(1995) 05 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

NATIONAL FORUM FOR CONSUMER EDUCATION RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Citation : 1995 0 NCDRC 142 : 1995 2 CLT 558 : 1995 2 CPC 172 : 1995 2 CPJ 141 : 1995 2 CPR 177 : 1995 3 CTJ 385

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , R.THAMARAJAKSHI , S.P.BAGLA , S.S.CHADHA J.

Advocate : S.L.GUPTA , VISHNU MEHRA

Judgement

1. THIS Revision Petition and Revision Petition No. 438/94 have arisen out of the order dated 4.5.1994 of the State Commission, Maharashtra, Bombay reversing the decision of the District Forum, Akola dated 11.2.1994. This order will dispose of both the Revision Petitions.

2. SMT . Padmawati was carrying on business under the name and style of Strishakti Mahila Soundrya Prasadhan Store at Post and Taluk Risod, Distt. Akola. She had availed cash credit facility of Rs. 25,000/- from the State Bank of India (Rasod Branch). She hypothecated her entire stock of goods with the bank to secure the due repayment under cash credit facilities. It is the requirement of the Bank to get an insurance cover of the hypothecated goods. The Bank took out an insurance policy from M/s. Oriental Insurance Co. Ltd. covering the insurance of the goods against "Fire and Burglary" for the period 30th November, 1990 to 29th November, 1991 and debited the premium to the account of Smt. Padmawati. The Bank took out another insurance policy, after the expiry of the first insurance policy, from United India Insurance Co. Ltd., for the period 30th November, 1991 to 29th November, 1992 covering the risk of ''fire''. The risk of burglary was not covered in the second policy. On 2.6.1992, there occurred a theft at the shop of Smt. Padmawati and the matter was reported to Police where she alleged that goods worth Rs. 17,729/- and cash Rs. 950/- in all Rs. 18,679/- were stolen but later on she made a claim against the Bank as well as the

Insurance Co. of an amount of Rs. 23,862/-. The claim was repudiated by the Insurance Company on the ground that the risk was not covered. The Complainant in her complaint alleged that it was the duty of the Bank to get the policy renewed covering the risk of ''Fire and Burglary'' and the Insurance company was wrong for not covering the burglary in the insurance and thus there has been deficiency in service. It was alleged that due to the failure on the part of the opposite party to have proper coverage of the burglary risk by arbitrarily deciding to get only the fire risk covered and not the burglary risk, without informing and consulting the complainant the loss incurred due to the theft could have been compensated by the Insurance Company, thereby amounting to deficiency in service, inasmuch as the quality, manner and performance is concerned. Therefore, the entire liability of losses of Rs. 23,862/- lies solely on the Bank.

3. THE District Forum appreciated the pleadings, documents and evidence on record and dismissed the complaint with a detailed and reasoned order. The State Commission, Maharashtra at Bombay on appeal by the complainant reversed the findings of the District Forum and allowed the complaint against both the opposite parties. This order of the State Commission, in our view, suffers from material illegality and irregularity in the exercise of jurisdiction and is entitled to be set aside.

4. THE State Commission has rightly noticed the practice that when the bank loan is advanced to a party, the Bank insists for the insurance policy cover as a security for the recovery of the loan. Admittedly, the complainant on her own failed to get the goods hypothecated with the Bank insured. No agreement or policy guidelines have been placed on record under which the Bank is under an obligation to get insured the hypothecated goods. The Bank on the failure of the complainant arranged for the insurance coverage as is evidence from the copy of the insurance cover issued by Oriental Insurance Co. Ltd. wherein the name of the insured is recorded as "State Bank of India, Rasod, Strishakti Mahila Soundarya Prasadhan Stores at Post and Tq. Risod" and debited the premium to the account of the complainant. The description of the premises containing the property insured is given as ''B class construction''. It was Miscellaneous Accident policy covering the risk of fire and burglary for the first year. The Bank''s version in the affidavit is that M/s. Oriental Insurance Co. Ltd. after issuing the policy disputed the insurance cover against burglary on the ground that it was wrongly represented to it that premises is a ''B'' class construction, whereas in fact it is a wooden structure and is treated as third class unsafe construction. The Oriental Insurance Co. Ltd. declined to renew the policy for the next year. The State Commission''s finding "that there appears to be negligence on the part of the Insurance Co. to have (not) provided the cover of burglary while renewing the policy, as it was made available in the previous year policy" and "it was the duty of the insurance company to provide cover for both the risk of burglary and fire since it was a renewal policy", is in our opinion perverse. M/s. Oriental Insurance Company Ltd. refused to cover the risk against fire and burglary for the next

year as the goods to be insured are stored at a premises of third class construction. The complainant against failed to get the insurance cover for the next year. The Bank on the failure of the complainant then approached another insurance company namely, M/s. United India Insurance Co. Ltd. who after examining the shop/kiosk of the complainant considered it as third class construction. They issued a fresh policy in the name of "State Bank of India, Risod A/c Stri Shakti Mahila Soundarya Prasadhan" for the period 30.11.1991 to 29.11.1992 giving only fire insurance cover. Risk of burglary is not covered in this policy which mentions "Build. Const. III Class". It is not the complainant''s case that she or the State Bank of India sought the cover in respect of burglary also. As the cover of the risk of burglary was neither sought nor was covered in the policy, the claim of the complainant was rightly repudiated by M/s. United India Insurance Co. Ltd. There is no deficiency in service on the part of the said Insurance Company.

5. THE finding of the State Commission that "this is a case of obvious negligence on the part of the State Bank of India not to have obtained the policy to cover the risk of burglary for the complainant as was done initially" is again based on no evidence or material on record. The complainant did not produce any agreement between the parties or any material or any rule or even administrative instruction of the Bank which makes the Bank duty bound to get the hypothecated goods insured for the risk of fire and burglary. No written demand has been made by the complainant on the Bank to arrange for the insurance cover against the risk of fire and burglary. No obligation thus can be foisted on the Bank. The Insurance Company do not accept the risk of burglary for such wooden kiosk/khokha which are considered as third class constructions. The complainant himself placed on record the letter dated 25.6.1992 of the Insurance Company that as the construction of the shop''s building was not well made and not of specified type, it did not cover the risk of burglary. It is within the competence of the Insurance Company whether to accept the risk or not of burglary of the goods stored in a third class construction. If the Insurance Company on justifiable grounds refuses to issue the cover, then no negligence could be attributed to the Bank in not obtaining the burglary risk cover and consequently no deficiency in service.

6. THE State Commission in reversing the order of the District Forum has exercised its jurisdiction and acted with material irregularity and illegality. In the result both the Revision Petitions are allowed. The impugned order dated 4.5.1994 is hereby set aside and the complaint is dismissed leaving the parties to bear their own costs throughout.