(2016) 10 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Case No : 4436 of 2013

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

M/S. IT NET INFOCOM PVT. LTD. — RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2016 4 CPR 110

Hon'ble Judges : B.C. Gupta

Advocate : NAVEEN KUMAR, C.N. Sreekumar, Amit Sharma

Final Decision : Petition Allowed

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 30.04.2013, passed by the Kerala State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission'') vide which, while allowing the appeal, the order dated 24.06.2011, passed by the District Forum, Ernakulam dated 24.06.2011, dismissing the complaint filed by the respondent/complainant was set aside.

2. Briefly stated, the facts of the case as stated in the consumer complaint are that the complainant is a company registered under the Companies Act and engaged in the sale of computers, its accessories and allied products. The company had insured the stock kept in the show-room under the shop-keepers'' policy as well as the burglary policy, taken from the petitioner, United India Insurance Company Limited. The sum assured under the shop-keepers'' policy was 27,75,000/- and it was valid from 17.01.2017 to 16.01.2018. The sum assured under the burglary policy was 3 lakh and it was valid from 18.09.2007 to 17.09.2008. it has been stated that a theft occurred in the show-room of the complainant between 8:30 PM on 15.12.2007 (Saturday) and before 9:10AM on 17.12.2007 (Monday). 15 branded laptops, 2 A30 Speakers and a sum of 1,83,331/- kept in locked iron safe were stolen and the total loss sustained as

per the complainants was 7,67,775.24ps. A report about the incident was lodged with the local police, where a case crime No. 803/2007 dated 17.12.2007 was registered. However, the Police filed an undetected report before the Court of Additional Chief Judicial Magistrate on 01.03.2009. The complainant also filed claim with the insurance company under the policies in question, but the same was repudiated by the OP Insurance Company, saying that there was no valid and visible evidence for any forcible or violent entry into the premises of the insured for causing loss. The complainant filed the consumer complaint in question, seeking directions to the OP to pay 7,67,675.24ps., being the cash and value of goods stolen, alongwith reasonable interest and compensation of 25,000/-.

3. The complaint was resisted by the OP insurance company by filing a written version before the District Forum, in which they stated that the claim fell outside the purview of the policy conditions, because the term burglary had been defined in the policies as meaning, theft involving entry into or exit from the insured premises by ''forcible and violent'' means. In the present case, there was no valid and visible evidence, indicating any forcible or violent entry into the premises of the insured.

4. The District Forum, after taking into account the averments made by the parties, dismissed the complaint vide their order dated 24.06.2011, observing that the element of force and violence was a condition precedent for burglary and house-breaking. There was, therefore, no deficiency in service on the part of the insurance company. Being aggrieved against the said order of the District Forum, the complainant challenged the same by way of appeal before the State Commission, which was allowed vide impugned order dated 30.04.2013, and a direction was given to pay a sum of 7,50,320/- to the complainant with interest @10% p.a. from the date of complaint till realisation. In addition, the OP Insurance Company was directed to pay compensation of 10,000/- and cost of litigation 5,000/-. It is against this order that the present revision petition has been made before this Commission.

5. At the outset, the Ld. Counsel for the petitioner insurance company tried to explain the delay of 78 days in filing the instant petition, saying that the same was caused due to time spent in obtaining legal opinion from the panel Advocate of the company and seeking necessary official approvals from the competent authority. A certified copy of the order of the State Commission dated 30.04.2013 was received by them on 03.06.2013. The legal opinion was then taken and the case was sent to the Head Office of the company via the Regional Office for seeking the necessary approvals. Thereafter, the services of an Advocate were engaged by the Regional Office and the process to draft and file the revision petition was undertaken. The Branch Office of the company was located at Thiruvananthapuram, whereas the Regional Office having centralised legal Department was located at New Delhi, and the Head Office of the company is at Chennai. Since the matter had to be dealt with at different offices at

different places and the necessary documents were also to be collected, there was delay in filing the petition, which should be condoned, as sufficient cause had been shown for condoning the same.

6. The Ld. Counsel further stated that the claim was to be decided as per terms and conditions of the policies in question. The definition of the term ''burglary'' had been given in Shop-keepers'' Insurance Policy as follows:- "The term Burglary and/or House breaking shall mean that involving entry, to in or exit from the insured premises by forcible and violent means or following assault or violence or threat thereof to the insured or any employees of the insured or member of the insured''s family."

7. It has been brought out in the report of the surveyor appointed by the insurance company that the front shutters and locks were intact and no mark of tempering was found anywhere on the shutters/locks. The District Forum had therefore, taken a correct view in dismissing the complaint as the claim was not admissible in terms of the terms & conditions of the policy.

8. On the other hand, the learned counsel for the complainant/respondent stated that the order passed by the State Commission was in accordance with law and should be upheld. It had been reported in the final report of the Police that the thieves entered the show-room by denting the shutters on the front side, which shows that burglary was committed by entering into the insured premises through forcible and violent means. The learned counsel further argued that the factum of loss in question had been proved from the report of the surveyor and hence, the claim should have been paid. The learned counsel stated that the State Commission had rightly relied upon the order passed by the Hon''ble Apex Court in " United India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal [(2004) 8 SCC 644], " while coming to their conclusion.

9. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

10. The delay of 78 days in filing the revision petition has been explained on the ground that the matter was dealt with at different offices of the company located at New Delhi, Chennai and Thiruvananthapuram etc. before the final decision to file the revision petition and engage the services of a counsel, could be taken. The petitioner is a national-level Government organisation and is expected to be more prompt in ensuring that statutory prescribed limits of time are followed in filing such cases. However, since the petitioner has explained the delay in the application for condonation of delay as well as during oral arguments, the said delay is ordered to be condoned in the interest of justice.

11. The main issue involved in the present case is whether the incident of theft in question is covered under the definition of burglary or not. The petitioner insurance company vide their repudiation letter dated 2.11.2009 stated that they were closing the claim file on account of the reason, "no forcible entry or exit into the premises." In the impugned order passed by the State Commission, it has

been stated as follows:- "Therefore first I shall consider whether there was any evidence of violence or forcible entry to commit the theft. Ext.A3 is the final report of the police which is not disputed. It is clearly reported therein that the thieves entered the showroom by denting the shutter on the front side which clearly shows that there is burglary committed by entering into insured premises through forcible and violent means. Thus, the finding of the Forum on this point is set aside and reversed."

12. As per the above version, the thieves entered the show-room by ''denting'', the shutter, giving rise to the conclusion that burglary was committed by entering the premises through forcible and violent means. However, the petitioner has stated that the Police Report nowhere mentioned of any denting or damage to the shutter. The petitioner has attached a translated copy of the said document Ext.A-3 alongwith the revision petition. It has been stated in the said translated copy of the document "Ext. A-3", as follows:- "It is understood that by opening the middle part of the front side shutter, some thieves entered the shop and stoles goods and cash worth Rs.7,68,325/- including 15 laptops of different companies having different prices and 2-A30 speakers displayed is different tables and cash Rs.1,83,331 kept in iron shelf."

13. It is clear, therefore, that entry was made by opening the middle part of the front side shutters. It is evident, therefore, that the State Commission made an erroneous observation that the thieves entered the show-room by denting the shutter on front side. The conclusion arrived at by the State Commission regarding the use of forcible and violent means, is not substantiated from the Police Report Ext. A-3.

14. In the light of the above discussion, the conclusion arrived at by the District Forum that this was not a case of entry by forcible and violent means is proved and hence, the claim was not payable, keeping in view the definition of burglary as contained in the insurance policy.

15. Based on the discussion above, the present revision petition is allowed and the impugned order passed by the State Commission is set aside. The order passed by the District Forum is upheld, having been based on correct appreciation of law and facts of the case in question. There shall be no order as to costs.