(2010) 07 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO LTD — APPELLANT

Vs

SURESH KUMAR — RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : 2011 2 CPJ 272

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision dismissed.

Judgement

1. UNITED India Insurance Co. Ltd., which was the apposite party before the District Forum, has filed this Revision Petition against the order passed by the State Commission in Appeal No. 255/2006 dated 6.5.2006 whereby and whereunder the State Commission has reversed the order passed by the District Forum and directed the petitioner to indemnify the respondent/complainant in the sum of Rs. 3,10,000, which was stolen while the respondent was travelling from Ratlam to Sant Road.

2. BRIEFLY stated the facts are that the respondent was a railway contractor and used to carry money to Ratlam, Meghnagar, Dahod, Sant Road and Godhara to look after his work and make payments to the labourers. He took a transit insurance policy in the sum of Rs. 20 lacs for the period from 9.4.2001 to 8.4.2002. On 20.8.2001, respondent withdrew a sum of Rs. 3,10,000 from State Bank of India, main branch Ratlam for payment of salary to the labourers and kept the same in a rexine bag safely and started his journey from Ratlam to Sant Road in Dehradun Express. As per averments made in the complaint, he lay down on the upper berth and kept the bag under his head. On reaching Bamniyan, he came down from his berth and sat down on the seat below. At Megh Nagar station, on lifting the bag, he found that the weight of the bag was less and on inspection found that the bag had been cut from the side and money stolen. As train had started, the respondent reported the theft at Dahod Railway Police Station where he was told to report about the incident at Godhara Police Station. Godhara Police Station told him that the area where theft took place falls

under the Indore police. But, at Indore he was asked to report the incident to GRP Police Station, Ratlam. Then, the respondent reported the matter to GRP Police Station, Ratlam. After investigation, the GRP Police Station, Ratlam closed the case file. Respondent lodged the claim with the petitioner, which was repudiated on the ground that the theft reported by him was of suspicious nature. Being aggrieved, respondent filed complaint before the District Forum.

3. DISTRICT Forum, on appreciation of pleadings as well as evidence, dismissed the complaint, aggrieved against which the petitioner filed an appeal before the State Commission.

4. THE State Commission, on reappraisal of the entire set of pleadings and evidence, came to the conclusion that money had in fact been stolen from the bag of the respondent which was being carried by him while travelling from Ratlam to Sant Road.

5. STATE Commission reversed the finding recorded by the District Forum and allowed the appeal. The complaint was decreed and the petitioner was directed to reimburse the respondent to the extent of Rs. 3,10,000 along with interest at the rate of 9% per annum with effect from 7.10.2002 till realization. Rs. 1,000 were awarded as costs. State Commission in its order recorded the following finding of fact: "The claim of the appellant has been rejected by the respondent on 7.2.2002 i.e. after 1 year and 2 months of the incident stating ''Appellant has not taken proper care and the appellant has left the bag containing Rs. 3,10,000 on the upper berth and went to urinal''. The respondent states that the appellant has not taken proper care according to condition No. 3 of the Policy. In the statement the appellant informed the Branch Manager about the incident on 24.8.2001 and states that during Ratlam to Sant Road and near Gohad the bag which was chained has been cut from a side and amount of Rs. 3,10,000 has been taken away by some unknown person. In the police report also the appellant has stated that he was sleeping on the upper berth and kept the bag under his head and found the bag to its place after coming from toilet. After that at Bamnyan Station sat on the seat below and after that came to know about the incident at 4.20 at Meghnagar. It is pertinent to clarify here that after coming from toilet the bag was found safe at its place and the amount was stolen only after when he sat on the seat below. In view of the respondent, what is the meaning of taking proper care, is not clear. Taking proper means is not that he should have sat tight with the money bag. He lied down on the berth by keeping the bag under his head and checked the bag after coming from toilet. What more can be expected and supposed to be done in regard to taking proper care from a common man. The money has been taken out by the theft by cutting the bag in his presence when he was sitting on the berth below."

6. WE agree with the view taken by the State Commission. It would be seen that the petitioner had withdrawn the sum of Rs. 3,10,000 on 20.8.2001. He was carrying the said amount with him while going from Ratlam to Sant Road for disbursement of salary to the labourers who were working at different places.

While he was going from Ratlam to Sant Road, money was stolen and he tried to report the matter to the police firstly at Dahod and later on in Godhara, then Indore and, ultimately, reported the matter to GRP Police Station, Ratlam. The source of the money is established. Soon after coming to know about the loss of the amount, respondent lodged the FIR with the police, which indicates that, in fact, the money had been stolen from the possession of the respondent. It is not disputed before us that the respondent had taken a cash-in-transit policy in the sum of Rs. 20 lakh. The respondent had taken the policy to safeguard against the loss of money in transit. There is nothing on record to show that the claim lodged by the respondent was false or at any stage managed.

7. WE do not find any infirmity in the order passed by the State Commission. Finding recorded by the State Commission is a finding of fact, which cannot be interfered with in exercise of revisional jurisdiction. Under Section 21 of the Consumer Protection Act, 1986, in revision, this Commission can interfere with the orders only if it appears that the Authority below has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. We find no error/irregularity in the exercise of jurisdiction by the State Commission in its impugned order. Dismissed. No costs. Revision dismissed.