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1999 2 CPC 628 : 1999 2 CPJ 194 : 1999 3 CPR 104

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NEW INDIA ASSURANCE COMPANY LIMITED	APPELLANT
Vs	
SUPDU R.WAH	RESPONDENT

Date of Decision: June 20, 1998

Citation: 1999 2 CPC 628 : 1999 2 CPJ 194 : 1999 3 CPR 104

Hon'ble Judges: A.A.Halbe , G.R.Bedge , Rajyalakshmi Rao J.

Final Decision: Appeal partly allowed

Judgement

1. THE important question which arises for our consideration is whether the insured is entitled to recover the insured value of the stolen articles or the actual price or value of the said articles. THE District Forum, Nasik in Complaint No. 75 of 1994 has taken the view that the insured is entitled to recover the loss at the rate of insured value of the stolen articles. We respectfully beg to differ from this decision.

2. THE few facts shall have to be noted and they are that the respondent/complainant owns a godown of Class-I construction at Nandgaon. He has been storing the LPG cylinders in the said godown and for that purpose, at the relevant time he had taken out the policy against theft, etc. of the valuation of Rs. 7,50,000/- for LPG empty cylinders and Rs. 50,000/- for Gas Stoves, Regulators, spare p arts, etc. When the policy was in force, the theft of 55 gas cylinders took place between the night of 15.6.1992 and 16.6.1992. THE complainant reported about the theft with the Nandgaon Police Station, which recorded the First Information Report in Crime No. 1-70/92. THE Police recorded the necessary punchanama as well as the statement of the complainant. THE

complainant, thereafter preferred the claim about the loss of 55 gas cylinders @ Rs. 1,500/ - per cylinder on the ground that this was the penal amount payable to the Hindustan Petroleum Company from whom he used to receive the gas cylinders. THE. Insurance Company came forth with the pleading that when the theft took place, the price of the gas cylinder as per M/s. Hindustan Petroleum Corporation was Rs. 550/- and not Rs. 1,500/- or alternatively, Rs. 850/-. THE Insurance Company, therefore showed its willingness to pay Rs. 30,250/- and called upon the complainant to discharge the voucher to that effect so as to enable the Insurance Company to release the payment. However, the complainant did not agree and the District Forum on consideration of the facts came to the conclusion that the complainant was entitled to the reimbursement of Rs. 82,500/- for the loss of 55 cylinders @ Rs. 1,500/- per cylinder.

The Insurance Company in this appeal has vehemently urged that HPCL price of gas cylinders was Rs. 550/- on the date on which the theft took place. It was raised to Rs. 850/- with effect from 15.2.1993. The penal amount of Rs. 1,500/- was applicable in case there was spurious disposal of the cylinders or the fraudulent disposal of the cylinders by the dealer or by anybody acting on his behalf. But so far as the stolen cylinders were concerned, the complainant was entitled to reimbursement @ Rs. 550/- per cylinder. The story of the complainant that the total insurance in regard to gas cylinders was Rs. 7,50,000/- cannot be countenanced on the ground that the insured value of the cylinders was more than Rs. 550/- per cylinder. Before adjudicating upon the aspect of this claim, we may settle down on some of the admitted positions. The complainant had insured the gas cylinders, gas stoves, regulators, etc. for the total value of Rs. 8 lakhs. Now, this is the valuation which has been furnished by the complainant and which has been accepted by the Insurance Company in good faith. We are unable to persuade ourselves to hold that on the basis of this calculation the price of the cylinder was much more than Rs. 550/-or even Rs. 850/-. It was around Rs. 1,500/-. We hold that the insured value has no relevance so far as the claim concerns the loss of cylinders. The loss has to be calculated on the basis of the actual value or the price of the cylinders and in that regard we may refer to two letters sent by M/s. HPCL.

Letter dated 28.12.1993 clearly reveals that the rate of gas cylinder was Rs. 850/-w.e.f. 15.2.1993. It is, however, not in dispute that the theft took place between 15.6.1992 to 16.6.1992. The price of Rs. 850/- is therefore not available to the complainant for placing his claim. Another letter dated 4.2.1994 clearly shows that at the time of theft, the rate applicable was Rs. 550/- per cylinder. In this regard, when we questioned the learned Counsel for the respondent/complainant, he clearly admitted that the dealer used to recover Rs. 550/- per cylinder by way of deposit from each consumer. This will briefly boil down to the fact that the reimbursement could be only @ Rs. 550/- and not beyond that amount. Thereafter, by letter dated 31.1.1994, the Insurance Company offered to the complainant to discharge the vouchers and receive the cheque for Rs. 30,250/-. It seems that this was not acceptable to the complainant and hence, the grievance as indicated above.

3. WE may here observe that Rs. 1,500/- was recoverable from the dealer on the basis of the Circular dated 1st August, 1987 issued by the HPCL. This penal amount was recovered because of the prevailing practice amongst the dealers to deal in spurious/unapproved regulators and giving LPG equipment for that purpose. Shortly stated, this would mean that if the dealer fraudulently or clandesthely dealt with the cylinders for the benefit of non-registered consumers. He was liable to pay the panalty @ Rs. 1,500/- per cylinder. Here, even the Company does not dispute that there was theft. In the letter dated 4.2.1994, the Company accepts this position, but has advised the appellant-Insurance Company to settle the claim for Rs. 850/- per cylinder. WE are afraid that the suggestion cannot be implemented. The complainant is being entitled to reimbursement only at the rate of prevalent price or rate of Rs.550/-per cylinder. His claim on the basis of insured value cannot be accepted. The learned Counsel for the Insurance Company by way of illustration contended that if the house containing cycles is insured for Rs. 1 lakh, the insured cannot claim that value for the theft of a cycle or two. WE fully concur with this suggestion and we hold that the complainant/insured is entitled to reimbursement of the value of the loss of the article. The loss in this regard, works out at Rs. 550/- per cylinder and the offer is a valid offer and beyond that the claim cannot be extended.

However, we further observe that the amount if recovered by the HPCL over and above Rs. 550/- per cylinder should be refunded to the complainant. He cannot be the sufferer when the theft of the article is admitted and evinced by the first information recorded by the Police. All the same, the claimant is entitled to Rs. 30,250/-. We cannot lose sight of one important fact that the Insurance Company has delayed the claim beyond normal 3 months. We, therefore, view that this is an uncalled for delay. We, therefore impose cost of Rs. 3,000/ - on the Insurance Company. Accordingly, we pass the following order :
ORDER

"The appeal is partly allowed. The appellant shall pay Rs. 30,250/-, plus cost of Rs. 3,000/- to the respondent/ complainant within 8 weeks of the communication of this order, failing which, the Insurance Company shall pay interest @ 18% p.a. on this amount from the date of complaint."

Appeal partly allowed.