

(1999) 08 NCDRC CK 0021

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ORIENTAL
INSURANCE Company
Limited

APPELLANT

Vs

PREM KUMAR AND
SONS

RESPONDENT

Date of Decision: Aug. 13, 1999

Citation: 2000 1 CPC 96 : 2000 1 CPJ 192

Hon'ble Judges: A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision: Appeal dismissed

Judgement

1. ORIENTAL Insurance Company is in appeal challenging order of District Forum, Amritsar dated February 26, 1998 allowing the complaint filed by M/s. Prem Kumar and Sons and its Proprietor Prem Kumar directing the appellant Insurance Company to pay a sum of Rs. 1,34,991/- with 12% p.a. interest thereon w.e.f. April 1, 1997 till payment and further to pay interest at the aforesaid rate on the amount of Rs. 4,04,975/- for the period April 1, 1997 to June 9, 1997.

2. THE complainant is carrying on the business of jewellery at Amritsar. Jewellers Block Insurance Policy for Rs. 9,50,000/-on payment of premium of Rs. 11,207/- was obtained by the complainant from the Oriental Insurance Company. THE policy was valid from April 17, 1995 to April 16, 1996. In December 1995, Manoj Kumar, Manager of the complainant firm accompanied by Sanjeev Kumar and Pankaj Kumar, other relations of Prem Kumar, complainant had taken jewellery weighing 1090.500 gms. for sale to different dealers at Muzafarpur. THEY were staying in a

room of Hotel Abhinandan, Sunapati that on the night of December 18, 1995, some unidentified persons armed with pistols entered the room of the hotel and robbed the jewellery at the pistol point. A report was lodged with the police. THE Insurance Company was informed about the loss which was to the tune of Rs. 6,00,935/-. THE goods remained untraced at the end of the police. THE Insurance Company appointed M/s. Ashok Arora and Co. of Amritsar as Surveyors to assess the loss. As per report, loss was assessed at Rs. 5,39,966/-. 75% thereof i.e. Rs. 4,04,975/- was offered to the complainant by the Insurance Company vide letter dated April 24,1997. Actual payment was made on June 10,1997 of that amount through Cheque issued on Bank of Baroda, Amritsar. THE amount was received by the complainant under protest as it was less and was received late. Thus, they approached the District Forum claiming the remaining amount as assessed as well as interest. THE Insurance Company contested the complaint, inter alia, relying upon terms and conditions of the policy that they were followed by the Insurance Company which justified cut of 25% on the amount as assessed. It was also the ground taken that after settlement of the claim and acceptance of the amount offered, the complainant could not approach the District Forum. THE District Forum did not accept the stand of the Insurance Company and passed the impugned order.

Mr. D.P. Gupta, learned Counsel for the Insurance Company has argued that since jewellery was not kept in the safe in the hotel room, the term as provided in the insurance policy stood violated and it was grace on the part of the Insurance Company to allow 75% of the amount as assessed to the complainant. We find no merit in this contention. The warrantee Clause (i) of Section 2 in the Insurance Policy reads as under :

"(i) Warranted that if stock with anyone person specified under Section II of the schedule exceeds Rs. 2 lacs, it shall be secured under an in built locker of a steel cupboard after business hours at all times."

After going through the aforesaid clause, we are of the opinion that it only meant that after business hours, the jewellery was to be kept in the iron safe otherwise it is taken that during working hours, jewellery was to be taken out of safe for display as well as for sale to the customers at the premises of the complainant. Even remotely such a clause cannot be attracted to the facts of the present case when the complainant, the insured, or his employees had to take the jewellery to another station for sale. Obviously the iron safe lying at the premises of the complainant was as such not to be taken to other stations containing the jewellery. Furthermore, the purpose of retaining the jewellery in the iron safe at the shop etc. is to avoid its theft but when unknown persons duly armed with dangerous weapons like pistols robbed the complainant at the pistol point, no reliance can be placed on the clause referred to above by the Insurance Company to avoid its liability. The contention of Counsel for the Insurance Company that the Company was justified in allowing cut on the ground that the terms and conditions were violated by the complainant is,

therefore, repelled. Non-payment of the entire amount as assessed by the Surveyor, thus, amounts to deficiency in rendering service entitling the complainant to the relief.

3. IT has been argued by Mr. D.P. Gupta, Advocate for the Insurance Company that on acceptance of the amount offered as full and final settlement, District Forum could not be approached with the complaint for the remaining amount, if any. There is fallacy in this argument. Present is not a case of un-conditional acceptance of the amount offered as final settlement. The complainant had lodged a protest that entire amount was not offered. When the amount is received under protest, the Insurance Company cannot take the plea that the complainant by his own act was debarred from claiming the relief. The contention is, therefore, repelled.

There is one clerical mistake in the impugned order which is being pointed out by the parties that the date April 1, 1997 was wrongly mentioned in the impugned order with effect from which the interest was allowed. The date should have been April 1, 1996, allowing about 4 months" time to Insurance Company to settle the claim from the date of the loss. In the present case, the robbery took place on December 18, 1995 and promptly claim was lodged. The cheque for Rs. 4,04,975/- was dated June 10, 1997. The delay even in settlement of part of claim was inordinate which itself amounts to deficiency in rendering service and the Insurance Company was rightly burdened with the liability of compensation by way of interest w.e.f. April 1, 1996. Hence it was a clerical mistake in the concluding portion of the impugned order that the interest was granted from April 1, 1997. This mistake in the date is ordered to be corrected as April 1, 1996. With this rectification in the impugned order, the appeal stands dismissed and the order of the District Forum granting compensation stands affirmed. Appeal dismissed.