(1997) 04 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

PREM NATH APPELLANT

Vs

UNITED INDIA INSURANCE CO.LTD RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Citation : 1997 3 CPJ 208

Hon'ble Judges : A.L.Bahri , R.L.Gupta J.

Final Decision : Appeal allowed

Judgement

1. APPELLANT before us is the insured Prem Nath, Proprietor, M/s. Prem Nath & Sons of Amritsar, who has got jewellery block policy of Rs. 10 lakhs commencing from 4.10.1995 to 3.10.1996 from the opposite party-United India Insurance Company Ltd. whose complaint was dismissed by the District Forum, Amritsar on the ground that the loss suffered by him is not covered within the ambit of the policy taken by him.

2. THE facts for the adjudication of the case are few and at which the parties are also not at variance. Admitted case of the parties is that Mr. Pankaj Duggal, an employee of the complainant firm was entrusted with gold jewellery, weighing 740 gms. by the complainant for its sale at Muzaffarpur. He was staying in Room No. 3 in the Abhinandan Hotel, Muzaffarpur and was viewing T.V. at 11 p.m. on 15.12.1995 in Room No. 4 of the Hotel with Manoj Kumar and his younger brother Sanjiv Kumar. Two persons who were armed with pistols came into the room and started beating employee of the complain- ant and ordered him to deliver them entire goods. THE gang consisted of five dacoits who looted the gold ornaments from the employee of the complainant and at that time one of the dacoits fired at Mr. Duggal. THE matter was published in the newspaper and reported to the police. THE claim was lodged with the Insurance Company and the same was repudiated vide its letter dated 29.3.1996. On receipt of the repudiation letter, the complainant-appellant des- patched letter dated 2.5.1996 to the Chairman-cum- Managing Director of the Insurance Company, with copy to the Manager of the Company inter alia, mentioning that the burglary and theft

has been committed while they were conducting their hawking business and gold ornaments were duly lying secured in the boxes at the time of mishap. After affording the due opportunities of leading evidence to both the parties, the District Forum has passed the order under challenge.

We have heard Mr. Pankaj Bhardwaj, Advocate for the appellant and Mr. Pardeep Bedi, Advocate for the respondent Insurance Company and with their kind assistance have gone through the pleadings and the documents placed before the District Forum.

3. AS stated at the outset, the question involved in this case is simple whether the loss suffered by the Insured falls within the purview of the insurance policy. Occurrence of the loss and the manner it has occurred and the value of the loss has not been disputed by the opposite party and we are not supposed to dilate much on it. It is profitable to refer to the repudiation letter dated 29.3.1996 (supra) wherein it has been mentioned that the Insured "has obtained risk under Section 2 of the ''Jeweller Blok Policy'' and the bare language of the said section makes it amply clear that the movement of jewellery is restricted within the city itself, when the same is sent for any type of process, whereas the present claim preferred by the Insured is alleged to have been occurred when certain gold items were being carried to Patna by one of the employees of the firm and the said risk is specifically covered under Section 3 of the Jeweller Block Policy. AS in the present case, risk under Section 3 has not been covered, therefore, the alleged loss is not covered with the risk obtained by Insured from the Insurance Company. Therefore, the claim is not payable by the Company and as such the same stands repudiated." The case of the Insured is that the loss is covered by Section 2 of the Policy and on the other hand the case of the Insurance Company is that the loss is covered by Section 3 of the policy, which has not been taken because the premium to be paid for Section 3 of the policy is on the higher side and the same in fact has not been paid. Hence, for the proper understanding of the order and contention of the parties, it would be useful to reproduce Sections 2 and 3 of the Policy: "SECTION II: Limit for any one loss (a) Property Insured whilst in the custody of the Insured, his partners, directors, duly constituted Attorneys, his employees or sorters of diamonds. Rs. 10,00,000/- (b) Property Insured excluding cash and currency notes whilst in the custody of persons not in regular employment of the Insured such as brokers or cutters of goldsmiths. Rs. (1) WARRANTED THAT IF STOCK WITH ANY ONE PERSON SPECIFIED IN SECTION II OF THE SCHEDULE EXCEEDS RS. 2 LAKHS IT SHALL BE SECURED UNDER AN INBUILT LOCKERS OF STEEL CUP- BOARD. AFTER BUSINESS HOURS AT ALL TIMES. (2) WARRANTED THAT THE SUM INSURED UNDER THIS SECTION SHOULD NOT EXCEED THE GROSS SUM INSURED UNDER SECTION I. SECTION III Limit for any one loss The property insured excluding cash and currency notes whilst in transit within India by (a) Registered Insured Parcel Post Rs. 5 lakhs or 10% of sum Insured under Section I whichever is less. Rs.-- (b) Air Freight minimum20% of value to be declared to the Airlines. Rs.-- (c) Angadia Rs.-- WARRANTED THAT PROPERTY IN TRANSIT BYMEANS OTHER THAN DESCRIBED

ABOVE IS NOT COVERED. BASIS OF VALUATION WARRANTED THAT THE BASIS OF VALUA- TION FOR PROPERTY OTHER THAN CASH ORCURRENCY NOTES FORTHIS INSURANCE IN RESPECT OF SECTIONS I, II & III SHALL BE THE INSURED''S COST PLUS TEN PER CENT THEREOF."

4. THE bare perusal of the repudiation letter categorically shows that the claim of the complainant-insured has been rejected on the ground that under Section 2 of the policy called the Jeweller Block Policy, the movement of the jewellery is restricted within the city itself when the same is sent for any type of process and whereas the present claim preferred by the Insured was caused when certain gold items were being taken outside the city by the employee of the firm. By throwing a mere glance only at Section 2 of the policy, one does not find even the remote indication that the loss covered within the said section of the policy must occur within the city of Amritsar. THE contention of the learned Counsel for the Insurance Company is that the loss occurred would be covered by Section 3 of the policy, but unfortunately the said policy covering Section 3 was not taken. Reading of the Section 3 makes it out that it would be applicable only when the property insured is in transit within India by Registered Insured Parcel or by Airways or by Angadia. It has been fairly considered by Mr. Bedi that the insured was not sending its gold ornaments either by Registered Parcel or by Airways, but Mr. Bedi has vehemently submitted that the employee of the firm taking the jewellery goods would be ''Angadia''. By any stretch of imagination or by any stretched meaning we cannot comprehend that the employee of the firm would be covered by the term Angadia and hence we are at loss to understand how loss caused to the gold ornaments well guarded and kept in proper custody by the employee of the firm in the room of the hotel taken in the due course of business of the Insured looted by the dacoits would attract Section 3 of the policy. It has not been disputed by Mr. Bedi that Mr. Pankaj Duggal was not the regular employee of the Insured. Stretching the arguments and for taking the case out of Section 2 of the policy. Mr. Bedi has submitted that Section 2 of the policy categorically provides that if stock with any per- son specified in Section 2 of the schedule exceeds Rs. 2 lakhs it shall be secured under an inbuilt locker of a steel cup-board after business hours at all times. It is not the case of the Insurance Company even at the time of passing the repudiation letter nor has been so stated in the written statement filed by the Company before the District Forum and hence we are not taking much cognizance of the submission made and raised for the first time before us. As stated above in its letter dated 2.5.1996 it has been categorically mentioned by the insured that the gold ornaments were duly secured and lying deposited in the boxes at the time of mishap and that has not been disputed anywhere by the Insurance Company. It is not disputed that the gold ornaments were 740 grams in weight, which came to Rs. 3,69,554.60 p. For the reasons recorded above, we are of the view that the repudiation letter passed by the Insurance Company is not sustainable and at the time of passing the impugned repudiation letter, the case of the complainant-insured was not fairly dealt with by the Insurance Company. The loss of the insured is covered by

Section 2 of the Policy and hence is entitled to be reimbursed for the loss having taken place and by not doing so, the Insurance Company has rendered deficient service to the complainant. For his legitimate and genuine claim the insured was made to rush from pillar to post. It is sad commentary affair. He has undoubtedly suffered a lot. Had the amount of Rs. 3,69,554.60 p. which has now been found due and has been paid at the appropriate time at least within four months of the date of loss, the reasonable period granted to the Insurance Company for the settlement of the claim, the insured would have been saved from lot of unnecessary harassment besides he would have earned interest on the amount also. He would have utilised the amount for other purposes. He was denied the amount on account of the default of the Insurance Company. With a view to settle the equities and do justice between the parties we consider it appropriate to direct the opposite party to pay the amount of Rs. 3,69,554.60 p. with interest @ 18% per annum on the amount awarded towards compensation, litigation expenses, harassment etc. for the amount withheld. Interest be calculated from 4 months after the loss i.e. from 15.4.1996. The complainant of the order be made within 4 months of the receipt of copy of the order. For the reasons recorded above, we set aside the order of the District Forum, Amritsar dated 19.9.1996, accept this appeal and allow the complaint filed by the Insured-consumer before the District Forum in the terms indicated above. Appeal allowed.

