
(2011) 07 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Parasram And Party

APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Citation : 2011 0 NCDRC 410 : 2011 3 CPR 237 : 2011 4 CPJ 303

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Complaint is allowed

Judgement

1. THE complainant, Paras Ram and Party, is a registered partnership firm in the business of distribution and sale of country liquor. THE complainant had taken a Miscellaneous Accident Insurance Policy? from the OP/New India Assurance Company Ltd, for insurance coverage of cash. This policy came into effect on 15.12.1998 with, the sum assured limit of Rs 40 lakhs. Just five days later i.e. in the night of the 20th and 21st of the month, a theft took place in their shop premises in Kota for which a police complaint was lodged on 21.12.1998 by the complainant. THE police were informed that ? a sum of approximately Rs.20 lakhs cash has been stolen by breaking open the lock of the steel almirah lying in the cash room of my office A-7, shopping centre, first floor by breaking the wall from the roof of Ramswarupji.

2. THE case of the complainant is that on 30.12.1998 he filed his claim with the respondent. THE insurance company deputed one Shyamlal Agarwal, surveyor who collected all information from the cashier of the complainant on 7.1.1999. He raised some queries in his letter of 9.1.1999, which were answered by the complainant in the letter of 18.1.1999. Another surveyor, behalf of the respondent, was conducted by Mr. R. G. Varma, on 8.2.1999. Later, Mr. Verma visited the office of the complainant on 24.2.1999 and was given the documents sought by him. After his visit, the complainant received a letter from the first surveyor, Shyamlal Agarwal, seeking some more clarifications. According to the complainant, a string of letters were received thereafter, from various functionaries of the respondent, including the surveyors, but the claim filed on

30.12.1998, was not settled. It is in this background that the present consumer complaint has been filed on 31.10.2002, seeking the following relief i. the amount stolen which was insured Rs. 19,48,753. ii. interest at 18% from the date of the claim Rs. 13,44,640. iii damages for mental harassment and agony Rs. 5,00,000. iv. legal and miscellaneous expenses Rs. 1,50,000 Total Rs. 49,43,393.

Before invoking the jurisdiction of this Commission, the complainant had issued a legal notice to the respondent seeking settlement of his claim within 15 days. The respondent replied the legal notice promptly through his lawyer alleging that the claim could not be processed due to failure of the complainant to supply the requisite documents, vouchers etc. it was also alleged-- That my client has a strong belief that your client has malafides in not giving the reply can keeping silent about supplying the required documents with an intention to just make the allegation against my client for deficiency in service in settling your client's claim. You would kindly agree that my client wrote to your client on 11.1.99, 4.2.99, 22.2.99, 5.3.99, 21.11.2001, 26.12.2001, 28.1.2002 and recently on 15.2.2002 for compliance but the same are not fully complied with till date.

The above remarks have elicited a sharply worded response from the advocate of the complainant. Details of specific dates of reply to the above correspondence are enumerated in this letter. The remark at the end of this letter speaks for itself In such circumstances perhaps your client has concealed the material facts from you otherwise you would advise your client to settle down or to finalise our claim instead of giving reply of notice on hypothetical facts which are based on surmises and conjectures far from truth.

3. IN reply to the consumer complaint, the respondent/New INdia Assurance Co has raised some preliminary issues. On the substantive question of acceptability of the claim under the policy, their response raises certain questions? a. Whether a theft has actually taken place? The wall was allegedly broken for entry, when about 30-40 persons were sleeping there and the premises was supposedly guarded round-the-clock by security watchman. b. Even the amount of cash in the safe and the almirah cannot be exactly ascertained. As per the practice of the complainant firm, cash received from the various liquor outlets would be collected/brought by about 11PM, locked for the night and counted only the next morning. c. No evidence is produced by the complainant, to show that cash was actually kept in the almirah. d. The study of the cash book of the complainant by the surveyor, showed that an amount of Rs.6,728/- was included in the cash receipt account for 20.12.1998, which was not part of the realization from sale of liquor. It was shown as commissions received. e. Similarly, another amount of Rs.32,055/- was included but it was not part of the cash receipt on the previous night. f. As per the respondent, a complaint (FIR No. 827/98) was lodged with Gumanpura police on 21.12.1998. On 17.3.1999 the police gave their investigation report. There were no arrests and no recoveries. [IN his rejoinder, the complainant has referred to the investigation into the FIR. According to him,

police investigation revealed that a notorious gang was suspected to be behind the incident. However, no further evidence appears to have been led in support of this claim by the complainant.]

The report of the Surveyor, R.G.Verma, shows that according to the cashier of the Complainant who had given a statement before the Surveyor, the total cash stolen was Rs.19,42,553/-. Out of this, Rs.9,60,600/- was in two black colour bags. The rest was in the cash box or the almirah. This excluded an amount of Rs.6200/- found as mutilated cash, not taken by the thieves. The Complainant had also debited this lost cash amount of Rs.19,42,553/- in his books of account by a voucher of 20.12.1998. In the opinion of the Surveyor, the cash stolen may be Rs.19,03,770/-. The report of the Surveyor also shows that the steel almirah and the safe were not as per the detail mentioned in the proposal form. This matter has also been raised by the respondent, in correspondence with the Complainant. However, no significance can be attached to it, at this stage. It should have been seen before the proposal for insurance was accepted. Such an observation is also made in the report of the Surveyor. THE PROPOSAL FORM WAS SIGNED BY THE MR. PARAS RAM. MR. MAHINDER SINGH WAS THE DEVELOPMENT OFFICER. PRE-INSPECTION OF THE PREMISES AND THE STEEL ALMIRAH WERE NOT DONE BY THE INSURER.

4. THIS Survey report indicates that the theft took place one day before the proposal for approval of this insurance proposal could be sent by the Branch Office to the Divisional Office. The proposal was sent on 21.12.1998. THIS again is of no consequence in so far as the present claim under the policy is concerned. The report of the Surveyor clearly shows that the insurance cover had been effected from 15.12.1998, after receiving a Cheque of Rs.24,728/- towards the premium on the same day. The receipt for this payment was issued on 16.12.1998, which according to the Surveyor, was as per the normal practice. The Surveyor has examined the other branch records like Code-46, RA-16 etc. and has observed that the entries of this payment have been made. Even the counter-foil of the Cheque book of the Complainant was seen by the Surveyor, which showed that the relevant Cheque No.1298418 was issued on 15.12.1998 as the Cheque of the next No.1298419 was issued on the next day i.e. 16.12.1998. The conclusion reached by the respondent/Insurance Co. that the complainant had not taken the amount of care and caution, which the man of ordinary prudence would take under such circumstances. Neither an extra lock was provided with the almirah nor was the locker inside it, locked. Despite this conclusion, the respondent New India Assurance Company, wrote to the complainant on 18.8.2003 informing that the company had agreed to settle his claim on non-standard basis of 50% of the assessed amount that is for Rs.9,51,885/-, subject to the complainant withdrawing the proceedings before the consumer forum and giving the full and final discharge voucher. There is no explanation why this offer was made. Also, if it was based on the report of the surveyor, why did the respondent need almost 4 years to make the offer. During the course of arguments, counsel for the Complainant questioned the plea of

respondents that the claim cannot be decided in summary proceedings as it involves complicated questions of fact. The learned counsel pointed out that the report of the Surveyor appointed by the respondent itself assessed the loss suffered by the Complainant at Rs.19, 03,790/-, while the complainant had claimed just Rs.38,783/- more than that. Therefore, in our view, this plea of the respondent cannot be accepted.

5. WE have mentioned earlier in this order that the Complainant had, in his complaint to the police, stated that the theft was committed by breaking the wall from the roof of Ramswaroopji. This is corroborated by the following observation in the report of the Surveyor:- THE THEFT WAS DISCOVERED IN THE MORNING OF 21-12-98, WHEN WIFE OF MR. RAM SWAROOP WENT TO THE TERRACE OF THE ADJOINING HOUSE A-6, SHOPPING CENTRE, KOTA. SHE NOTICED THE BROKEN WALL OF THE CASH ROOM OF M/S PARAS RAM AND PARY. SHE INFORMED HER HUSBAND MR. RAM SWAROOP. THEY INFORMED THE GUARD OF THE M/S PARAS RAM & PARTY ABOUT THEIR BROKEN WALL THE GUARD THEN INFORMED MR. PARAS RAM, THE OWNER.

6. IN the light of the above examination, we are of the view that the claim of the complainant derives substantial support from the report of the Surveyor. The report itself is a clear and an ambiguous document, both in its analysis and conclusions. The difference between the amount of loss claimed on behalf of the Complainant, before the Surveyor and the amount of loss assessed by the Surveyor, is just Rs.38,783/-. This is the total of two amounts considered suspect by the Surveyor, as they did not constitute part of the cash receipts from liquor sale. We appreciate and accept this distinction made by the Surveyor. What we are unable to appreciate is that the respondent /Insurance Co. has taken nearly four years to accept the report of the Surveyor. Even this highly delayed response, is only to the extent of 50%, in the form of a non-standard/ compromise settlement. The report of the Surveyor was made on 7.9.1999 and the offer of the respondent is made on 18.8.2003. There is however nothing to show that this offer received any acceptance from the Complainant. The Complaint is therefore, allowed. The OP/New India Assurance Company is directed to pay Rs.19,03,770/- (being the loss, as assessed by the Surveyor) in settlement of the claim. The amount shall also carry interest at the rate of 7% per year from the date of complaint to this Commission and shall be paid within a period of three months. Failing this, 9% interest shall be paid for the period of delay. There are no orders as to compensation and costs.