
(1997) 02 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd.

APPELLANT

Vs

Prakash and Company

RESPONDENT

Date of Decision : 26-02-1997

Acts Referred:

Citation : 1997 2 CPJ 97 : 1997 3 CPR 97

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Appeal partly allowed

Judgement

1. BRIEF facts of the case are M/s Prakash & Co., complainant for short, obtained a fidelity guarantee insurance policy in the sum of Rs. 50,000/- for the period 29.11.1991 to 28.11.92 from the opposite party in respect of one Mr. K.K. Gupta, Sales Officer, employed by the complainant. The case of the complainant was that the said employee embezzled a sum of Rs. 28,331.50 from the cash sale collections and further a shortage of stock in his charge as store-keeper amounting to Rs. 18,852.50 was found. The matter was reported to the police of P.S. Kalkaji and a claim preferred for both the aforesaid amounts with the insurance company. The insurance company failed to settle the claim and hence the complaint. During the pendency of the complaint, the opposite party repudiated the claim by its letter dated 28.2.94.

2. THE case was contested. On a consideration of the material before it the District Forum Held that the complainant was not entitled to recover the amount relating to alleged shortage from the stock as duty as store-keeper entrusted to Mr. K.K. Gupta in addition to being a salesman had not been intimated to the insurance company and the insurance company was, thus, not liable in terms of the policy. With regard to the amount alleged to have been embezzled by Mr. K.K. Gupta, Mr. Manohar Lal Sharma, surveyor appointed by the insurance company, had recommended a sum of Rs. 26,404/-. THE District Forum directed the Opp. Party to pay the said amount together with interest @ 18% p.a. from the date of filing the complaint and Rs. 1,000/- as compensation and costs. Aggrieved by the order, the Opp. Party has preferred this appeal. We have heard

Mr. H.C. Goel, Advocate for the appellant and Mr. S.C. Juneja and Mr. G.R. Budhiraja, Advocates for the respondent and have gone through the records.

Mr H.C. Goel has raised three contentions. Firstly, the District Forum failed to take notice of the report dated 1.11.93 which had the effect of superseding the earlier report dated 18.12.93 submitted by Mr. Manohar Lal Sharma,, Surveyor. Secondly, the complainant having failed to intimate the change in the nature of duties of the employee committed contravention of the terms of the policy and the insurance company was not liable to pay any amount, and lastly, there was no basis to support the finding for the payment of Rs. 26,404/-, the earlier report having been superseded by the same very surveyor. The contention of Mr. S.C. Juneja, learned Counsel for the respondent, on the other hand, is that the Surveyor had recorded a clear finding with regard to the extent of loss suffered by the employer in his report dated 18.12.92 and the said report had not been superseded by merely saying that this was a case of dispute between employer and the employee in which the insurance company was not involved. Mr. S.C. Juneja pointed out that the employee Mr. K.K. Gupta had resorted to a counter-blast after two months of the report lodged by the employer with the police. Mr. S.C. Juneja emphasised that what was open to the employer was to lodge a complaint with the police station and it was beyond the power of the complainant to compel the police to convert the report into a formal First Information Report.

3. WE have carefully considered the respective contentions. There can be no dispute that what is open to the complainant is to report the facts to the police. The information received is required to be entered into a daily diary maintained at the police station. It is the function of the police whether to convert the information into a formal First Information Report by recording the same in the FIR register. It was acknowledged in the report of the surveyor that the employer had duly reported the loss to P.S. Kalkaji. It is, therefore, of no consequence that the police did not convert the information into a formal FIR. In the facts of the present case, the matter of substance is the financial loss suffered by the employer. Facts bearing on this question were gone into by the surveyor and he assessed the loss to be Rs. 26,404/-vide his report dated 18.12.92. No doubt, as a later development the employee also made a counter-claim against the employer. This fact, in our view, does not detract from the loss suffered by the insured, who has taken a fidelity guarantee policy. It was, therefore, not open to the insurance company to deny its liability under policy simply on the ground that the employee had also raised a counter-claim against the employer and the case was one of dispute between employer and employee. In this sense the second report submitted by the Surveyor is not relevant.

4. THE complainant had also raised a claim for Rs. 18,852.50 on account of shortage in the stock placed under the charge of the same employee. This part of the claim has been rejected by the District Forum on the ground that the complainant failed to notify to the insurance company about the change in the duties assigned to the employee after taking the insurance policy. THE

complainant has not preferred any appeal against that finding. Insofar as violation of the terms of the policy is concerned, the matter no longer survives in, appeal and, therefore, the contention of Mr. Goel based on the alleged violation of the terms of the policy, is not applicable to the facts arising for consideration in the appeal. With regard to evidence to support the quantum of loss, it is plain that the same is based on report of the surveyor dated 18.12.92. The surveyor, on going through the relevant material, concluded that the insured had suffered a loss of that amount. It cannot, therefore, be said that the finding is based on no evidence. The District Forum has allowed interest @ 18% p.a. In a recent decision their Lordships of the Supreme Court have laid down that the insurance company is liable to pay interest @ 12% p. a. (see *United India Assurance Co. Ltd. v. M.K.J. Corporation*, III (1996) CPJ 8 (SC)).

5. FOR these reasons, the appeal is partly allowed. The rate of interest allowed by the District FORum is reduced to 12% p.a. Except for this alteration, the remaining order is affirmed and the appeal disposed of accordingly. A copy of this order be conveyed to both the parties as well as District FORum-II. Appeal partly allowed.