

(2015) 02 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD.

APPELLANT

Vs

Catelizer (India)

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Citation : 2015 2 CPJ 320

Hon'ble Judges : AJIT BHARIHOKE J.

Advocate : P V Nanavati, Vibhuti Nanavati, M T M Hakim

Final Decision : Petition Allowed

Judgement

1. THIS revision is directed against the order of the State Commission Uttar Pradesh, Lucknow dated 26.3.2010 in Appeal No. 247/ 09. Briefly stated the facts relevant for the disposal of this Revision Petition are that the petitioner firm is engaged in the business of manufacture and sale of chemicals. The petitioner had obtained insurance policy for Rs. 6.00 lacs w.e.f. 6.9.1989 to 5.9.1990. According to the complainant on the night intervening 16th and 17th March, 1990, some unknown persons entered the factory premises and looted chemicals worth Rs. 3,10,000 after assaulting and beating the two labourers, namely, Aslam, Ziledar and watchman Kripa Shankar Pandey. The matter was reported to the police on the same night and intimation was given to the insurance company. The insurance company, however, repudiated the claim on the premise that story of looting of chemicals was false and it was belied by the FIR of the incident lodged at PS Partapur and the investigation conducted by the preliminary surveyor Balbir Singh and subsequent surveyor Rakesh Agarwal and Associates.

2. BEING aggrieved of the repudiation of the claim, the respondent filed consumer complaint in District Forum, Meerut. The District Forum on consideration of the pleadings and material on record came to the conclusion that the incident of looting of chemicals was established and the petitioner/ opposite party was not justified in repudiating the claim. Thus, the District Forum allowed the complaint and directed the petitioner to pay to the respondent, insurance claim amounting to Rs. 2,96,500 with 12% interest p.a. besides

compensation of Rs. 15,000 was also granted. Being aggrieved of the order of the District Forum, the petitioner preferred an appeal and the State Commission while agreeing with the finding of District Forum regarding deficiency in service on the part of the petitioner partly allowed the appeal and modified the order of the District Forum to the extent that the insurance claim awarded by the District Forum was reduced to 1,93,314.

3. MR . Ashok Mehrotra, Advocate for the petitioner has contended that impugned orders of the Foras below are erroneous for the reason that they have ignored the material evidence. Expanding on the argument, learned Counsel for the petitioner has drawn our attention to the copy of the FIR lodged by Anil Sharma, employee of the respondent firm at PS Partapur wherein there is no mention of looting of chemicals and instead it is stated that miscreants after assaulting and beating the employees of the complainant took away one typewriter (Remington), wrist watch of Kripa Shankar Pandey and blanket. Learned Counsel further contended that the Foras below have also ignored the survey report of Balbir Singh dated 27.8.1991 as also survey report of Rakesh Agarwal and Associates, wherein both the surveyors have concluded that no theft of chemicals had taken place and the story of looting of chemicals has been introduced by the insured on an afterthought with a view to defraud the insurance company. Learned Counsel for the petitioner has thus urged us to set aside the impugned orders and dismiss the complaint.

4. MR . Vishwas Saraswat, Advocate for the respondent on the contrary has argued in support of the impugned orders. He has contended that much importance cannot be attached to the FIR recorded at PS Partapur because Anil Kumar Sharma on coming to know about the incident, in his anxiety to inform the police immediately went to PS to lodge a report without bothering to verify whether anything else besides the typewriter, watch and blanket had been taken away by the miscreants. Actually, the theft of chemicals came to the knowledge when Arun Sharma, partner of the complainant firm visited the factory in the morning and on checking found that chemicals stored in the factory were stolen. It is further contended that investigation report of PS Partapur is of no consequence for the reason that subsequent investigation conducted by S.I.S. under the directions of Superintendent of Police confirmed the theft of chemicals. We have considered the rival contentions and perused the record.

5. THE only question which requires determination in this revision petitioner is whether or not the chemicals as alleged by the complainant were stolen in the incident? Undisputedly, shortly after the incident, Anil Sharma, employee of the complainant firm visited PS Partapur and lodged FIR on the night intervening 16th and 17th March 1990. On perusal of the copy of the FIR, we find that it is regarding theft of typewriter, wrist watch and a blanket besides assault on employees of the complainant firm. There is no whisper of loss of chemicals in the said FIR. Claim of the complainant is that chemicals worth Rs. 2,96,500 were stolen in the incident. That obviously is a huge amount of chemical. As per the

FIR, light was on in the premises. Therefore, under normal circumstances had such huge stock of chemicals been removed, Anil Sharma would have noticed the same. Further, on perusal of the survey report -cum -investigation report dated 27.8.1991 of Balbir Singh as also survey and investigation report of Rakesh Agarwal and Associates, we find that both the surveyors had concluded that story of looting of chemicals is not confirmed and the claim has been filed on an after thought. The surveyors are independent persons. Therefore, their reports cannot be taken lightly. The complainant has relied on subsequent investigation conducted by S.I.S. which confirmed the theft of chemicals. Said report cannot be taken as proof of theft of chemicals because we have two contradictory investigation reports -one by PS Partapur and other by S.I.S. Therefore, much reliance cannot be placed on investigation report of S.I.S. Admittedly, at the time of incident, Aslam who sustained injury by a sharp weapon, Zileadar and watchman Kripa Shankar were present. Those persons being eye witnesses were best persons to throw light upon the incident. None of them have been examined by the complainant to establish the version of theft of chemicals. Otherwise also, such huge amount of chemicals could not have been removed by those unidentified miscreants without using a truck/ carrier and if any truck or carrier was used for removing the chemicals, the above three persons would have heard the sound of coming and going of the truck. There is no evidence in this regard. On the contrary from the investigation reports of the surveyors, it appears that said three witnesses belied the story of theft of chemicals. Therefore, in our view, complainant has failed to establish the theft of chemicals. The above noted important aspect of the evidence has been ignored by the Foras below while allowing the claim. Therefore, their orders cannot be sustained. In view of the discussion above, we are of the opinion that impugned orders of the Foras below cannot be sustained. Revision petition, is therefore, allowed; orders of the foras below are set aside and the complaint is dismissed.