(2001) 03 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

SENIOR BRANCH MANAGER, PUNJAB NATIONAL BANK — APPELLANT

Vs

SUDHIR PAL SINGH — RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Citation : 2001 2 CPJ 477

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 18.12.1999 passed by District Consumer Forum-I, Agra in Complaint Case No. 799/97.

2. THE facts of the case stated in brief are that the "complainant is doing business in the name and style of M/s. Fatco Footwear. THE complainant is an educated unemployed person and he took a loan of Rs. 35,000/- from the Punjab National Bank in the year 1987 and started business. An account was opened in the name of the complainant. THE loan was paid in the year 1989. For payment of the rest amount of that loan, an account was also opened in the name of the complainant in which a Cash Credit Limit was sanctioned upto Rs. 50,000/- after completing all the formalities. THE Bank took upon itself the responsibility of getting the stock insured every year. It is further alleged that thereafter the Cash Credit Limit was increased to Rs. 60,000/-. According to the complainant every year Bank used to deduct the amount of the premium from his account and used to get the insurance done. He has given the details of the dates on which the amount was deducted and the period of which the insurance was done by the Bank. For the period 1997-98, a sum of Rs. 463/- was taken out from the account of the complainant by the Bank on 9.7.1997 for insurance and an entry of it was made in the accounts of the complainant but the insurance was not got done by the Bank. This amounts to deficiency in service on behalf of the Bank. It is further alleged that unfortunately in the night of 9/10.7.1997 the stock of the complainant''s firm was stolen which was valued at Rs. 67,838/-. On 10.7.1997 an FIR was lodged with the police station. THE Bank was also informed. THE

police visited the spot and registered the FIR. THE complainant was assured that he will get the amount of the claim. THE claim has not been given so far, hence the complaint is filed. The opposite party in its written version has alleged that the insurance policy of the stock of the complainant was never made by the Bank and it was the duty of the complainant to do so According to the Bank, there was a condition in the agreement that the insurance shall be got done by the complainant. Till 1.1.1998 a sum of Rs. 64,665.15 was due outstanding against the complainant and he was duly informed about the insurance but he did not take any interest in the matter and the premium was not deposited with the National Insurance Company Limited by the complainant. It is further alleged that when the complainant did not take any steps, the Bank deposited the premium amount with the National Insurance Company Limited.

The learned District Forum, after considering the case and evidence led by the parties came to the conclusion that it was the liability of the Bank to insure the goods and as it has not been done so, therefore, its liability to pay the amount. It directed the Bank to pay Rs. 67,838/- along with interest at the rate of 15% per annum from the date of occurrence to the complainant. It also allowed Rs. 5,000/- as compensation and for mental torture and harassment. It was further directed that if the amount is not paid within 45 days then the interest shall be payable at the rate of 18% per annum.

3. AGGRIEVED against this order, the appellant has come in appeal and has challenged the correctness of the order passed by learned District Consumer Forum. We have heard the learned Counsel for the parties and perused the evidence on record. The learned Counsel for the appellant has argued that according to the terms of the agreement the complainant was to get the insurance done. It is true that there is a condition in the agreement that the insurance of the goods is to be done by the complainant and if the complainant fails to do so, then the Bank will do but in the present case, the facts are otherwise. The complainant has specifically alleged in para 5 of the complaint that since the taking of loan the Bank is deducting the premium amount from his account every year and is paying the same to the Insurance Company for insurance purposes. He has given the details of the account in which the amount was deducted by the Bank. According to the complainant, he never got the insurance done and it was done by the Bank. This fact has been alleged in para 6 of the complaint. In the written statement para 6 of the complaint has not been specifically denied. It is alleged that it is a matter of record. Thus we find that the Bank has admitted that the insurance was got done by the Bank throughout in all the years from the date of taking of the loan. The copy of the bank account of the complainant issued by the Bank also clearly goes to show that it was the Bank which was deducting the amount of the premium from the account of the complainant and paid the premium to the Insurance Company. It has been argued by the learned Counsel for the appellant that the Insurance Company has not been made a party. The Bank did not take this plea in the written statement that the National Insurance Company Limited should be made a party. Moreover,

the complainant was not a consumer of the Insurance Company because he did not get the insurance done. The insurance was got done by the Bank, hence there was no necessity for the complainant to have impleaded the Insurance Company. When the Bank did not get the insurance done, the liability for payment of the loss is of the Bank because the Bank has been deficient in its service towards the complainant in not getting the articles insured. Thus we find that the findings of the learned District Forum are perfectly correct and require no interference. The appeal has no force and is liable to be dismissed. ORDER The appeal is dismissed and the judgment and order of the learned District Forum are confirmed. The appellant shall pay a sum of Rs. 2,Q00/- as cost to the complainant. Let compliance of this order be made within a period of two months. Let copy of this order be made available to the parties as per rules. Appeal dismissed.