(1993) 10 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

SARKAR IRON INDUSTRIES — APPELLANT

Vs

BRANCH MANAGER, NEW INDIA ASSURANCE CO. — RESPONDENT

Date of Decision : 29-10-1993

Acts Referred:

Citation : 1994 1 CPR 207 : 1994 3 CPJ 485

Hon'ble Judges : P.M.Chauhan , R.K.Shah J.

Final Decision : Complaint allowed

Judgement

1. THE complainant insured has claimed Rs. 6,61,376.80 which includes Rs. 2,29,998/- for the damage caused by theft to the auto sleeves from the factory premises etc. THE admitted facts are that the complainant is the insured and was covered by the Insurance Policy (Exh. 23) dated 18.12.90. On 4.5.91 i.e. during the insurance coverage period theft took place in the factory premises and the auto sleeves worth Rs. 2,80,000/- were stolen. THE complainant then filed a complaint with Naroda Police Station on 5.5.91 as the complainant came to know about the theft on that day and the police prepared the panchnama on the same day. On 6.5.91 the Insurance Company was informed about the theft and damage and the Insurance Company then appointed a Surveyor who submitted the report (Exh. 24) on 20.6.91. THE Surveyor assessed the damage at Rs. 2,29,998/-because of the theft of auto sleeves.

2. THE only point requiring consideration is as to whether the property was lost by theft following upon an actual forcible and violent entry in the premises by person/persons committing theft. THE Insurance Company had undertaken the insurance coverage for burglary and house breaking to the extent of Rs. 8 lakhs which includes the liability for Rs. 3 lakhs for raw materials and finished and/or unfinished goods. It was "burglary and housebreaking" insurance. In the sheet attached to the policy (Exh. 23) it is stated that "Burglary (Business Premises) Insurance". It is specifically stated in it that "the Insurance Company will pay or make good to the insured if the property described in the schedule or only part thereof shall be lost, destroyed or damaged by theft following upon the actual

forcible and violent entry in the premises by person or persons committing such theft". THE Surveyor in his report (Exh. 24) has given the detailed description of the building in which the factory premises are situated. He has stated that the building comprised of three big halls, one on front side and two on back side. THE back side halls are extended in width upto compound wall in margin and their entry gates were placed in this side margin. A rolling shutter was fixed as main door in the front room. One of the back side hall was given on rent to plastic industries. THE second hall was used by insured as casting department and for storing raw materials and fuel. Some portion of roof of this department was kept open for air movement. Front side hall was used as workshop-machining department and for storing semi finished and finished goods. Office room and waiting space with wooden partition was also made in this hall. THEre were two other wooden doors of this front side hall, one was opening on external side wall in the open side margin of building. That door was being closed from inner side while closing the factory. THE second door was in between the casting department and front hall. That being the internal door was never closed from inner side of the hall. THE insured was holding considerable stock of finished and nearly finished sleeves at the time of the occurrence. THE insured had closed the factory on Friday, 3.5.91 at about 6 p.m. and there was nobody in the factory as the security guard had proceeded on leave. One person was staying in one room made in front side margin land of compound. Next day being weekly off, the factory was not working. It was observed that the culprit may have first entered into the insured''s casting department through the open gap of its gate placed in margin on backside and through the open door placed in between casting and machining department entered into machining department and after stealing the stock of sleeves may have exited through the side door of machining department. Such huge stock must have been carried in some big vehicle. All the locks of rolling shutter, gate and their keys were found intact. THE police carried out the panchnama. During the period one of the workers who was staying with his family in a room built in the compound reported that he was unaware of the happening of any such theft in the factory. About 6.5 M.T. sleeves were stolen and must have been taken away in the vehicle like tempo. The Surveyor then observed that the exact modus operandi of thief could not be ascertained but after observing the situation of site he could say that there was no breaking out of any locks or any doors either for entering into the premises or for exiting from the premises and there was an existing gap above the external gate of casting department which was locked and there was also open gap in the roof of the casting department. But it was at a substantial height and, therefore it could have been difficult for the thief to get down through that gap. In the opinion of the Surveyor it was easy to get into casting department through the existing gap kept above the gate. Surveyor also observed that he believed that culprit may have entered into casting department of factory through the existing open gap lying above its locked gate and from there he must have entered into the machining department through the common internal door which was always left open and then the door of the machining department must have been opened out for exiting and after stealing the heavy inventory lying in machining department may have fled away through that door which they left open. In opinion of the Surveyor there was no violent entry or exit from the factory premises.

The sketch is also produced alongwith the report by the opposite party. Considering the sketch it is clear that the worker''s room is one corner nearby the front rolling shutter. Casting department was there on the passage of the front room and the entry to the gate is in the passage nearby the compound wall. The main gate is on the corner of the compound from the worker''s room. From the main gate in the compound one can straightaway proceed to the gate of the casting department. In the machining room there is a door which abuts the passage i.e. side margin. Open gate No. 2 is on that side margin and from there the vehicle could be taken to door No. 2 which is in the factory wall which abuts the side margin. There is only one door to the worker''s room and that abuts the open compound. It, therefore, is quite possible that the worker could not have come to know about the vehicle being taken to door No. 2 in the side margin and removing the huge quantity of auto sleeves. According to the Surveyor the thief must have entered from the gap above the gate No. 1 of the hall of the casting department and jumped into the room and then must have managed the theft.

3. IN the policy (Exh. 23) it is only stated that the insurance coverage is for burglary and house breaking. IN the policy it is not stated that the INsurance Company will be liable only when the theft is committed by actual forcible and violent entry. IN the sheet attached to it which specifies the conditions, on the title it is stated that "Burlgary (Business Premises) INsurance". IN that it is stated that the INsurance Company will pay or make good the insured such loss to the extent of the intrinsic value of the property if the property described in the schedule or any part thereof is lost, destroyed or damaged by theft following upon the actual forcible and violent entry of the premises by the person or persons committing such theft. That condition is only for forcible and violent entry in the premises. Even if the report of the Surveyor is accepted it is clear that the entry was forcible and violent as the burglar had entered forcibly from the gap above the gate which was locked. There cannot be any doubt that it was not forcible entry. It was also violent entry as the entry was made by violation of the normal and routine way or was by use of some physical force. The dictionary meaning of "violent" is "(1) chatacterised by very forcible, vehement, rapid, often sudden movement, (2) requiring, exhibiting, a powerful voluntary exertion of muscular strength: violent efforts, exertion, struggle to escape, (3) due to powerful external physical cause; caused by violence, un natural." The very fact that the burglar climbed the gate, forced the entry through the gap and entered the premises amounted to his violent act. It was, therefore, the forcible and violent entry. The damage was by theft following upon actual forcible and violent entry of the premises. That also amount to house breaking as the thief had entered by the way which was not meant for ordinary entry. As per the definition

of housebreaking in Sec. 445 INdian Penal Code, entry in the premises which is not the normal intended way is house breaking. That condition of the INsurance Policy was, therefore, satisfied and the INsurance Company was wrong in not accepting the claim of the complainant and repudiating it. Shri C.A. Shah, learned Advocate for the opposite party relied on George and the Goldsmiths and General Burglary Insurance Association Ltd. I Queen''s Bench Division 595. It was the case of theft of ornaments from the shop wherein the servant who was attending was just on the other side for some work and had closed the door without locking it and the burglar just opened the door and entered and had committed theft. The terms of the policy were that the assured was to be protected against the loss "by theft following upon the actual forcible and violent entry upon the premises". Considering the said phrase it was held that "merely simply opening the door by turning the door handle does not amount to violent and forcible entry". In the facts and circumstances of that case it was held that it was not forcible violent entry. The judgment is not much helpful to the opposite party as the facts in the instant case are quite different and establish the forcible and violent entry. The Insurance Company therefore cannot avoid the liability to pay the damages caused by theft.

4. THE Surveyor assessed the damages at Rs. 2,29,991/-. THE complainant has claimed the same amount for the damages and that should be awarded. The complainant has claimed compensation for bank charges, rent of the shed, stationery etc. But such claim cannot be allowed. Under the policy also consequential loss is not admissible. Not only that the Insurance Company is not liable for such loss. The complainant, however, is entitled to the interest as the Insurance Company failed to settle the claim within reasonable time and not only that repudiated it. The report of the Surveyor was submitted on 12.8.91 and, therefore, the claim should have been settled atleast by 1.9.91. The interest @ 12% therefore should be awarded from 1.9.91. We, therefore, pass the following order: ORDER The opposite party shall pay Rs. 2,29,991/-1 with 12% interest from 1.9.91 till realisation within one month from the date of receipt of the order and shall pay Rs. 3,000/- for the cost of this complaint and bear their own cost. Complaint allowed.

