(2004) 09 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

United India Insurance Company Limited APPELLANT

Vs

RAJ NARAIN RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Citation : 2005 2 CPJ 135

Hon'ble Judges : Rachna , Senior , R.N.Prasad , Vinod Shankar Chaubey J.

Final Decision : Appeal allowed

Judgement

1. -IT pains me to differ from the opinion expressed by my learned Sister, Mrs. Rachna and learned Brother, Mr. Raghunath Prasad, Members, but the facts and law which are on the file overwhelmingly justify my view in this case.

2. IN the memo of appeal, United INdia INsurance Company Limited has pleaded that "through uncontroverted facts, documents and independent survey it has been well proved that the theft story is manipulated and the insured has played fraud to claim money from the insurer". The story and the facts formulated by the complainant, Sri Raj Narain, and another appears to be unbelievable on the grounds mentioned below: 1. No doubt the F.I.R. has been lodged but registration of a case is by no means any proof to support the alleged crime.

2. The independent Surveyor has given a detailed report with reasoning and good details of the circumstances and the alleged facts. The report of the Surveyor appears to be very reasoned and self-explanatory.

3. The insured has no record to substantiate the quantity of items lost in the incident.

4. The items found outside the shop were all expired and do not form part of the items lost which raises doubt on the genuineness of the incident of burglary of the stocked items. It is not believable that thieves will find sufficient time to sort out the expired and non-expired medicines. The loss of stock appears to be superfluous and efforts to claim money from the insurer. The insured is a whole-saler but operates as a retailer also without a licence and normally he keeps the

medicines which are prescribed by the doctors practising there. The items purchased per prescribed demand are usually purchased from local market to cater to the needs of the patients attending Dr. Tripathi operating from the next shop.

5. No burglar would remove the strips from the boxes and take strips only and leave behind the box and such a thing never happened in the past. The burglar had to sell the stock and selling without boxes is a difficult task. Again the burglars certainly will not find sufficient time to remove the medicines from the boxes and throw away the boxes.

6. The boxes retained and produced by the insurer were empty boxes after selling the medicines on prescriptions from Dr. Tripathi as the medicines are purchased by the insured from local market for retail selling for which they do not have retail licence. It appears that the insured is putting forward a concocted story for unethical and immoral gain.

7. The Surveyor inspected the place of occurrence during day time, but during day time also the place and the shop was appearing inaccessible. Reaching the rear portion of the shop was difficult one and it was full of night-soil which came in contact with the feet of the person going there. It is such a dirty place full of night-soil that no human being would try to attempt for the petty theft. The area is used by the local people for satisfying the call of nature, for discharging night soils, etc.

8. The bricks removed by the burglars and mud was lying on the exterior portion and there was no brick inside the shop. This suggests that either the thieves had been extra cautious for the removal of bricks or the bricks have been removed from inside the shop. It is quite unnatural proposition to accept this incident because the burglars while trying to break the wall, the bricks or mud will fall inside the shop or room also and not only outside. It may be exceptionally possible that if there was only mud wall, most of the mud of the wall is removed outside during the crime, but this is not the case here. The wall of the shop was constructed of bricks and when the wall of the shop is made of bricks, then certainly most of the bricks or atleast some of the bricks must have been found inside the shop and not only outside the shop. IN such dirty and filthy area, it is not natural for even a burglar to sit in a relaxed mood and replace bricks one by one and keep outside very neatly.

9. The statement of loss appears to be fictitious and the Surveyor also has drawn same inference. There is no record for showing cash in the shop. The Surveyor laboured hard to show some imaginary figures of alleged stock loss but the Surveyor does not appear to be satisfied with the story of loss. Earlier also the incidence of theft has been alleged and this also makes the alleged incidence concocted.

The Surveyor''s report appears to be factual, neutral and reliable. The story of theft is concocted and fictitious and there is no evidence to support it. Hence the appeal of the Insurance Company appears to be on sound footing and it should be allowed.

The expressed, implied, between the lines meaning of the Surveyor''s report conveys that there was no theft.

3. REGARDING the occurrence of theft only it has been mentioned in the draft judgment of my learned Sister Mrs. Rachna and Brother Mr. Raghunath Prasad that "from materials available on record it has been amply proved that there has been a breaking of wall of the shop and the theft was committed". A perusal of the file will show that there is no material whatsoever to prove that there has been a theft except the First Information Report and it need not be emphasized that F.I.R. is not a proof. It is not an evidence. It is only First Information Report. The Surveyor though repeatedly did cast doubts on the genuineness of the incidence of burglary of stocked items at one place in his observations he has mentioned that "the police believe the forcible entry into the shop and hence have registered the crime under Section 457/380 of I.P.C.". Needless to emphasise that registration of a case does not mean that it has really happened. It will depend on the evidence of the facts and law. In this case the facts and the law is wholly against the story of theft. Whatever material before us is the Surveyor''s report and no evidence has been filed by complainant to disprove the opinion of the Surveyor or his assertions about the facts. There will be a question now in the circumstances that why the stock loss has been mentioned in the report of the Surveyor. The Surveyor has never opined that the theft has taken place and the loss of stock was there due to incidence of theft. He has mentioned "stock of medicine loss claimed as per list enclosed". This word "claiming the loss" does not prove that there was any loss. Again it further mentions that in absence of any supporting documents, excepting empty boxes, the loss was treated as 50% of the amount claimed. This also shows that there is no supporting document and again there is no actual loss but the loss is "treated" of the amount claimed". Again he has mentioned about average of various figures. I have mentioned my observations on the basis of report of the Surveyor earlier but on the risk of repetition I will like to mention the recommendations of the Surveyor wherein he has mentioned that the loss of stock appears to be superficial and it is an effort without incident of theft to claim from the insurer. He has also mentioned that the loss of stock as reported by the insured appears impossible for the following reasons: (1) Stock found outside the shop and believed to have been dropped by the miscreants should form a part of the items lost in the incident, whereas these were all expired items which had been thrown outside to substantiate the theory of stock loss. (2) No burglar would remove the strips from the boxes and take strips only and leave its boxes behind as such a situation had never happened in the past. The burglars had to sell the stock stolen by them and selling without boxes is a difficult task. (3) The boxes retained and produced by the insured are empty boxes after selling the medicines on prescriptions from Dr. Tripathi as the medicines are purchased by the insured from the local market for retail selling for which they do not have

retail licence.

4. THE above discussion and narration of facts would make it amply clear that neither the theft took place nor the loss claimed was possible. Earlier also theft has been alleged by the insured about two years ago as has been reported by the Surveyor and loss assessor. I am of the view that the appeal of United Insurance Company Limited must succeed in toto. ORDER In view of the above discussion, the appeal is allowed and the judgment and order dated 16.11.2002 of District Forum, Sitapur is quashed in toto. No order as to the costs. Appeal allowed.