
(1995) 05 NCDRC CK 0038

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

VENKATESWARA BOREWELLS

APPELLANT

Vs

Oriental Insurance Co. Ltd

RESPONDENT

Date of Decision: May 16, 1995

Citation: 1995 3 CPJ 280 : 1996 1 CPR 162 : 1996 2 CLT 170

Hon'ble Judges: D.R.Vithal Rao , Susheela Cheluvaraju J.

Judgement

1. IN this complaint, under Section 17 read with Section 12 of Consumer Protection Act, 1986, the complainant has sought payment of compensation in a sum of Rs. 9.9 lakhs with interest thereon and also punitive damages in a sum of Rs. 50,000/- from the O.P. The Oriental INSurance Co. Ltd., Bangalore.

2. THE complainant insured with the opposite party-the Oriental Insurance Co. Ltd., his drilling rig which consisted of a diesel engine coupled to a compressor which in turn is mounted on a Ashok Leyland Truck. THE period of insurance was from 1.2.1991 to 31.1.1992, the insurance amount was Rs. 9.9 lakhs as per the policy -Ex.C-4.

The complainant, with a view to make sale of the said drilling rig, sent the said rig from Bangalore to Bombay with one Sri. B.A. Muthappa, Driver-cum-Manager and one Sri. Ramu as Cleaner. The said vehicle left Bangalore on 19.8.1991, reached Pune on 21.8.1991 and as Muthappa became sick at Pune; parked the vehicle in front of Vishwa Kamal Hotel on Bangalore-Pune Road and stayed in the adjoining Rajdoot Hotel. Sri. Muthappa directed the Cleaner-Ramu to stay with the vehicle. Sri. Muthappa inspected the said vehicle on 22nd and 23rd of August, 1991. On 23.8.1991, Muthappa felt very weak and got himself admitted to the nearby Kamal

Nursing Home, Saparashwanath Society, Market Yard, Pune. Mr. Muthappa was discharged at about 11.30a.m. on 24.8.1991. When he reached the Hotel from the Nursing Home on 24.8.1991, found the drilling rig and Mr. Ramu missing. The material facts, in this regard, are averred by the complainant at para 8 of the complaint, which read as under:

"8. The vehicle left Bangalore on 19.8.91 and reached Kholapur on 20.8.1991. The check post at Kholapur issued a temporary permit for plying the vehicle in Maharashtra for the period 20.8.1991 to 26.8.1991 (Encl. as Annex. P-9). The vehicle then reached Pune on 21.8.91. As Sri. B.A. Muthappa, did not feel well and with the consent of the complainant, decided to take rest for a day or two. He parked the vehicle in front of Vishwa Kamal Hotel on Bangalore-Pune Road and stayed in the adjoining Rajdoot Hotel. He instructed the cleaner Ramu to stay with the vehicle. The keys of the vehicle and the documents like RC Book, Tax Card, Permit etc. was kept with Sri. B.A. Muthappa, in the Hotel Room. The vehicle was inspected by the Manager on 22nd and 23rd morning and was found where it was parked. On 23.8.1991, Sri. B.A. Muthappa, felt very dizzy and weak in the morning. He immediately got himself admitted to the nearby Kamal Nursing Home, Saparashwanath Society, Market, Yard, Pune. He was given necessary treatment and stayed in the Hospital on 23rd and 24th August 1991. He was discharged at about 11:30 a.m. on 24.8.1991 after paying the necessary bills (Encl. as Annex. P-10). When he reached the Hotel from the nursing home he found the drilling rig missing. He could not also find the cleaner. The matter was immediately reported to the nearby Pawate Darshan Police Station. The Manager was asked by the police to scout the nearby areas for the vehicle. Having not found the vehicle the Manager tried to get in touch with the complainant over the phone. As he could not get the complainant, he sent a tele gram which is enclosed as Annex. P-II. The matter was then formally reported to the Police Station by a letter (Encl. as Annex. P-12) and an FIR was recorded (Encl. as Annex. P-14). The Manager along with the Pune police then proceeded to Bombay and contacted the intending purchasers to try and locate the vehicle. They also visited other places in Bombay in their attempt to locate the vehicle."

Sri. Muthappa, the Manager filed the complaint with the Police at Pune which was registered and an FIR was issued.

The complainant also made a report of the occurrence and the claim petition with the opposite party-Insurance Company.

3. THE Police failed to locate the vehicle. THE opposite party repudiated the claim on certain untenable grounds, as per Ex. C-31 stating that the complainant failed to take reasonable care as required under the policy conditions and it was an act of criminal breach of trust on the part of the employee of the complainant.

The complainant, thereafter filed this claim petition seeking the compensation as referred above.

4. THE opposite party filed its version, and admitted the fact that the drilling rig was insured with it. THE opposite party further averred that the claim of the complainant was repudiated because the complainant failed to take care of the vehicle against the loss or theft as required under the policy conditions and the complaint filed by its Manager, Sri Muthappa, immediately after occurrence to the police clearly disclosed that it was an act of criminal breach of trust by the employees of the complainant and such a risk was not covered under the policy. So the claim of the complainant was repudiated. THE opposite party, on the basis of these averments, sought the complaint to be dismissed.

During enquiry, the complainant filed the affidavit of the general power attorney holder of the complainant and got Exs. C-1 to C- 32 marked in evidence. The opposite party filed the affidavit of its Assistant Divisional Manager and got Exs. R-1 to R-29 marked in evidence.

We heard the learned Counsel for the O.P. and perused the written submissions filed by the complainant. We have perused the pleadings of the parties and also the material placed on record by them.

5. EX. C-4 is the Policy of Insurance. The risks covered under the said policy, read as under:

"Section I. Loss or Damage The Company will indemnify the insured against loss or damage to the motor vehicle/or its accessories whilst thereon. (a) by fire explosion and ignition or lightning; (b) by burglary house-breaking or theft; (c) by riot and strike; (d) by earthquake (fire and shock damage); (e) by flood, typhoon, hurricane, storm, tempest, inundation, cyclone, hailstorm, frost; (f) by accidental external means; (g) by malicious act (h) by terrorism; (i) whilst in transit by road, rail, inland

waterway, lift, elevator or air;"

6. EX. R-18 is the complaint filed by the Manager, Sri Muthappa with the Police at Pune, which reads as under:

"Office of the Judicial Magistrate Special Court G-I Court No. 8 Poona Complaint filed in Swas Gate Police Station Place: Deccan Date & 4.9.91 time 13.55 Hrs Case No. 616/91 FIR No. Date and Time hour of crime On 23.8.91 morning 9 O'clock to 24.8.91 during day time upto 12 O'clock Case reported to- Parvati Darshan Police Station F.I.R. filed by Complainant Mr. Muttappa Bakilera Anand, age 50 years. Present Occupation - Driver-cum-Manager Address: 100/9/16, Cross Lane, Lukkasandra Bangalore-30 Filed on Accused : - Cleaner: Ramu (Full address not known) Address: 28/A, Station Road, Raichur, Karnataka. The above complainant had in his possession Vehicle No. CAM/3495 valued at Rs. 2,50,000/- at the above detailed time and place and entrusted Mr. Ramu-cleaner while going for medical treatment due to the sickness in good faith to the accused-which has been stolen by him and hence complainant has filed this complaint on account of the cause of "injustice and breach of trust" on the accused-cleaner - registered vide Crime No. I.P.C. 406 for loss of property valued at Rs. 2,50,000/- covering vehicle No. CAM/3495. Sd/-PSI Parvati Darshan P.S. Poona By making an appearance in the Court, complainant/petitioner hereby declares that I am staying with my family at the above (given) address and owner of the vehicle-Mr. Ramdu P.M. Sharma residing at No. 27, 10th Main Road, Rajmahal Vilas EXtn. Sadashivanagar, Bangalore-80 whose borewell (truck) belonging to his Co. M/s. Venkateswara Borewells, Regn. No. CAM/3495 - have been employed for about one year on the said vehicle as Drivercum-Manager. The said Borewell Truck was to be sold to a party at Bombay and hence owner told the to take it to Bombay for displaying to the buyerparty. I took the said vehicle along with cleaner Ramu - full name not known residing at No. 28/A, Station Road, Raichur, Karnataka and left for Bombay on 21.8.1991 and came to Poona at 1.30 p.m. (night). However due to rise of sugar % in my body, I was suffering and hence I informed the owner accordingly on phone, when my owner asked me to take rest for 2 days and then to proceed ahead. I therefore parked my vehicle on Poona-Satara Road near open premises adjacent to Old Check Post and told the Cleaner (Ramu) to keep a watch and ward on it and went to nearby Vishwa Kamal Hotel. However on 23.8.1991 my ailment aggravated and hence I went to the place of my parked vehicle and paid Rs. 20/- to the cleaner for his refreshments and got myself admitted in Kamal Nursing Home (which is) on Market Road for treatment and on 24.8.91 at about 11.30 a.m. I was discharged from the hospital and came to the parking place of my vehicle but I could not trace out the vehicle and

cleaner and hence on making enquiries nearby place and people I went (back) to Bangalore and informed accordingly to the owner/employer. I have also enquired at the address of the cleaner (Ramu) to trace out the truck and cleaner. Since I am unable to find either the truck or the cleaner, I am filing this complaint regarding the vehicle (missing) detailed as under: Value Rs. 2,50,000/- With C.P.T. Machinery filled - Colour-Yellow Borewell Truck with 35 Drilling rock-Hammer - on Ashok L/L Truck filled with Board - "On Govt. Duty" in English. Rs 2,50,000/- Detailed as per above description and value. Borewell Truck No. CAM/3495 which was parked by the on Poona-Satara Road, near Old Check Post in the open premises and which was left in the custody of the abovenamed cleaner Ramu - full name not known residing at 28/A, Station Road, Raichur, Karnataka from 23.8.91 at 9 a.m. to 24.8.91 till 12 O'clock (p.m.). During the said period I was undergoing medical treatment in the hospital and during the said period in spite of my instructing him (cleaner) to safeguard the truck, he has disappeared with the truck and hence I register this criminal complaint against him (cleaner). This criminal complaint recorded has been written and explained to the in Hindi which is according to my narration. This statement written by STM. Sd/- (in English)"

This would clearly disclosed that though the occurrence is alleged to have taken place on 24.8.1991, complaint came to be filed only on 4.9.1991. In the said complaint, its Manager-Sri. Muthappa, has clearly stated that the said vehicle was entrusted with its cleaner-Sri. Ramu, who had committed criminal breach of trust. The police on receipt of the said complaint, registered a case in Crime No. 616/91 under Section 406 IPC against the said Ramu.

It is clear from these facts that the said drilling rig was entrusted with Ramu who dishonestly disappeared with the said drilling rig. The criminal breach of trust was not one of the risks covered under the policy, as per Ex. C-4. So having regard to these facts and in the circumstances of the case, we do not find any deficiency in service on the part of the opposite party in repudiating the claim of the complainant. ORDER In the result, therefore, this complaint fails and it is dismissed. The parties are directed to bear and pay their own costs in this proceeding. Complaint dismissed.