was not working and on the date of the incident, the cash in question was not kept in the safe.

(b) The other document of importance cited by Ms. Chacko was the affidavit of Mr. Probir Roy, Senior Accounts Officer, SECL, Raigarh area filed by SECL along with its complaint before the State Commission. In paragraph 5 of this affidavit, Mr. Roy stated as under:

That an armed dacoity took place in the intervening night of 9th and 10th January, 1998 and the dacoits after murdering one security guard namely Satyanarayan Shrivastava and grievously injuring the other security guard present on duty at Sub Area Manager's office SECL, Dharam Incline and robbed a sum of Rs. 16,80,000 from the locked cash room of SAM office of Dharam

Incline and after breaking open the locks of the steel trunk in which the cash was safely placed.

This corroborated the fact that the stolen cash was kept not in the stipulated safe but in a steel trunk placed in a so -called strong room.

7. In the impugned order, the State Commission discussed these issues in considerable detail but came to the following erroneous conclusions:

It would thus appear from the above that cash was kept in the strong room and in the safe embedded in the wall as well as in the G.I. sheet box duly locked while the strong room was also locked from outside. This appears to be as per - stipulations of the policy which required cash to be kept in safe and/ or strong room.

It would, therefore, appear that the cash was kept by the complainant as stipulated in Clause 10 of the policy issued by the insurers opposite parties and adequate arrangement of security was made by the complainant. Hence, exclusion Clause 4 was not attracted. The repudiation of the claim of the complainant by the insurers/opposite parties resorting to the said exclusion Clause 4 was not justified and amounted to deficiency in service.

8. We are unable to agree that first, the room in which the cash was kept was a "strong room" covered by the money insurance policy in question. As discussed above, the proposal itself did not refer to any strong room at all - -all that it stipulated was that the cash, to be covered by the insurance policy, would be kept in a Godrej safe of a specific model of specific dimensions embedded in a wall. Secondly, from the statement of the cashier in -charge as well as the Senior Accounts Officer, it was clear that the cash could not have been kept in the stipulated safe in the insured's premises at the time of the burglary and that it was, in fact, kept in a steel trunk in a so -called strong room. What was claimed to be a strong room in which the steel trunk was placed was not a strong room covered by the insurance policy. Thirdly, therefore, the exclusion Clause No. 4 of the insurance policy referred to above was clearly attracted. In other words, though, unfortunately, SECL did actually lose as much as Rs. 13.14 lakh in cash as a result of the burglary, we cannot hold that the lost cash was covered by the money insurance policy in question under which SECL had sought to be indemnified.

9. For these reasons, we have passed the order referred to above.