

(1999) 02 NCDRC CK 0016

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SURINDERA DEPARTMENTAL
STORE

APPELLANT

Vs

National Insurance Company
Limited

RESPONDENT

Date of Decision: Feb. 10, 1999

Citation: 1999 1 CLT 589 : 1999 1 CPC 533 : 1999 2 CPJ 122

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

Final Decision: Appeal allowed

Judgement

1. THE complainant M/s. Surindera Departmental Store, Bhatinda has appealed against order of District Forum, Bathinda dated December 30, 1997 whereby the complaint was dismissed filed against National Insurance Company Limited with costs of Rs. 1,000/-.

2. THE complainant had taken an insurance cover from M/s. National Insurance Company covering risk of theft of articles lying in the shop. Period of the policy commenced from January 18, 1996 and was for an year. On the night intervening 5th and 6th of August, 1996, theft took place in the shop and loss was of cash amount of Rs. 12,500/- from the safe which was after breaking open the shutter of the shop and lock of the AI mirth from where key was obtained by the thieves and the theft took place. FIR was lodged. Claim was made before the Insurance Company which was repudiated on November 12,1996 alleging therein that the safe was opened with the key and the same was not broken. THE complainant had not taken appropriate safety measures. This led the complainant to approach the

District Forum. THE Insurance Company took up the plea that the repudiation was bona fide made on the material collected. THE plea of the Insurance Company prevailed with the District Forum and ultimately the complaint was dismissed.

The report of the Surveyor Annexure R-3 records finding as to how the theft took place and the money was removed from the chest. It records as under :

"The thieves pulled out the shutters from the centre and made entry in the shop. They forcibly opened the table draws to extract the cash from it. It was reported that the keys of the cash safe were lying in the same draws which came in the hand of the thieves and with the help of these keys, the cash safe was opened and cash lying the Cash Safe was stolen. Though the shutter and the table draws were having clear visible forcible signs but the cash safe was not having any tampering sign as cash was stolen with the help of original keys." Under the heading "Conclusions", it was reported as under : "From the verification of the records, circumstances of the loss, we came to the conclusion that a theft did take place in the shop of the insured."

4. When such a report was submitted by the Surveyor, it was left to the Insurance Company to decide about settlement of the claim or to repudiate it. It was quite clear that the thieves had deplored wicker while pulling out the shutters of the shop and had entered the same, broken lock of the Almirah from where they happened to find the key of the safe. Hence with the key aforesaid, safe was opened and the cash was looted. It was expected of the Insurance Company to settle the claim on receipt of such a report. The approach of the District Forum that the repudiation was bona fide as the complainant has not taken safety steps is not justified. What was expected of the shop-keeper was to lock the safe and keep the key at another safe place and in the present case, it was kept in the Almirah which was again locked. Further, the shop itself was also locked. All necessary safeguards were taken by the complainant and the approach of the Insurance Company to repudiate the claim was arbitrary. The matter came up before the National Commission in New India Assurance Company Limited v. M/s. Sakar Iron Industries, II (1996) CPJ 207 (NC)=1996 (2) CPC 188 where in forcible entry in the shop by breaking open the outer gate was itself found to be violent act and the Insurance Company was held to be liable. The contention of Counsel for Insurance Company, that the facts of the present case did not suggest any threat, violence or assault on the complainant and hence the case was not covered under the terms and conditions of the policy, cannot be accepted. Assault or threat may be against the person but violence can also be against the property as was noticed by the National Commission in the case referred to above. For the reasons stated above, this appeal is allowed. Order of the District Forum is set aside. The complaint is allowed. Direction is given to the Insurance Company to pay the insured amount of Rs. 10,000/- to the complainant along with 12% interest thereon w.e.f. November 17, 1996, allowing two months time from the report of the Surveyor to settle the claim, till payment along with cost of litigation which are assessed at Rs. 2,000/-.
