

(1996) 10 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

P. MANEKLAL SONI

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 28-10-1996

Acts Referred:

Citation : 1997 1 CPC 548 : 1997 1 CPJ 440 : 1997 1 CPR 563

Hon'ble Judges : R.C.Mankad , Jatin P.Vaidya J.

Final Decision : Complaint partly allowed with costs

Judgement

1. THE complainant is carrying on business of gold ornaments and Jewellery at Dahod in Panchmahal district and he has filed this complaint for recovery of Rs. 2,49,000/- together with interest, compensation and other reliefs as prayed for in para 13 of the complaint from the National Insurance Company Ltd., opponent herein.

2. THE complaint is based on the following allegations. THE complainant had taken burglary policy for a total sum of Rs. 13 lakhs from the opponent and this policy was valid for the period from October 12,1993 to October 11,1994. Under the said policy, the complainant had insured stock of gold, silver ornaments etc. lying in his business premises. On the night between December, 24 and 25,1994, burglary took place in the business premises of the complainant as a result of which, according to the complainant, gold and silver ornaments worth Rs.11,77,200/- were stolen. THE complainant lodged complaint with the police and the police drew up a panchnama in the course of investigation of offences registered on the basis of the complaint. THE complainant also intimated the opponent about the incident and lodged claim for Rs. 11,77,200/- with it. THE grievance of the complainant is that although he had supplied all the relevant information and documents to the opponent and the Surveyor appointed by it, no decision was taken by the opponent on the claim made by him. It is submitted that police arrested culprits and recovered from them ornaments worth Rs. 4,28,000/-. The ornaments seized were produced before the Court of J.M.F.C. (criminal Court for short), Dahod. The complainant gave application to the

criminal Court to hand over to him the ornaments which were attached or seized from the culprits. The Criminal Court passed an order dated April 26,1995 directing to deliver the ornaments to the complainant on his furnishing a bond in a sum of Rs. 6 lakhs on the condition that whenever called upon to do so he shall produce the ornaments before the Court. It is however submitted that the complainant is not in a position to use or deal with the ornaments which are handed over to him because he is required to produce them whenever the Court so directs.

It is submitted that the opponent has paid to the complainant Rs. 5 lakhs on account on July 12,1995 pending final decision on the claim made by him. The opponent has not given any decision on the balance of Rs. 2,49,000/- from the total claim. There was thus deficiency in service on the part to the opponent. On the above grounds, the complainant has sought to recover the following amounts from the opponent. 1. Rs. 2,49,000/- together with 18% interest; 2. Interest on Rs. 5,00,000/- paid on account; 3. Profit of Rs. 2,50,000/- on Rs. 4,28,000/- being the value of the ornaments handed over by the Court to the complainant which are required to be produced by the complainant before the Court or in the alternative interest @ 18% on the said amount; 4. Business loss of Rs. 2 lakhs; 5. Travelling expenses of Rs. 1,00,000/-; and 6. Cost of Rs. 15,000/-.

3. THE opponent has resisted the claim made by the complainant by its written statement Exh. 14. It has denied the allegations of deficiency in service made by the complainant and submitted that since the dispute between the parties was only with regard to the quantum of compensation, the dispute should have been referred to arbitration under the terms and conditions of the insurance policy. It is further submitted that the opponent had not repudiated the claim made by the complainant and therefore there was no cause of action. It is further submitted that it is necessary for the complainant to lead oral and documentary evidence to prove his case and therefore the proper course for him to adopt is to approach the Civil Court. The opponent has further submitted that out of the claim of Rs. 11,77,200/- made by the complainant, Rs. 5,00,000/- have already been paid to the opponent. The Criminal Court had handed over ornaments worth Rs. 5,10,000/- to the complainant. There was also melted gold worth Rs. 1,40,000/- in the custody of the criminal Court. Therefore, the total value of the ornaments and gold recovered from the culprits came to Rs. 6,50,000/-. If Rs. 5,00,000/- paid by the opponent to the complainant are added to the said amount, the complainant has already received or recovered Rs. 11,50,000/-. Therefore the claim made by the complainant practically stands liquidated and hardly any amount remains payable to him. The complainant is, therefore, not entitled to claim any amount as prayed for in the complaint. In any case, there is no deficiency in service on the part of the opponent and therefore the complainant is not entitled to claim any amount or compensation from it. The opponent has therefore prayed for the dismissal of the complaint.

4. THERE appears to be no dispute that the weight of the ornaments handed

over by the Criminal Court to the complainant was 1037.280 gms. This is evident from the list of ornaments alongwith their weight produced at Annexure-A to the affidavit-in-rejoinder which is at page 60. However, there is no evidence to prove that the market value of gold at the relevant time was Rs. 4130/- per 10 grams. The complainant has worked out the value of the ornaments handed over to him @ Rs. 4,130/- per 10 gms. and estimated their value at Rs. 4,28,000/-. However, according to the opponent, the value of the said ornaments comes to Rs. 5,10,000/-. We do not know how this value has been worked out since Surveyor's report is not produced before us. In any case, there is controversy with regard to the value of the ornaments handed over by the Criminal Court to the complainant and there is no evidence on record to resolve this controversy. We are also not in position to hold that the value of Rs. 5,10,000/- stated by the opponent is not correct. It is significant to note that in his rejoinder affidavit the complainant is silent about the value of melted gold which is stated to be Rs. 1,40,000/- by the opponent. We have therefore, to proceed on the basis that the complainant does not dispute that the value of the melted gold is Rs. 1,40,000/- as stated by the opponent. Thus, if what is stated by the opponent is accepted, the value of the gold ornaments and gold recovered from the culprits comes to Rs. 6,50,000/-. The opponent has paid Rs. 5,00,000/- on account to the complainant. Thus out of claim of Rs. 11,77,200/-, the complainant could be said to have received Rs. 11,50,000/-. This leaves balance of Rs. 27,200/-. The opponent has not explained as to why they are not liable to pay said amount of Rs. 27,200/- to the complainant. If the calculation made by the complainant is correct, he has received Rs. 10,68,390/- including the value of the ornaments, value of melted gold and Rs. 5,00,000/- received from the opponent towards his claim of Rs. 11,27,200/-. Thus, according to the complainant, Rs. 1,08,810/- are not paid to him. In absence of any evidence regarding the value of the gold at the relevant time, we are not inclined to accept the complainant's statement to the effect that the value of ornaments would be Rs. 4,28,000/- only. The ornaments have been recovered from the culprits and to the extent of their value and the value of the melted gold it could not be said that the complainant has suffered any loss due to burglary. It is true that the Criminal Court had directed the complainant to produce the ornaments whenever called upon to do so and has not handed over melted gold worth Rs. 1,40,000/-. But for that reason the opponent could not be held liable to pay to the complainant any sum by way of loss of profit or interest as claimed by the complainant. The burglary took place on the night between December 24-25,1994. The opponent paid Rs. 5,00,000/- on account on July 12,1995. We are unable to see as to how the complainant can claim interest @ 18% p.a. for the period from April 1,1994 to July 12,1995. There appears to be mistake in stating the date from which, according to the complainant, interest would begin to run on the said amount. The complainant perhaps meant not April 1,1994 but April 1,1995. If that be so, perhaps the interest amount would not come to more than Rs. 88,000/- as claimed by the complainant. In our opinion, having regard to the facts and circumstances of the case, it is difficult to hold that there was delay on the part of the opponent in

making payment of Rs. 5,00,000/- on account. In a case of this nature, where the opponent is required to make survey and investigation, it would take about 6 to 7 months to take even some tentative decision on the claim made by the complainant. In our opinion, therefore, there is deficiency in service on the part of the opponent in making on account payment as stated above. In our opinion, the only thing which the opponent has failed to explain is why they have not offered to pay Rs. 27,200/- which even according to their calculation, are outstanding towards the claim made by the complainant. As pointed out above, even if the calculation is made as suggested by the opponent, it is still liable to pay Rs. 27,200/- to the complainant. There is, therefore, deficiency in service on the part of the opponent insofar as withholding of Rs. 27,200/- are concerned. It may be mentioned here that the opponent has not challenged the correctness of the total claim of Rs. 11,77,200/- made by the complainant. It has not produced the survey report and we do not see any reason to disbelieve the statements made by the complainant to the effect that the total value of the loss suffered by him on account of theft was estimated at Rs. 11,77,200/-. The opponent having accepted this estimate of loss, as pointed out above, it was liable to pay to the complainant balance of Rs. 27,200/-. It is also liable to pay interest on the said amount. So far as rest of the claim made by the complainant is concerned, we do not find any substance.

5. IN the result, this complaint is partly allowed and the opponent is directed to pay to the complainant Rs. 27,200/- together with 18% interest from August 1,1995 till realisation and cost of Rs. 1,000/-. Rest of the claim made by the complainant shall stand rejected, with no order as to costs. Complaint partly allowed with costs.