(2001) 03 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

SHIV KUMAR MEHROTRA APPELLANT

Vs

United India Insurance Company Ltd. RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Citation : 2001 2 CPJ 453

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 . 22.10.1992 passed by District Consumer Forum, Banda in Complaint Case No. 63/1992.

2. THE case of the complainant before the Consumer Forum was that he had a shop near Jama Masjid in Banda Town through which he was dealing with cycle repair work as well as tyres and tubes etc. THE said shop was insured for theft, burglary and against fire also. Policy No. 215 was issued by the opposite party Insurance Company and the insurance was for Rs. 25,000/- valid from 25.10.1990 to 24.10.1991. In the night of 23/24th April, 1991 theft was committed by some miscreants in the shop after breaking open the lock and goods worth Rs. 23,720/- were stolen. THE goods reported to have been stolen consisted of 360 tyres and 800 tubes. A report of the incidence was lodged with the Thana Kotwali, Banda and the opposite party was also informed on 14.5.1991. A list of the articles stolen along with copy of the final report of police was furnished to the opposite party and the claim was lodged but inspite of the notice given on 14.5.1991, 15.5.1991, 3.6.1991, 26.10.1991, 28.1.1992 and 13.3.1992 as well as on 27.3.1992 the opposite party did not settle the claim. A Surveyor was appointed by the opposite party and the case of theft was established but the opposite party did not pay any heed. A claim was, therefore, lodged before the learned District Forum for a sum of Rs. 23,720/-. The opposite party, United India Insurance Company, in the written statement before the learned District Forum stated that the claim of the complainant has been dismissed on 17.6.1992 and on the same day the complainant was

communicated the decision. The conduct of the complainant was suspicious as he had two shops in one shopping centre with the gap of 3 or 4 shops. The insurance cover was for one shop against fire and theft. One shop was being used for storing purposes and the other one was being used for running the business of sale and repair of cycles. The theft as per report of the Surveyor had occurred in the shop which was being used for Storage purposes and which was not covered by the insurance policy. An F.I.R. was lodged on 25.4.1991 and information to the Insurance Company was sent after 20 days. This raised a doubt that the complainant was not sure of filing the claim instantly as the theft had occurred in the shop which was not covered by insurance. There was a dispute between the complainant and his partner and as per information of the opposite party the partner had taken away the goods, the value of which has been claimed by the insured. The Insurance Company has made a no claim and the case of the complainant has been rejected.

Both the parties filed evidence in the District Consumer Forum and after hearing the parties, the learned District Forum came to the conclusion that the case of theft as reported by the complainant has not been established and, therefore, the complainant was not entitled to any claim. The complaint was, therefore, dismissed.

3. AGGRIEVED of this order of the learned District Forum the complainant has come in appeal. Along with memo of appeal, affidavits of Naiumullah, Arvind Kumar Tripathi and Hiqamatullah as well as copies of some of the other documents were also filed.

4. WE have also heard the arguments of the learned Counsel for the appellant as well as respondent. Learned Counsel for the appellant has argued that the complainant had two shops and the claim was in respect of the shop which was covered by the insurance. The Surveyor''s report was clear that the theft had taken place. It is also argued that the complainant had only one shop and the other shop was under a partnership of other persons also and the partnership was dissolved. Therefore, the insurance cover was for the shop in which the theft had taken place. Learned Counsel for the opposite party has argued that the police report was lodged by the complainant after 48 hours of the alleged occurrence and the Insurance Company was informed of the incidence after 20 days. The delay was the main ground for repudiation of the claim which was done on 17.6.1992. The learned Counsel has also argued that affidavits filed by the complainant in the appeal was not admissible as they were not filed before the District Forum and the facts contained in the affidavits carry such pleas and facts which had not been placed before the District Consumer Forum. We have also perused the entire records of the appeal as well as the case file of the District Consumer Forum. The point of dispute involved in the appeal is whether the theft as alleged took place for which the insurance cover had been obtained by the complainant. A perusal of the report of the Surveyor goes to show that the shop in question was inspected by the Surveyor and he did not find any cycle

parts there. He has only given the details of the items stolen as intimated to him by the complainant. The Surveyor has also reported that no Stock Register was maintained of the items and no bills etc. of the purchases of the items were produced. Therefore the contention of the appellant that the Surveyor''s report had indicated that theft of the tyres and tubes had occurred is baseless. On the other hand the Surveyor has pointed out that the shop in question, for which the insured had claimed the insurance amount, did not have any spare parts kept therein and was, therefore, in doubt whether the shop had really been used for the purpose of trading in tyres and tubes and attending to repairs of the cycles. The complainant has given copies of certain bills of tyres and tubes reported to have been purchased on various dates in the months of December, 1990 to March, 1991, but no reliance can be placed on these documents as receipts etc. for the payment of the amount have not been produced.

5. THE theft as reported took place on the night of 23rd/24th April, 199.1. THE incident could have been reported to the police station immediately. Instead the incident was reported on 25.4.1991 at 8.10 a.m. This casts doubt on the occurrence of the theft especially when the matter was investigated by the police and ultimately a final report was submitted.

6. THE procedure for filing the claim is clear from the policy issued by the opposite party, Insurance Company. In general Condition No. 5 of the policy, it has been made clear that "the insured shall upon the occurrence of any event giving rise or likely to give rise to a claim under this policy give notice thereof to the Company and shall within 14 days thereafter furnish to the Company at his own expense detailed particulars of the amount of the loss or damage together with such explanations and evidence to substantiate the claim as the Company may reasonably require". It is an admitted fact that the complainant reported the matter to the Insurance Company on 14.5.1991, twenty days after the reported occurrence and no plausible explanation has been advanced for such delays. THE only explanation offered was that the complainant was mentally worried and he could not give information to the Insurance Company. This is not a satisfactory explanation. THE Company''s office was not far off and intimation could have been given in time which the complainant failed to do. It appears that the claim made by the complainant was not genuine and the District Consumer Forum was perfectly justified in dismissing the same. THE result is that the appeal is liable to be dismissed and the judgment and order of the learned District Forum are liable to be confirmed. ORDER THE appeal is dismissed and the judgment and order of the learned District Forum are confirmed. THE complainant''s case file of the District Forum shall be returned to the Forum concerned for records. THEre shall be no order as to the costs. Let copy as per rules be made available to the parties. Appeal dismissed.

