(2015) 05 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Tata Aig General Insurance Co. Ltd. APPELLANT

Vs

Neetha Rajendran RESPONDENT

Date of Decision : 03-05-2015

Acts Referred:

Citation : 2015 2 CPJ 688

Hon'ble Judges : J.

Final Decision : Petition Dismissed

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 29.7.2010 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, ''the State Commission'') in Appeal No. 27/2010, Ms. Neeta Rajendran v. The Branch Manager, Tata AIG Gen. Ins. Co. Ltd. by which, while allowing appeal partly, order of District Forum allowing complaint was upheld, but compensation was reduced. Brief facts of the case are that Complainant/Respondent insured her business premises with OP/Petitioner for a period of one year from 18.2.2008 to 17.2.2009. Complainant hired services of private security agent to guard her premises who were not on the pay roll of complainant''s establishment. On the night of 14.1.2009, theft was committed in complainant''s premises by breaking lock in which security personnel were also involved. Complainant lodged complaint with OP which was repudiated by the OP. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that as per FIR lodged by complainant, security guards had broken lock and entered in the premises and committed theft of articles and as per exclusion clause, OP was not liable for any loss and claim was rightly repudiated and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to pay Rs. 9,93,228 with 12% p.a. interest and further allowed Rs. 10,000 as cost of litigation. Appeal filed by OIP was partly allowed by learned State Commission vide impugned order and compensation was reduced from Rs. 9,93,228 to Rs. 5,10,044 against which, this revision petition has been filed.

2. HEARD learned Counsel for the parties and perused record. Learned Counsel for petitioner submitted that complainant''s claim was rightly repudiated on the basis of exclusion clause in the terms and conditions of policy even then learned District Forum committed error in allowing complaint and learned State Commission further committed error in not allowing appeal fully; hence, revision petition be allowed and impugned order be set aside and complaint be dismissed. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

3. THE core question to be decided in this revision petition is whether claim of the complainant falls within purview of exclusion clause which runs as under: "(e) Loss or damage where any inmate or member of the Insured''s household or of his business staff or any other person lawfully in the premises is concerned in the actual theft of or damage to any of the articles or premises or where such loss or damage has been expedited or in any way assisted or brought about by any such person or persons."

4. IT is not disputed that complainant availed services of security agency and two personnel supplied by security agency as guards were prima facie involved in alleged burglary (theft committed by breaking lock). As per policy - "burglary or housing breaking (theft following upon an actual forcible and violent entry of or exit from the premises by the person or persons committing such theft) or hold - up; including Robbery."

was covered in the exclusion clause. Burglary has not been excluded, but only theft by inmate or member of the Insured''s household or of his business staff or any other person lawfully in the premises has been excluded. Learned Counsel for the petitioner has placed reliance on judgment of this Commission in R.P. No. 2773 of 2011, M/s. J.S. Designer v. New India Assurance Co. Ltd. in which it was observed that security guard is also a lawfully person in the business premises and learned State Commission has committed error in holding that security guards do not fall under category of persons who were lawfully in the premises.

Though, theft by security guard is excluded from coverage, but burglary by security guards has not been excluded from the coverage of policy. Learned Counsel for respondent has placed reliance on judgment of Hon''ble Apex Court in Appeal (Civil) No. 6277 of 2004, United India Insurance Co. Ltd. v. M/s. Harchand Rai Chandan Lal, : V (2004) SLT 876 : IV (2004) CPJ 15 (SC), in which it was held that -

The terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended. It is true that in common parlance the term ''burglary'' would mean theft but it has to be preceded with force or violence. If the element of force and violence is not present then the insurer cannot claim compensation against theft from the Insurance Company.

5. HON ''ble Apex Court in Civil Appeal No. 1557 of 2004, Export Credit Guarantee v. M/s. Garg Sons International, : II (2013) CPJ 1 (SC) : I (2013) SLT 614, observed as under:

6. IT is a settled legal proposition that while construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled, that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of the liability of the insurer. Therefore, the endeavour of the Court should always be to interpret the words used in the contract in the manner that will best express the intention of the parties. (Vide: M/s. Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd., : (2010) 10 SCC 567). The insured cannot claim anything more than what is covered by the insurance policy. According the terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely. The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the Insurance Company must also be read strictly.

In the light of aforesaid judgments it becomes clear that there is lot of difference between theft and burglary and terms and conditions of insurance policy are to be construed strictly. If burglary has not been excluded in the exclusion clause of terms and conditions of policy, burglary even by security guard is covered by the policy. Hon''ble Apex Court in : II (1995) CPJ 15 (SC) : 1995 Supp (1) SCC 754, Smt. Shashi Gupta v. Life Insurance Corporation of India Ltd., observed as under:

"3. As both the aforesaid interpretations are reasonably possible, we would accept the one which favours the Policy holder, as the same advances the purpose for which a Policy is taken and would be in consonance with the object to be achieved for getting lives assured."

8. In the light of aforesaid judgments of Hon''ble Apex Court petitioner has committed deficiency in repudiating claim on the basis of exclusion clause and learned State Commission has not committed any error in partly dismissing appeal and revision petition is liable to be dismissed. Consequently, revision petition filed by the petitioner is dismissed with no order as to costs.

