

**(2012) 07 NCDRC CK 0170**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Champaklal Hansraj Shah

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

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**Date of Decision:** July 3, 2012

**Citation:** 2012 0 NCDRC 301 : 2012 3 CPJ 303 : 2012 3 CPR 83

**Hon'ble Judges:** R.C.Jain , S.K.Naik J.

**Advocate:** S.K.Pattjoshi , R.K.Dave , P.K.Seth

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**Judgement**

1. THIS complaint is directed against the repudiation of the complainant's claim by the United India Insurance Co. Ltd. (hereinafter referred to as the opposite party-Insurance Company) for the loss incurred by him due to the theft of gold jewellery and cash in an incident of burglary. It is the say of the complainant that he deals in sale, purchase and trading in gold and silver ornaments. In order to cover risk in his business, he used to purchase a Jewellers' Block Policy from the opposite party-Insurance Company from the year 1995 onwards. Originally the policy was for a sum of Rs.35.00 Lakhs, which, however, was enhanced to Rs.70.00 Lakhs as his business prospered. When the policy, effective from 13th of November, 1999 to 11th of November, 2000, was in vogue and the shop was closed at about 9.00 pm on Sunday, the 23rd of January, 2000 for the weekly off on the next day and the shop was reopened thereafter at about 10.00 am on Tuesday, the 25th of January, 2000, the complainant, to his horror, discovered that there was a theft in which some gold and silver ornaments and certain amount of cash had been stolen. The police was immediately informed. On detailed examination, the complainant found that gold ornaments weighing 6810.030 grams were robbed by the thieves leaving 7338.005 grams intact. Similarly, out of Rs.1,80,241/- cash kept in different places in the safe, they had removed only Rs.45,000/-. The opposite party-Insurance Company being informed about the incident appointed M/s Sunil J. Vora & Associates as surveyors, who submitted their final report dated 10th of July, 2001 assessing the loss of gold ornaments at Rs.28,04,778.95 ps. and the loss of cash at Rs.45,000/-. It, however, disallowed the claim for the loss of silver ornaments, as these were lying outside the

strong room at the time of burglary and, therefore, did not fall within the policy. The complainant thereafter pursued his case with the opposite party-Insurance Company for making good the loss indemnified under the policy but of no avail. The relentless pursuit of his claim finally resulted in the total repudiation by the opposite party-Insurance Company overruling the report/recommendation of their own surveyor. Hence, this complaint.

2. THE complaint has been contested by the opposite party-Insurance Company. They have filed their written version justifying the repudiation. The complainant has filed rejoinder reiterating the averments and contentions made in the complaint. The parties have filed their respective evidence. While on behalf of the complainant the complainant has filed his own affidavit, on behalf of opposite party-Insurance Company Shri E.S.N. Moorthi, Manager of United India Insurance Company Ltd. and Shri Sunil J. Vora, Surveyor have filed their affidavits. On the direction of this Commission, the complainant has filed the original purchase memo, case memo, order memo, issue note, receipt vouchers, purchase bill, gold registers no. 11 and 12 and consent letters of customers.

3. REFERRING to the letter of repudiation, learned counsel for the complainant has contended that even though the independent surveyor appointed by the opposite party-Insurance Company themselves has found that the burglary indeed has taken place and after a thorough scrutiny and verification of the voluminous records assessed the loss, the opposite party-Insurance Company arbitrarily ignoring the report of the surveyor have repudiated the claim only holding that the stocks were not held under any "burglar proof safe" at the time of the incident, as warranted under Schedule-B, Section 1 of the Policy. The other ground stated is that the shop was not occupied at night, as undertaken by the complainant in his answer to the question no. 3(b) of the proposal in his declaration. The third ground advanced is that the account books were not backed up by purchase registers and sales registers.

4. LEARNED counsel for the complainant contends that all the three objections have been raised just to defeat the legitimate claim of the complainant. Insofar objection with regard to "burglar proof safe" is concerned, the opposite party-Insurance Company has scrutinized the proposal form, which contained the plan/design of the safe and the complainant having got the safe fabricated as per the approved plan in site and the policy being renewed from year to year without any objection/observation, they are debarred from raising this issue at this belated stage. That apart, he contends that there is no definition as to what constitutes "burglar proof safe" and the complainant having built the safe in the wall with steel doors cannot be said that it was not "burglar proof safe". It is only a pervert interpretation of the words "burglar proof" and has been resorted to as an afterthought. In that respect, he has relied upon the order passed by this Commission in the case of Orient Treasures Pvt. Ltd. V. United India Insurance Company Ltd. [IV (2007) CPJ 146 (NC)], in which it has been held as under :-

"25. Further, it is to be stated that the insistence by the Insurance Company that the goods should be kept in a burglar proof safe, is apparently a vague condition. It is difficult to find out any safe which could be said to be burglar proof. Up-till now it is not invented." (emphasis added)

5. WITH regard to the objection that premises/shop was not occupied by the owners at night, the learned counsel for the complainant contends that this ground is neither proper nor valid as the word "occupation" is not synonymous with the word "sleeping". The opposite party-Insurance Company ought to have appreciated that the shop was located in a business complex and being a jewellery shop, it had no windows and, therefore, it could not even be thought of that anyone could sleep inside the closed shop during the night. The word "occupation" in this context does not imply that it has to be physically guarded. Sleeping inside the premises is, therefore, out of question. The opposite party-Insurance Company has been misinterpreting the meaning of "occupation" to their advantage illegally especially when it has been explained to the opposite party-Insurance Company that in such business premises/complex there is a common watchman deployed by the shopkeepers to keep a watch on the premises during night.

6. INsofar as the observation of the opposite party-Insurance Company that the books of accounts were not reliable, the opposite party-Insurance Company has taken this objection from a cursory observation of the surveyor in his report, which is rather vague and has been made in the nature of a general statement. It was stated as a pretext for the delay in submitting the report as the subsequent report of the surveyor in emphatic terms states that the insured's last purchase bill, purchase memo, issue notices, receipt vouchers etc. were available and were duly scrutinized and verified. Thus, even this ground has no legs to stand.

7. FINALLY, referring to the judgment of the Hon'ble Supreme Court in the case of Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Ors. [(1987) 2 SCC 654], learned counsel for the complainant contends that under the "main purpose", principle and the objective of an insurance cover being to protect the consumer from any unforeseen eventuality, the attempt of the opposite party-Insurance Company to snipe at the main purpose of the policy should be guarded and a view should be taken to relieve the distress and miseries of victims of incidents. Learned counsel for the opposite party-Insurance Company on the other hand has again referred to the letter of repudiation, in which the grounds on which the claim has been repudiated along with the justification have been reiterated. He contends that the surveyor in categorical terms has said that the insured's accounts were not reliable, which was sufficient for the opposite party-Insurance Company to repudiate the claim.

8. WE have heard the learned counsel for the parties and perused the voluminous records.

9. THE short point for adjudication is as to whether even after the report of M/s Sunil J. Vora and Associates, an independent surveyor appointed by the opposite party-Insurance Company, who after a thorough scrutiny and verification of books

of accounts, bills and vouchers etc. had justified the loss only with regard to the gold jewellery and part of cash, ignoring the value of the silver jewellery which was outside the safe/vault/strong room which was not covered under the policy; the opposite party-Insurance Company is justified in repudiating the claim.

10. LEARNED counsel for the opposite party-Insurance Company in support of the stand of repudiation by the opposite party-Insurance Company has advanced three main grounds, namely :-

(i) The complainant had failed to store the stock of jewellery in a "burglar proof safe"; (ii) The shop was not guarded during the night; and (iii) The stock statement, books of accounts, which had to be reconstructed, were not reliable.

11. ON the point of "burglar proof safe", the say of the complainant is that at the time of obtaining the policy during 1995 he had enclosed along with the proposal form the design and plan of the strong room/safe, which stated that the vault would be embedded into the wall and would be made of a steel structure and only after their approval that the design was adequate to meet the safety requirement, he had got the same fabricated on the spot, which was further inspected by the representative of the opposite party-Insurance Company before accepting the proposal. It is only thereafter that the policy was issued and has been renewed from year to year. We quite agree with the learned counsel for the complainant that it is too late in the day for the opposite party-Insurance Company to now say that the safe was not "burglar proof" having renewed the policy for a period of five years. The denial by the opposite party-Insurance Company that no such approval to the design or inspection of the fault/strong room was ever carried out by their representative would not cut much ice for the simple reason that in the absence of any schedule/design having been given to the complainant to suit their safety requirement, the objection cannot be treated as tenable or valid. In the case of Orient Treasurers Pvt. Ltd. (supra) this Commission, as has been relied upon by the counsel for the complainant, has opined that "It is difficult to find out any safe which could be said to be burglar proof. Up-till now it is not invented."

12. INSOFAR as the alleged breach of condition that the shop was not occupied during the night, we are of the view that strictly speaking the said requirement has been treated to be an undertaking provided as an answer to a question/query of the opposite party-Insurance Company, which was only a declaration but did not constitute part of the cover note, which was to be subsequently converted into terms and conditions of the contract. Be that as it may, the explanation offered by the learned counsel for the complainant that the jewellery shop being in the nature of a protected enclosure without any windows and with only a door/opening in the front, it could not even be conceived of that anyone could stay inside during the night. The word "occupation" has been misinterpreted by the opposite party-Insurance Company to mean the physical presence of the complainant, which amounts to stretching the meaning of the word "occupation" to a ridiculous limit. As per the Black's Law Dictionary, "occupy" means to take or enter upon possession or hold possession. Therefore, there is no violation of the condition even if it is treated to be a condition. Further, the deployment of a common watchman engaged by the shopkeepers, including the complainant, to patrol the premises can be said to meet the safety requirement expected from the word "occupation". The interpretation resorted to by the opposite party-Insurance Company, in our view, appears too far-fetched if not artificial.

13. INSOFAR as the doubts cast on the reliability of the books of accounts are concerned, it would be relevant to refer to the report of surveyor, which is the basis for arriving at such a presumption. The relevant part of the report is as under :-

"18.7 The Insured's last purchase bills, purchase memos, issue notes, receipt vouchers, etc. were available. These were verified and endorsed. Their books of account and inventory registers were not immediately available. However, the proprietor's personal record detailing the inventory of gold ornaments by piece count by tags was available. This record was written in pencil and was endorsed, verified and noted. 18.8 The Insured's cash book was endorsed. 18.13 The Insured's accounts were not reliable. 18.14 In the circumstances, the Insured's subsidiary records were scrutinized. The entire movements of gold/gold ornaments for the period between April 1, 1996 to the date of loss were drawn up from these records. The purchases were verified from bills and purchase memos and co-related with the payments. The gold deposits received under the "New for Old" scheme were verified

from order memos. The sales were verified from cash memos. All issues to karigars and goldsmiths were verified from issue notes and corresponding receipts were verified from receipt vouchers. Gold ornaments returned to depositors under the scheme were verified from cash memos. 18.15 The Insured's Trading in gold ornaments and the inventory position for the relevant period were reconstructed as follows : March 31, 1998 Gms March 31, 1999 Gms January 23, 2000 Gms Opening Stocks 1,538.540 2,410.125 2,072.205 Add: Purchases 7,397.095 8,935.635 4,185.650 6,595.775 1,377.290 3,449.445 Less : Sales 6,525.510 4,523.570 2,503.280 Closing Stock 2,410.125 2,072.205 946.115 18.16 The position of the ornaments in the Insured's custody, received under the New for Old Deposit Scheme for the respective years was reconstructed as follows : March 31, 1998 Gms March 31, 1999 Gms January 23, 2000 Gms Opening Stocks 11,548.380 16,578.760 19,228.590 Add: Fresh Deposits 14,254.570 25,802.950 6,719.100 23,297.860 6,169.170 25,397.760 Less : Returns of Deposits 9,224.190 4,069.270 12,195.840 Closing Stock 16,578.760 19,228.590 13,201.920 18.17 The aforesaid position with respect to gold ornament deposits were cross verified by appropriate confirmations from the concerned depositors. After the incident, the Insured endeavoured to settle the outstandings due to several of the depositors as and when they matured and/or to those depositors who called back for the depositors. (Refer list of Depositors, order memos etc. under Annexure "K" attached) 18.22 We also examined the Insured's latest purchases with respect to gold ornaments. The cost of purchase of gold ornaments and the labour charges for conversion were worked out accordingly. The gold deposits in the Insured's custody was also valued accordingly. 18.23 The Insured reported loss of cash of Rs.45,000.00. The Insured's cash book was verified and co-related with receipts under cash memos. The cash book was maintained under the Indian single entry system and was regularly written up. The cash balances reflected were relatively high. Nevertheless, for the purpose of this assessment, the cash receipts against sales for the last week prior loss were considered. Day to day petty expenses likely to arise during normal working days were deducted and accounted for to arrive at the possible cash balance at the showroom. The Insured's loss was within this balance and was thus substantiated.

14. WHILE the opposite party-Insurance Company has picked up the thread from the isolated observation of the surveyor in para 18.13 of the report that the insured's accounts were not reliable, a combined reading of the report as a whole clearly brings out that the said observation was based on the haphazard manner in which the complainant maintained and kept his records, which necessitated the reconstruction of the records, which was only a tabulation of the relevant data on

the basis of the original records. This would be clear from clause 5.8 of the report where it is mentioned that "The Insured's purchase memos, cash memos, order memos, receipt and issue vouchers were serially numbered" and the clause 5.11 where it mentioned that "The Insured were regularly filing their Sales Tax returns as well as their Income Tax returns". Since learned counsel for opposite party-Insurance Company, Shri P.K. Seth, during his arguments has laid lot of stress on the complainant operating a scheme of "New Ornaments for Old", which according to him was not transparent in terms of its book keeping and account, we had called for the original records to satisfy ourselves as to whether the surveyor had undertaken proper verification of the various business transactions. We have perused these documents. The surveyor in para 19.10 of his report has stated that he had examined the inventory level with the insured's sales and recovery towards labour and on a comparative analysis for the years 1998, 1999 and upto 2000 had opined that the high level of gold deposits allowed him to earn higher labour charges which added to the complainant's overall profitability. In para 19.12, it has been stated that the complainant made the repayment obligations to old depositors from available stocks by attracting sufficient deposits. Apparently, high volume of stocking primarily by way of gold deposits was satisfactorily explained. The surveyor further goes on to say that the gold deposits with the complainant were confirmed by the depositors. This goes to show that the surveyor had gone deep into the matter of "New Ornaments for Old" scheme and found that there was no dubious element to suspect any suppression or wrongdoing on part of the complainant. We have also perused the records produced before us and from a cursory glance of the records we do not find that there is room for any suspicion.

15. IN view of the above, we do not find substance in any of the three grounds of repudiation. The opposite party-Insurance Company was not justified in repudiating the claim especially when the surveyor had assessed the loss and had disallowed the claim for the loss of silver jewellery which did not fall within the parameters of the policy conditions. The Supreme Court in the case of Oriental Insurance Company Ltd. V. Ozma Shipping Company and Anr. (Civil Appeal No. 6289 of 2001 decided on 25.08.2009) where the surveyor's report had been similarly ignored by the Insurance Company, has held that when valuation has been carried out by a surveyor, the Insurance Company should not hesitate to pay the amount. The Apex Court has further gone on to observe that "Insurance Companies in genuine and bonafide claims of insured should not adopt the attitude of avoiding payments on one pretext or the other. This attitude puts a serious question mark on their credibility and trustworthiness. By adopting honest approach and attitude the



insurance companies would save enormous litigation costs." This observation of the Hon"ble Apex is fully applicable to the facts of the present case for the simple reason that if the opposite party-Insurance Company was not satisfied with the report of their surveyor, they ought to have sought further clarification from the surveyor on the points of disagreement and even thereafter if they were not satisfied, they ought to have referred the matter to a second surveyor before finally arriving at a conclusion as to whether or not to repudiate the claim. We further notice that the opposite party-Insurance Company has taken more than eight months to consider the report of the surveyor and only when the complainant pursued his case relentlessly that they have finally repudiated the claim. This was not expected of a service provider like the opposite party-Insurance Company and, therefore, they are liable for the deficiency in service.

16. ON the quantum of compensation, the assessment made by the surveyor is quite in detail and the figure of Rs.28,49,778.95 ps. (i.e. Rs.28,04,778.95 towards assessment of gold ornaments and Rs.45,000/- towards loss of cash) appears appropriate.

17. WE, accordingly, allow the complaint and direct the opposite party-Insurance Company to pay the sum of Rs.28,49,778.95 ps. along with interest @ 7% per annum to the complainant within a period of six weeks from the date of filing of the complaint till its realization, failing which the rate of interest will stand enhanced to 9% for the period of default.