(2009) 04 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Poomkudy Auto Service (P) Ltd. APPELLANT

Vs

NATIONAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Citation : 2009 3 CPJ 155

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Advocate : NAVEEN R.NATH

Judgement

1. THE revision petitioner was the complainant before the District Forum. This revision petition has been filed against the concurrent judgments and orders of the Fora below, dismissing the complaint of the complainant.

2. THERE is a delay of 32 days in filing this revision petition. For the reasons mentioned in the application for condonation of delay, this delay is hereby condoned.

3. AFTER valuation of the stocks, the complainant had taken a burglary and house breaking policy (business premises) for a total sum of Rupees one crore and twenty two lakh. It is the case of the complainant, that a verification of the stocks was conducted and there was variation in the stock due to the theft of the stocks during the year 1996 -97 and this was discovered in the year 2000, after the audit. It is their allegation that this theft was committed by their employees and hence, they filed a complaint before the police in April 2000. Subsequently a claim was filed before the Insurance Company. The Insurance Company appointed a Surveyor and later on repudiated the claim vide letter dated 2.9.2002, which is quoted in extenso: " Dear Sir, Re : Claim under your policy No. 570100/ 46/ 98/ 7576575 alleged theft of automobile spare parts on various occasions between 1996 -97 and 1998 - 99. We refer to the above claim preferred with us. We had appointed M/s. Thomas Grom Surveyor to conduct a survey. It is observed from their report and the claim papers submitted to us that the claim does not fall within the purview of Burglary and House Breaking (Business Premises) Policy issued to you due to the following reasons: 1. There

has been no actual forcible and violent entry prior to loss which is a requirement under the policy. (Kindly refer operative Clause 9A of the policy) 2. The loss has taken place with the active involvement of your own employees who were employed as security persons and stores assistant which is a specific exclusion under the policy (kindly refer exclusion (ii) of the policy). 3. Although the shortage in stock was first noticed in 1996 -97 no proper steps were taken to ascertain the reasons for shortage and prevent the loss. The exact dates and quantum of loss has also not been identified as the loss has occurred over a period of time between 1996 and 1999. The loss was reported to police only in May 2000 thus violating general conditions (a) and (b) of the policy."

The District Forum granted relief to the complainant which was reversed by the State Commission in appeal. The State Commission observed as follows: " The claim was preferred on 3.5.2002 but the opposite party repudiated the claim vide letter dated 2.9.2002. The grounds mentioned in the above letter that there was no actual forcible and violent entry prior to loss which is requirement under the policy vide Clause A of the policy, and that it was committed by the complainant''s own employees employed as a security persons and stores assistant vide exclusion (ii) of the policy and that the loss was reported only in May 2000 whereas admittedly the shortage of stock was noticed in 1996 -97 and that the above violated the general conditions (a) and (b) of the policy cannot be approved."

4. ACCORDINGL Y , the State Commission held that the order of the District Forum cannot be sustained and it was set aside and the appeal of the Insurance Company was allowed.

5. AGGRIEVED by the order of the State Commission, the petitioner who was the complainant before the District Forum had filed this revision petition before us.

6. WE have heard the learned Counsel for the petitioner Mr. Naveen R. Nath at great length. Learned Counsel for the petitioner drew inspiration and support from the judgment of the Hon''ble Apex Court in United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, IV (2004) CPJ 15 (SC)=V (2004) SLT 876=(2004) 8 SCC 644, wherein it was observed as follows: "But before parting with the case we would like to observe that the terms of the policy as laid down by the Insurance Company should be suitably amended by the Insurance Company so as to make it more viable and facilitate the claimants to make their claim. The definition is so stringent in the present case that it gives rise to a difficult situation for the common man to understand that in order to maintain their claim they will have to necessarily show evidence of violence or force. The definition of the word burglary'' should be given a meaning which is closer to the realities of life. The common man understands that he has taken out the policy against theft. He hardly understands whether it should precede violence or force. Therefore, a policy should be a meaningful policy so that a common man can understand what is the meaning of burglary in common parlance. Though we have interpreted the present policy strictly in terms of the policy, we hope that

the insurance companies will amend their policies so as to make them more meaningful to the public at large. It should have the meaning which a common man can easily understand rather than become more technical so as to defeat the cause of the public at large."

7. THE learned Counsel for the petitioner also relied upon the para 17 of the order of the Hon''ble Apex Court wherein it is stated as under: "but we hope that the insurance companies will amend their policies so as to make them more meaningful to the public at large. It should have the meaning which a common man can easily understand rather than become more technical so as to defeat the cause of the public at large."

8. AS against the observations made by the Hon''ble Apex Court for the future guidance of the Insurance Company, certain important portions of the very same judgment relied upon by the learned Counsel for the petitioner are extracted as under in extenso: "Necessary provision of the policy read as under: The Company hereby agrees subject to the terms and conditions contained herein endorsed/or otherwise expressed hereon that if - (a) the property hereinafter described or any part thereof be lost or damaged by burglary and/or housebreaking, or (b) any damage be caused to the premises to be made good by the insured from burglary and/or housebreaking or any attempt threat The terms burglary and/or housebreaking'' has been defined in terms of the policy also which reads as under: "Burglary and/or housebreak -ing" shall mean theft involving entry to or exit from the premises stated therein by forcible and violent means or following assault or violence or threat thereof to the insured or to his employees or to the members of his family."

In Halsbury''s Laws of England, 4th Edn. (2003 reissue), para 646 read as under: "646. Forcible and violent entry -The terms of a burglary insurance may exclude liability in certain circumstances unless there is forcible and violent entry into the premises. If so, the entry must be obtained by the use of both force and violence or the definition is not satisfied and the policy does not apply. An entry obtained by turning the handles of an outside door or by using a skeleton key, though sufficient to constitute a criminal offence, is not within the policy since the element of violence is absent. However, an entry obtained by picking the lock or forcing back the catch by means of an instrument involves the use of violence and is therefore covered. The policy may be so framed as to apply only to violent entry from the outside; or the violent entry into a room within the insured premises may be sufficient. In any case, the violence must be connected with the act of entry; if the entry is obtained without violence, the subsequent use of violence to effect the theft, as for instance where a showcase is broken open, does not bring the loss within the policy."

"Similarly, in the case of Oriental Insurance Co. Ltd. v. Sony Cheriyan an insurance was taken out under the Motor Vehicles Act, 1988 in which Their Lordships observed: (SCC p. 455, para 17)"

"17. The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy."

Similarly, in the case of General Assurance Society Ltd. vs Chandumull Jain the Constitution Bench has observed that the policy document being a contract, it has to be read strictly. It was observed: (SCR p. 510 A -B) In interpreting documents relating to a contract of insurance, the duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however, reasonable, if the parties have not made it themselves. Looking at the proposal, the letter of acceptance and the cover notes, it is clear that a contract of insurance under the standard policy for fire and extended to cover flood, cyclone, etc., had come into being." Therefore, it is settled law that the terms of the contract have to be strictly read and natural meaning be given to it. No outside aid should be sought unless the meaning is ambiguous." "From the above discussion, we are of the opinion that theft should have been preceded with force or violence as per the terms of insurance policy. In order to substantiate a claim an insurer has to establish that theft or burglary took place preceding with force or violence and if it not, then the Insurance Company will be well within their right to repudiate the claim of the insurer."

9. AFTER observing as above, the Hon''ble Apex Court allowed the appeal filed by the United India Insurance Company.

10. IT is clear from the facts of the case under consideration that there was no burglary at all. There was neither house breaking or a theft following upon forcible or violent entry or exist from the premises. In fact variation in the stocks was discovered much later than the occurrence of the incident, when the audit of the stocks was conducted resulting in belated intimation to the police and the Insurance Company and when the Insurance Company repudiated the claim that the complaint was filed. The State Commission after analyzing the facts of the case in great detail and also the terms of the contract enshrined in the Insurance policy have come to the conclusion that the Insurance Company was within its rights in repudiating the claim as there was no deficiency in service on their part.

11. THE ratio of the case quoted supra is squarely applicable to the case on hand. Hence, we do not see any merit in this revision petition.

12. ACCORDINGL Y , it is dismissed. However, there shall be no order as to cost. R.P. dismissed.