**(2002) 06 NCDRC CK 0003**

**In the National Consumer Disputes Redressal Commission**

United India Insurance Co. Ltd. APPELLANT

Vs

Harchand Rai Chandan Lal RESPONDENT

**Date of Decision :** 19-06-2002

**Acts Referred:**

**Citation :** 2003 1 CPJ 393 : 2003 2 CPR 256

**Hon'ble Judges :** Lokeshwar Prasad , Rumnita Mittal J.

**Final Decision :** Appeal disposed of

## Judgement

1. THE present appeal has been filed under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as ''the Act'') assailing the order of the District Forum-II passed in Complaint Case No. 176/1994 entitled M/s. Harchand Rai Chandan Lal v. United India Insurance Co. Limited.

2. BRIEFLY stated, the relevant facts are, the the respondent had insured stocks of food grain of every kind stored at his godown, situated at 48, Srinagar Colony, Bharat Nagar, New Delhi for a sum of Rs. 7,00,000/-. The said policy was in force from 22.9.1991 to 21.9.1992. The partner of the respondent on checking the said godown on 22.7.1992 discovered that 197 bags of ''gwar'' were missing and as such lodged FIR No. 210/1992 under Section 380/457, I.P.C. with the Police Station, Sarai Rohilla, Delhi. Thereafter the respondent preferred a claim for the loss with the appellant who repudiated the claim of the respondent on the ground that the policy being a ''burglary policy'', the incident in question was not covered under the same as there was no violent entry or exit into the premises and the case made out was only of theft of goods lying in the store. The appellant, therefore, approached the District Forum for the redressal of his grievances. The appellant in its reply/written version filed before the District Forum raised several preliminary objections regarding jurisdiction and maintainability of the complaint before the District Forum. On merits the stand of the appellant was that under the policy in question the appellant was to be indemnified only against loss occurring on account of ''burglary'' or ''house breaking'' whereas in the present case there was no mention of violent or forcible

entry as the lock of the gate of the godown was found intact and only the bags of gwar were found missing. It was stated that only a case of theft was made out which was not covered under the policy and as such the claim of the appellant was rightly repudiated and there was no deficiency in service on the part of the appellant.

The learned District Forum relying upon the decision of the State Commission Chandigarh in case - United India Insurance Company Ltd. v. Chand Gotia Bros., reported as I (1997) CPJ 565, held that term burglary included theft and as such allowed the complaint of the respondent with directions to the appellant to consider claim of the complainant on merits and to disburse the amount due to him under the policy within two months from the date of the order together with interest @ 15% per annum, as well as awarded cost of Rs. 1,000/-.

3. AGGRIEVED by the aforesaid order, the appellant has preferred the present appeal. We have carefully perused the documents/material on record, as well, as have deliberated upon written submissions filed on behalf of the parties. We have also heard the arguments advanced on behalf of the parties at length. First of all we will proceed to deal with the objection taken by the respondent that the present appeal has been filed after considerable delay and as such is liable to be dismissed on the grounds of limitation itself. So far as the said contention of the respondent is concerned, the impugned order is dated 1.6.1998 whereas the present appeal has been filed on 18.9.1998. However, the appellant has also filed an application along with the appeal for condonation of delay in filing the appeal wherein it has been clarified that though the impugned order of the District Forum is dated 1.6.1998, but a certified copy of the same was received by the appellant/Insurance Company, only on 9.9.1998 and as such the present appeal filed on 18.9.1998 is within the period of limitation of 30 days as prescribed under Section 15 of the Act. In this regard the appellant has referred to the certified copy of the impugned order filed along with the present appeal. The same bears the endorsement that the certified true copy of the impugned order was prepared on 7.8.1998 and the stamp of the appellant/Insurance Company on the same reveals that the said copy was received in the office of the appellant only in September, 1998 (the date being illegible). Furthermore, the appellant had also placed on record a copy of letter issued by the Branch Office of the appellant stating therein that the copy of the impugned order was received by it on 9.9.1998 and was being forwarded to the concerned Divisional Office. Thus it is established that the impugned order of the District Forum was received by the appellant on 9.9.1998 and, therefore, the appeal, filed by the appellant, on 18.9.1998 is within the period of limitation prescribed under the Act for filing an appeal. As such the objection taken by the respondent that the present appeal is time barred is baseless, devoid of merit deserves to be rejected summarily.

4. COMING to the merits of the case the sole controversy involved in present appeal is as to whether ''theft'' is included in the definition of burglary as envisaged in the policy in question and as such the claim of appellant for

indemnification under the policy would be justified or not. Thus very question has been considered by the Hon''ble National Commission in case National Insurance Company Ltd. v. Public Type College, reported as II (2001) Consumer Protection Judgments 26 (NC), wherein it has been held- "We do not find insurer is right in its mission. In common parlance burglary is understood as theft. We have not been told if there was any separate policy for theft. If we draw on our knowledge as to what has happened in normal course of events, which we can do in these proceedings, it can safely be assumed that complainant asked for insurance cover for theft and the Insurance Company did insure the property against theft by giving the policy name Burglary and House Breaking. Question is what does a common man understand by the term burglary when he goes for insurance to cover the case of theft ? We do not have to go for any legal terminology of the word or strict meaning of the term in English Dictionaries. Even these dictionaries give different meaning to the term burglary. If we refer to the Concise Oxford Dictionary (10th Edition), Burglary is defined as "illegal entry into a building with intent to commit a crime such as theft". In the Longman Dictionary of Contemporary English, burglary is a "crime of entering a building by force with the intention of stealing". In the New Webster''s Dictionary of the English Language (College Edition), burglary is "the crime of breaking into the house of another at night with felonious intent, some times extended by statute to cover the breaking and entering of any of various buildings by night or day".

In Dino Services Ltd. v. Prudential Assurance Co. Ltd., (1989) 1 All ER 422 (CA), goods were stolen from the premises of the insured by thieves who had stolen the keys to the premises from the insured''s car and then entered the premises at night by simply using the keys in the normal way to unlock various doors, without causing any physical damage to the locks or to the doors. The insurer repudiated the claim on the ground that loss or damage had to occasion from theft involving "forcible and violent" means of entry to the premises. Trial Court held on these facts there had been entry to the premises both by forcible and violent means within the meaning of the policy. On appeal filed by the insurer it was not disputed the opening of the doors with stolen keys constituted forcible entry within the meaning of the policy and the only issue before the Court of Appeal was whether the entry had also been violent. In the context of the policy of insurance against theft from the premises by forcible and violent means of entry, the Court said that the word ''violent'' is to be construed according to ordinary meaning and meant entry by the use of any force which was accentuated or accompanied by a physical act which could properly be described as violent in nature and character. Since there was no evidence of any violence, the Court held that policy did not cover the loss sustained by the insured. In the present case since the stand of the insurer has itself been that the entry to the premises has either to be forcible or violent and in view of the aforesaid decision of Court of Appeal in the case of Dino Services Ltd. v. Prudential Assurance Co. Ltd., it can be said that entry to the premises was forcible and thus covered under the policy for loss by theft. In common parlance burglary will certainly mean theft. We have not been told or shown if there is any separate policy for theft if, according to the Insurance Company, burglary does not include simple theft."

(Emphasis supplied) Thus in view of the aforesaid decision of the Apex Commission the controversy in dispute stands settled that the term burglary covers theft also and as such the present case is also covered under the policy which has been wrongly repudiated by the appellant and as such the respondent is entitled to the claim preferred by him for the loss incurred in respect of the theft of the bags of gwar. In the circumstances, therefore, we do not find any infirmity in the impugned order of the District Forum so as to call for any interference on our part in exercise of appellate jurisdiction. As such the impugned order of the District Forum is upheld and in consequence the present appeal, filed by the appellant, being devoid of merit is dismissed. In the circumstances of the case, however, there is no order as to cost. The present appeal stands disposed of in above terms. Appeal disposed of.