(1996) 11 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

YETI PACKERS PVT. LTD. — APPELLANT

Vs

UNITED INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Citation : 1997 1 CPJ 417 : 2001 1 CTC 111

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

Final Decision : Complaint dismissed

Judgement

1. BRIEF facts of the case are that a sum of Rs. 1,80,000/- was withdrawn by the complainant Company from its account from Vijaya Bank on 9.4.91. On 11.4.91, the complainant obtained a Money-in-transit insurance with annual estimated carrying of Rs. 10,00,000/- from New Delhi to Sikkim, limit per carrying being Rs. 2,00,000/-. Mr. Soman Gyatso, Director of the Company left by Air for Bagdogra. He carried a total sum of Rs. 1,75.000 /- in cash; 15,000 /- was kept apart while remaining Rs. 1,60,000/- was kept in cash in a briefcase carried by him. The said Director was on his way to Gangtok, Sikkim for purchase of land at Majitar, Rangpo. He was received at the Airport by his son Mr. K.K. Gyatso and the driver who had come there in Maruti van. They had lunch at hotel Sinklair and at about 3.00 p.m. they left Siliguri. The bag containing the cash was intact at that point of time. On the way, they stopped near a stream to drink water and wash their hands. Some hawkers were selling nuts, etc. near the stream. Thereafter they started for Teesta. On reaching there they got down to have a cold drink. The van was standing at a close distance from where they got down to have a cold drink and there were only a few persons around. When Mr. Soman Gyatso returned, he found the bag missing. Search was made for the cash and people standing near about were asked but nobody could give any clue. Mr. Soman Gyatso immediately reported the matter to the Police Checkpost, Teesta. The report was entered vide No. 140 dated 13.4.91. The amount could not be recovered. Mr. Gyatso sent a telegram which was received by the complainant Company on 14.4.91 at Delhi. The Insurance Company was informed about the loss of money on 18.4.91. The Insurance Company appointed Mr. Pradeep Kumar

Harjani as Surveyor. The Surveyor wanted to record the statement of Mr. S. Gyatso but he was not available having reportedly gone to Sikkim. The Surveyor submitted his report dated 24.10.91 to the Insurance Company. The Insurance Company repudiated the claim vide its letter 9.1.92 mainly on the ground of condition No. 3 of the Policy namely that the insured failed to take due precaution against the loss. The present claim was filed claiming Rs. 1,60,000/- together with the interest @ 18% w.e.f. 18.4.91 till the date of payment.

2. THE complaint has been contested. THE main plea in the written statement was that the Director Mr. S. Gyatso was guilty of negligence as he failed to take due care and that the Insurance Company had repudiated the claim bona fide and after due application of mind. In support of the complaint, the complainant failed to file any affidavit. What is more surprising is that Mr. Soman Gyatso failed to appear even though the Surveyor made repeated attempts to record his statement. On behalf of the OP, however, the affidavit of Mr. Soumya Mukherji, Divisional Manager, has been filed alongwith the copies of the reports of Mr. P.K. Harjani, Surveyor and also a detailed report made by Mr. A.D. Thomas, Investigator dated 19.1.96. Mr. S. Gyatso failed to take necessary precaution while leaving the sizable amount of money contained in the bag/briefcase in the car when all three of them i.e. Mr. Soman Gyatso, his son as well as the driver together left the van unattended and without locking the same. This constitutes violation of the Clause-3 of the Insurance Policy. The complaint must fail on the ground that the complainant failed to lead any evidence at all.

For the foregoing reasons, the complain fails and the same is dismissed. A copy of the order be conveyed to both the parties. Complaint dismissed.