(1995) 06 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

PREM PARKASH MEHRA APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 16-06-1995

Acts Referred:

Citation : 1995 2 CLT 282 : 1995 2 CPC 360 : 1995 3 CPJ 407 : 1995 3 CPR 161

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

Final Decision : Complaint allowed

Judgement

1. PREM Parkash Mehra, Proprietor of M/s. PREM Parkash Mehra, Jewellers of Amritsar claims Rs. 7,56,648/- as cost price of the Jewellery lost which was insured with the opposite-party. The Oriental Insurance Company and 10% as per terms of the policy alongwith a sum of Rs. 2,04,294/- as interest and future interest @ 18% per annum. The complainant is carrying on the business of jewellers in the premises situated in Bazar Batti Hattan, Amritsar for the last about 15 years. He had been regularly taking insurance policies from the opposite-party covering loss for so many years. During the relevant period, the policy obtained from the opposite-party covered the period from May 20, 1993 to May 19, 1994. The policy is known as Jewellers Block Insurance Policy for Rs.10 lacs. A sum of Rs. 9830/- was paid as premium. The terms of the policy contained provisions in respect of goods in custody of the insured, his partners, duly constituted attorney and employees to be indemnified against loss.

2. ON July 5, 1993, Rajesh Mehra, attorney of the complainant had to go out of Amritsar to Goa and Bihar. He got his railway ticket booked from Amritsar to Delhi journey and from Delhi to Goa. He was carrying VIP suitcase containing gold ornaments weighing 1657.500 gms. vide voucher Annexure P-7 dated July 3, 1993. Alongwith gold ornaments, he was carrying his usual clothes and articles of daily need. At about 6.00 a.m., he reached the Railway Station. He was allotted seat No. 67 in Chair Car Compartment No. C2 and reached the said seat, which was confirmed upto Ludhiana. He placed his suit case and wanted to wish his father, who was on the platform and to return to the seat. It was in this

process that when he returned to the seat, he found his suitcase missing. He immediately stopped the train raising hue and cry. All efforts to locate the suitcase failed and ultimately, he lodged report with the General Railway Police vide Entry No. 84, dated July 5, 1993. The Insurance Company was informed about the loss who appointed their Investigator and Surveyor. Accounts of the complainant were examined by the Surveyor. Thorough enquiries were made with respect to the First Information Report. Although the complainant had insured the goods to the extent of Rs.10 lacs. He claimed that he suffered the loss amounting to Rs. 6,87,862/-. The sale price of the aforesaid goods was stated to Rs. 7,29,300/-. Besides the aforesaid amount, he was also entitled to additional amount 10% of the cost price of goods as per terms of the policy. It was in this manner that he claimed Rs. 7,56,648/-, as his claim was not settled by the Insurance Company inspite of several efforts being made.

The opposite-party contested the claim by filing written statement. The fault lay with the complainant for not getting the matter settled. The complainant did not fulfil the requirement of several letters written to him by the Company. The claim stood repudiated. Jurisdiction of the Commission to entertain the complaint was disputed as the complaint involved complicated and disputed questions of law and fact. As per survey report, the loss was assessed to the tune of Rs. 2,19,828/- as per terms and conditions of the policy. Only Civil Court can entertain the dispute. A direction was sought compelling the complainant to produce his accounts. On merits, broadly, it was admitted that the Insurance Policy was obtained by the complainant from the opposite-party. However, liability to indemnify the insured was denied. According to the opposite-party, the loss of goods had not taken place while the same were in the custody of the attorney of the complainant. It was, however, admitted that VIP suitcase of Rajesh Mehra containing gold ornaments was stolen. However, it was denied that it contained gold ornaments of 1657.500 grms. As per survey report, loss was to the extent of 499.610 grms. The Investigator on the other hand had reported that loss was not more than 503.610 grms. of gold ornaments. Both the Surveyor and Investigator came to the conclusion that some of the vouchers were prepared after the loss and manipulations were done by the complainant. It was further asserted that the suitcase was left unattended, unguarded, negligently and carelessly by the attorney, who did not observe proper precautions. Reliance was placed on Clause 10 of the Insurance Policy providing that the insured shall use due diligence and do and concur in doing all efforts reasonably practicable to avoid or diminish any loss under this policy. The report of the Surveyor Annexure R-1 and that of the Investigator Annexure R-2 were produced. As per survey report, the loss was to the tune of Rs. 2,19,809/-. The Investigator had found that Entries Nos. 21 to 24 seemed to have been arranged after the alleged theft to enhance the insured claim. One such entry refers to the firm M/s. Amit Jewellers who had no dealings with the complainant since 1992. Entry No. 22 dated July 2, 1993 refer to Voucher No. 51 dated July 3, 1993. It related to Faqir Chand Kashmiri Lal, Amritsar. Entry No.13 issued by M/s. Prem

Parkash Mehra was missing in the register. Voucher No.14 had cutting entry attested by Prem Parkash Mehra. Entry No. 25 and Voucher No. 14 were prepared after the alleged theft. Other allegations of the complainant were denied.

3. BOTH the parties were called upon to produce affidavits in support of the allegations and the documents relied upon. It was so done by the parties. An application was filed on behalf of the Insurance Company for permission to cross-examine the complainant and his witnesses Gurmit Kumar, Rakesh Mehra, Kashmiri Lal and Prem Parkash Mehra as affidavits produced by these witnesses were false.

4. AFTER hearing Counsel for the parties, we are of the view that no case is made out for allowing Misc. Application and for holding detailed enquiry of recording evidence of the witnesses in open Court as the case can be disposed of on appreciation of the evidence produced by the parties on affidavits. During arguments, relevant register of Prem Parkash Mehra the complainant was produced containing the relevant entries Nos. 21 to 25 on the basis of. which the claim of the complainant hinges. Learned Counsel for the Insurance Company has argued that on the admitted facts and as per case put up by the complainant, no compensation can be awarded to the complainant as the terms and conditions of the policy were not adhered to by the complainant or his attorney i.e., the attorney did not take ordinary precautions of keeping the suitcase in his custody. During the entire period of his journey, he left the suitcase unattended at the allotted seat and came out on the platform to see of his father. It is in this context that it has further been argued by learned Counsel for the Insurance Company that at the relevant time when the alleged loss took place, the suitcase was not in the custody of the attorney of the complainant and thus the loss did not occur in respect to the goods while they were in the custody of the complainant or his attorney. As far as the second argument is concerned that deserves to be rejected on the short ground that custody of goods can be physical as well as corporal. When a person is travelling in a railway compartment, he is not expected to be glued to the seat or the luggage throughout the journey. He could certainly visit the toilet and likewise on reaching the compartment, he could certainly go to the door or near the door at the platform to see off his companion. During all this period, legally the suitcase or the articles carried by him would remain in his custody and if any theft had occurred in such process, the insured had to be indemnified by the Insurance Company for the loss. The other argument addressed by the learned Counsel for the complainant finds support from the decision in "Gwalior Freight Carriers v. National Insurance Co." I (1993) CPJ 488. In that case, the complainant had taken out an insurance policy to cover loss of money in transit. He had left the briefcase unattended in the train. His briefcase was stolen and he lodged the report with the police. On merits, the claim was repudiated as the factum of loss itself was denied by the Insurance Company. In Para 11 of the judgment, it was observed that as found by the Forum, a complainant had not taken precautions

to secure the briefcase carrying money with any chain or latch or lock, fastening it with the compartment in such a manner that it becomes impossible for anyone else to take it away. He left it unattended and got down at Gwalior Station in search of the conductor without even putting the briefcase in temporary charge of a co-passenger. Thus, it could not be said that an ordinary prudent man would have acted in the same manner in the same situation. The condition of the policy was not fulfilled and the insurer was within its right to reject the claim. It was further observed that the Forum rightly came to the conclusion that since the aforesaid precautions were not observed, the Forum on that basis disbelieved the factum of theft itself. Ultimately, it was observed that there was no warrant in such an inference. The State Commission upheld the rejection of the claim but not for the reason that it was false but for the reason that the insured had not fulfilled one of the essential conditions of the policy i.e., taking of ordinary and reasonable precautions to safeguard the money in transit. We have given due consideration to the reasoning adopted by the Madhya Pradesh State Commission but with great respect, we differ there with. Theft ordinarily means removal of the articles from the custody of the other without his knowledge or consent. Putting the jewellery articles in a VIP suitcase for the purpose of carrying in a journey by itself will be a precautionary measure adopted by a passenger while travelling in a train. Usually suit case etc. are not chained with the seats that it could be said that chaining of suitcase was one of the precautions which must have been taken by the complainant or his attorney. The other argument is that temporarily custody of the suitcase carrying jewellery or case with a co-passenger would have been a precaution. We do not subscribe to such a view as how a third person unknown could be trusted in the manner suggested. In a moving train or when the train is to start from the station in a very short span of time, the passengers coming to the door to seeoff their relations is a normal feature. All the passengers are not expected to bring their luggage along with them again on the platform or near the entrance door to seeoff their relations and then carry them back to their respective seats. It is a theft as contemplated in such circumstances. It is not only snatching of the valuables from the physical possession of the owner that constitutes theft. The precautions which were expected to be taken under the terms of the policy and were taken in the present case were reservation of seat in compartment prior to the journey and carrying the valuable jewellery in a VIP suitcase. Inspite of these precautions, the theft did take place and since the Insurance Company has not settled the claim, there is a deficiency of service and the complainant is entitled to be compensated. The complaints under the provisions of the Consumer Protection Act are required to be disposed within 90 days of the service of the opposite-party. This speedy disposal of complaints is a revolutionary step which has been taken by the Legislature. Even for breach of the principle of natural justice, orders of the authorities cannot be questioned. Thus, normally it is not contemplated that a regular trial as is usually done in the matter of civil suit is to take place. Parties can be called upon to lead evidence on affidavits not only on the question of deficiency in service on the part of the opposite-party but also on the subject of determination of damages or compensation on account of loss of the goods as well as harassment and agony caused to the complainant. It is not considered appropriate in the facts of the present case to summon the witnesses for recording their evidence in open Court. Entertainment of the affidavits of such witnesses is considered sufficient compliance of the procedure prescribed for disposal of the complaint. It is entirely different that while appreciating the evidence of such witnesses, the same may or may not be accepted either wholly or partly.

5. THE question of consideration in the present case is as to whether the complainant has succeeded in establishing his case entirely or there is doubt in respect of some of the alleged articles relating to which the theft had taken place. Although, it is admitted that the theft did take place. THE affidavits of the complainant and his witnesses referred to above have been perused. THEy fully corroborate the complainant''s case as set up. Reference may be made to the five entries as recorded in the register "New Ornaments Account". Entries Nos. 21 to 24 are dated July 2, 1993. It is only in respect of Item No. 22 relating to Voucher No. 51, dated July 3, 1993 that argument was addressed that this entry was manipulated subsequently to inflate the claim. In our view it makes no difference as all these entries are prior to the date of journey. THE date of journey as already stated above is July 5, 1993. All other entries relate to Vouchers dated July 2, 1993. If the attempt of the complainant had been to prepare false accounts obtaining false vouchers from other firms, he would have been cautious enough to exclude such mistakes. Entry No.25 is dated July 3.1995 and refers to the Voucher dated July 3, 1993. Entry No. 22 could also be made on July 3, 1993 at Sr. No. 24 if all the entries Nos. 21 to 25 as stated were made subsequently. On the basis of this minor discrepancy in the matter of date of the voucher, it cannot be said that all the entries are fabricated entries. THE fact cannot be lost sight of that the complainant had taken insurance policy covering loss upto Rs. 10 lacs and that while the disputed entries, the loss is much less than Rs. 10 lacs. No malafide intention can be attributed to the complainant in the matter of making the claim in the circumstances stated above. THE affidavits produced by the complainant himself as well as his witnesses in support of these entries can well be accepted. That being the position, the Surveyors on flimsy ground seem to have come to the conclusion more so when the factum of theft was not being disputed. THE Insurance Company was not justified in repudiating the claim merely on the ground of discrepancy in respect of one of the entries in the register. THE Insurance Company was thus deficient in rendering service to the complainant.

6. IT was also argued on behalf of the Insurance Company that since the alleged stolen articles were not recovered as the complainant did not take active steps in helping the police in apprehending the culprit and the police did not take any action in this respect, the State Commission should not grant any compensation to the complainant. This contention is devoid of merit. In the circumstances as stated above, the only thing expected by the complainant was to report the theft

to the police. IT was immaterial if the stolen articles were not recovered either on account of laxity on the part of the police in investigation of the case or on account of lack of evidence. As far as the liability of the Insurance Company under the terms and conditions of the policy is concerned, that is not dependent upon the final outcome of the investigation of the police or in that matter the ultimate decision of the Criminal Court. The object of obtaining an insurance in such like matters is that promptly on commission of the theft, the insurer is to indemnify the insured in respect of the loss suffered. No doubt, a reasonable time is required by the Insurance Company to settle the claim or in a given case to repudiate it. However, if there is undue delay, which is unexplained that per se would amount to deficiency in service. The claim in such cases is required to be settled promptly and if ultimately some articles are recovered during investigation of the criminal case, the Insurance Company could make claim to the same for adjustment of the amount of insurance policy. For the reasons recorded above while allowing the complaint, we direct the Insurance Company-opposite party to indemnify the loss of the complainant as claimed i.e., a sum of Rs. 7,56,648/- along with interest @ 18% thereon from the date of the loss i.e. July 5, 1993 till the payment is made. The complainant was harassed in not settlement of his claim for which he would be compensated by the opposite party by payment of Rs. 10,000/-. The complainant would also get costs of this litigation, which are assessed at Rs. 5,000/-. Let the aforesaid amount be paid by the Insurance Company within a period of two months from the receipt of this order. The account register is ordered to be returned to the complainant. Complaint allowed.

