(2005) 10 NCDRC CK 0096

In the National Consumer Disputes Redressal Commission

P. MANEKLAL SONI APPELLANT

Vs

National Insurance Co. Ltd. RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Citation : 2007 3 CPJ 43

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal allowed

Judgement

1. APPELLANT was the complainant before the State Commission where he had filed a complaint alleging deficiency in service on the part of the respondent-Insurance Company.

2. UNDISPUTED facts of the case are that the complainant deals in gold and silver ornaments and obtained an insurance cover for Rs. 13,00,000 against burglary effective from 12.10.1993 to 11.10.1994 for which premium was paid and policy was issued by the respondent. On the night of 24-25th December, 1993, burglary was committed in the premises of the complainant and an FIR was lodged with the police and matter was reported to the respondent and the claim amounting to Rs. 11,77,200 was preferred before the respondent-Insurance Company. In the meantime, the police apprehended the culprits and recovered the ornaments. As per details, after some days, on request of the complainant, the Hon''ble Judge dealing with this case, ordered possession of all these ornaments to the appellant, on furnishing a bond by him which was done and ornaments were released in favour of the complainant with the caveat that complainant will have to bring the original goods before the Court as and when he is required to do so. Keeping this in view, the respondent company also made an ''on account'' payment of Rs. 5,00,000 to the appellant. Since the whole claim was not getting settled, the complaint was filed before the State Commission who after hearing the parties allowed the complaint to the extent that the appellant/complainant shall be entitled to receive Rs. 27,200 along with interest @ 18% from 1.8.1995 till realisation along with cost of Rs. 1,000. The rationale

for arriving at this figure was that ornaments of gold recovered by the police, in the custody of the Court are valued at Rs. 6,50,000. After providing for Rs. 5,00,000 paid by the Insurance Company to the appellant what remained against the claim amount was only Rs. 27,200 which was directed to be paid. Not satisfied with this relief, this appeal has been filed before us praying for grant of the full amount, on the grounds namely that whatever gold has been given to them cannot be sold or dealt in any other way, which will amount to a loss within the meaning of the terms of the policy. We heard the learned Counsel for both the parties and find that there is no disputing the fact that the ornaments worth Rs. 4.28 lakh are already in the custody of the appellant which cannot be said to be a loss for which they need to be indemnified. There is also no disputing the fact that Rs. 5.00 lakh has been given as ''on account'' payment to the appellant. There is also no disputing the fact that the melted gold worth Rs. 1.4 lakh is also lying with the Criminal Court. We are told that despite passage of time of over 10 years, there is no outcome in the criminal case and the unmelted gold valued at Rs. 1.40 lakh remains frozen with the Criminal Court or lost as far as the appellant is concerned.

It is argued by the learned Counsel for the respondent-Insurance Company that there is nothing on record that any effort has been made by the appellant to obtain this quality of gold worth Rs. 1.4 lakh. Even though we see some ray of light in this argument but since the Criminal Court itself has not ordered grant of this unmelted gold on ''Superdhari'' treating them at par with the other ornaments given in possession of the appellant, we see no merit in this plea raised by the respondent, as in our view the demand for grant of unmelted gold would be deemed to have been not accepted by the Criminal Court. Otherwise they could have released the un-melted gold along with the other gold ornaments released in favour of the appellant. In the light of this, it is obvious that appellant is being deprived of Rs. 1.4 lakh for which he had a valid insurance cover. In the light of this discussion, we direct the respondent/O.P. to pay this amount of Rs. 1.4 lakh after obtaining a requisite authority from the appellant, that if in the criminal Court, order is passed in favour of the appellant then the respondent shall be entitled for the melted gold. On this amount, the appellant shall also be entitled to interest @ 9% from the date of filing of this complaint before the State Commission till the date of payment. It may be relevant to state that since the value of the gold has increased considerably since 1994-95.

3. THE appeal is allowed in above terms, in view of which, the respondent-Insurance Company is directed to furnish a format of authority letter within 6 weeks of the passing of this order to the appellant, which will be completed/ signed by the complainant within 4 weeks after which the payment shall be made as per direction given above, failing which the appellant shall be free to proceed under Sections 25 and 27 of the Criminal Procedure Code. Keeping the facts and circumstances of the case, no order as to cost. Appeal allowed.