(2013) 09 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

THE NEW INDIA ASSURANCE CO. LTD. APPELLANT

Vs

Shri C.D. Singla and Saroj Singla RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : 2013 4 CPJ 123

Hon'ble Judges : B.C.Gupta J.

Final Decision : Petition allowed

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 by the petitioner against the impugned order dated 06.05.2008, passed by the Chandigarh State Consumer Disputes Redressal Commission, (hereinafter referred as ''the State Commission'') in Appeal No. 92 of 2008, Sh. C.D. Singla & Anr. Vs. New India Assurance Company Limited & Anr., vide which, while allowing appeal, the petitioner/OP was directed to pay an amount of Rs. 2.5 lakhs to the appellants on account of reimbursement of the value of diamond bangles. This appeal had been filed against the order dated 23.01.2008 passed by District Consumer Disputes Redressal Forum, U.T. Chandigarh, vide which, the District Forum had allowed a sum of Rs. 5,100/ - as compensation in addition to a sum of Rs. 45,900/ - already paid by the Insurance Company and also allowed Rs. 2,100/ - to the complainants as costs of litigation. Briefly stated, the facts of this case are that the complainants/respondents had taken a Householder''s Insurance Policy from the petitioners/OPs valid from 02.02.2005 to 01.02.2006, insuring the household goods, including risk for jewellery, valuables, breakdown of domestic appliances and public liability etc. It has been stated in the complaint that the purse of Complainant no. 2/ Respondent no. 2 Saroj Singla was stolen from Car No. HP48 -0055 containing a jewellery pouch and some other items. She lodged an FIR at Manimajra Police Station, Chandigarh immediately after the incident and also sent intimation to the Insurance Company. The Insurance Company appointed Mr. S.P. Singh as Surveyor -cum -Investigator for investigation of the complaint. The said Surveyor -cum -Investigator collected the relevant documents, statements and information

and submitted his report but thereafter, the Insurance Company appointed another Surveyor. The Insurance Company approved the claims of the complainants for a sum of Rs. 45,900/ - based on the report of the second Surveyor and the said amount was paid to them. However, the complainants alleged that the amount approved was much less than the loss sustained by them, which was for an amount of Rs. 3,31,500/ -. The complainants accepted the amount of Rs. 45,900/ - under protest and filed Consumer Complaint before the District Forum. The District Forum, vide their order dated 23.01.2008, held the complainants entitled to a further amount of Rs. 5,100/ - as compensation and Rs. 2,100/ - as costs of litigation. The District Forum observed that the complainant no. 2 nowhere mentioned that she was having diamond karas in her purse. An appeal was filed against this order before the State Commission, which was allowed and the Insurance Company was directed to pay an amount of Rs. 2.5 lakhs to the complainants on account of reimbursement of the value of diamond bangles and also an amount of Rs. 10,000/ - for deficiency in service and Rs. 5,000/ - as costs of litigation. It is against this order that the present petition has been made.

2. AT the time of arguments before us, the learned counsel for the petitioner has drawn our attention to the copy of the Household Insurance Policy in question saying that the description of the jewellery items as stated in the policy was as follows: - Diamond items 1 set Necklace -60,000, 1 Ring -10,000/ -, 1 pair Tops -40,000, 2 Bangles -2,50,000, 1 set Necklace -1,55,000

Gold items -4 Bangles -35,000, Necklace -16,800, 1 Necklace -36,600, 2 Karas -33500.

Learned counsel argued that as per copy of the FIR No. 313 recorded by the police on 22.09.2005, under Section 379 IPC, it has been stated that total value of the property stolen was Rs. 10,000/ - only. The particulars of the articles stolen have been mentioned as, "One mobile phone Nokia No. 6681 and some cash, gold ornaments, necklace, kady". However, subsequently, the complainants asked the police on 23.09.2005 to add in the FIR the following items: - 1. One diamond Kara/Chain valuing Rs. 2.5 lakhs.

2. One diamond necklace/pendant valuing Rs. 60,000/ -.

3. One Nokia mobile phone valuing Rs. 17,000/ -.

3. CASH Rs. 4,000/ - to 5,000/ - with home key. 4. The learned counsel argued that in the first instance, there was no report about the loss of any diamond kara, rather the report was about the loss of gold ornaments only. Further, in the Insurance Policy also, the coverage was for diamond bangles and not for Karas. Hence, the demand made by the complainant for loss of diamond Kara was not justified as the same was not covered under the policy. She, further, stated that under the special exceptions under section, ''jewellery and valuables of the policy'', the company was not liable to make payment for the said loss. However, the company had already made payment to the complainants for an amount of

Rs. 45,900/ -, as per the report of the second Surveyor. They had also made payment of Rs. 5,100/ - as allowed by the District Forum.

4. IN reply, the learned counsel for the respondents has also drawn our attention to a copy of the Insurance Policy in question saying that under the item, "Jewellery" two diamond bangles at a price of Rs. 2.5 lakhs were included in the list of items assured. He mentioned that there was no difference between a "bangle" and a "kara", and the State Commission had very clearly spelt out that the only difference between the two was in the thickness of the item. A bangle which had more thickness was often referred to as Kara. The learned counsel further stated that the respondents were not at all negligent in any manner, when the theft took place. He further referred to the reports submitted by S.P. Singh, Surveyor cum Investigator where it had been concluded that the theft claimed of Jewellery as filed by the respondents was correct and genuine claim and no mala fide intention was found in the case. The State Commission had rightly relied upon the report of S.P. Singh, Surveyor cum Investigator. The District Forum had not taken note of the fact that the complainant, in statement before the police had informed that she had lost her diamond necklace and diamond kara and diamond churis having value of Rs. 2.5 lakhs. The learned counsel has drawn our attention to the orders passed by the National Commission in Baldev Singh Malhi v/s. New India Assurance Co. Ltd. as reported in : I (2003) CPJ 79 (NC), in which, it has been stated that where two investigation reports are contrary to each other, the first one has to be taken into account. He also referred to the order of the National Commission in Murli Agro Products v/s. Oriental Insurance Company as reported in : I (2005) CPJ 1 (NC) in support of his arguments. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

5. FROM the material on record, it is made out that the most crucial document in this whole episode is the FIR lodged with the police by complainant no. 2, Smt. Saroj Singla on 22.09.2005. It has been very clearly stated in the said FIR that the total value of the property stolen was Rs. 10,000/ - and in addition to one mobile phone and some cash, gold ornaments and necklace was stolen. There was no mention of any diamond kara etc. in the said FIR. The complainants have stated subsequently on 23.09.2005 that they had asked the police to add diamond Kara/Chain, diamond necklace/pendent etc. in the list of items stolen. However a copy of any FIR or report recorded by the police on 23.09.2005 has not been produced on record.

6. IN the memo of appeal filed before the State Commission, it has been mentioned that it was explained by the complainants in the statements made to the police that she had lost her diamond necklace and diamond karas/churis valuing Rs. 2.5 lakhs. In the letter sent to the insurance company on 23.09.2005, the details of the loss or any estimate of loss have not been mentioned. It has been observed that in the report filed by S.P. Singh, Surveyor cum Investigator, there is a mention of the FIR lodged on 22.09.2005, but there

is no mention of any subsequent report made to the police on 23.09.2005. In the report of the second investigator, Surya Surveyor, it has been mentioned that the second report made to the police appears to be "second thought", for the reasons best known to the complainants. From the above facts, it becomes clear that in the FIR lodged with the police, there is no mention of any diamond item and the total loss is stated to be Rs. 10,000/ - only. It is not clear, therefore, as to why the complainants omitted to mention about the diamond items at the time of lodging the FIR before the police. There is a natural presumption, therefore, that the inclusion of the diamond items in the list of articles is an afterthought. Further referring to the Policy in question, it has been mentioned against diamond items that two bangles with a cost of Rs. 2.5 lakhs are in the list of items insured. Against the gold items, two karas with value of Rs. 33,500/ - have been mentioned. While, we agree with the contention of the State Commission that the only difference between a bangle and a kara is of thickness and thick bangles are generally referred to as karas; in the policy, however, the term bangle has been used against diamonds whereas the term kara has been used against gold items. We, therefore, tend to agree with the line of argument advanced by the learned counsel for the petitioner that in the instant case, the loss as reported in the FIR relates to gold items only and hence, there is no justification in giving compensation for any diamond item. We, therefore, find no reason to agree with the report of the first investigator, as he has not mentioned any valid ground to include the diamond items in his report while, he has mentioned in detail about the FIR lodged with the police on 22.09.2005.

7. BASED on the discussions above, we do not find any justification to be in agreement with the order passed by the State Commission vide which, they have allowed the compensation of Rs. 2.5 lakhs on account of the reimbursement of the value of diamond bangles. It has been stated in the order of the State Commission that the complainants had asked the police to add in the FIR one diamond kara/chain valuing Rs. 2.5 lakhs, in addition to some other items. The State Commission has, however, not made it clear as to why they have allowed claim for two diamond bangles. In the light of the discussion above, this revision petition is allowed and the order passed by the State Commission is set aside. It is observed that the order passed by the District Forum reflects a true appreciation of the facts and circumstances on record and hence it is held that the complainants are entitled to receive compensation, as per the order passed by the District Forum. There shall be no order as to costs.

