

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1600 OF 2017

(Against the Order dated 31/05/2017 in Complaint No. 83/2017 of the State Commission
Chandigarh)

1. NATIONAL INSURANCE CO. LTD.

THROUGH ITS AUTHORIZED SIGNATORY. REGIONAL
OFFICE-I, 2E/9. ZHANSWALAN EXTN.

NEW DELHI.

.....Appellant(s)

Versus

1. TIMELESS JEWELS

S/O. LATE. SH. SHAM LAL SINGLA. S.C.F. NO.3, PHASE-
3B2.

MOHALI (S.A.S. NAGAR)

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

Dated : 23 April 2024

ORDER

For Timeless Jewels Mr M K Dua, Advocate (FA no.1528/2017)

For Timeless Jewels Mr Inderjit Kaushal, Advocate (FA no.1600/2017)

For Insurance Company Ms Neerja Sachdeva, Advocate (Both appeals)

ORDER

PER MR SUBHASH CHANDRA

1. This appeal under section 17 of the Consumer Protection Act, 1986 (in short, the 'Act') seeks a review of the order dated 31.05.2017 of the State Consumer Dispute Redressal Commission, UT, Chandigarh (in short, the 'State Commission') in complaint case no. 83/2017. This order will also dispose of FA No. 1600 of 2017 filed by the respondent herein

against the appellant which also emanates from the same order. As the facts of the case are similar, FA 1528 of 2017 is taken as the lead case.

2. The relevant facts of the case, in brief, are that the appellant/respondent has a jewellery shop, "Timeless Jewels" at SCF No. 3, Phase 3B-2, Mohali, District SAS Nagar, Punjab. The appellant undertakes manufacturing, wholesale and retail sale of certified gold and diamond jewellery and had taken a "Jewellers Block Policy" from the respondent/opposite party from 13.02.2015 to 12.02.2016 and paid a premium of Rs 2,14,936/-. On 13.06.2015, a partner of the appellant came to Delhi by car no. PB 65 X 1035 to purchase and get jewellery finished. In the afternoon the vehicle was flagged down in Karol Bagh on Vishnu Mandir Marg by an unknown person and when the driver and the partner got down to check the vehicle, the bag containing the jewellery was stolen from the car. The police were summoned and FIR No. 458 was registered at Police Station, Karol Bagh (Central), Delhi. The opposite party was intimated on 15.06.2015 and a surveyor was deputed. A claim was filed for Rs 18,11,097.57 with supporting bills/invoices. On 04.09.2015 the police filed an "untraceable report" before the Magistrate, Tis Hazari Court, Delhi. The claim was repudiated on 08.04.2016 on grounds of violation of Clause 10 of the policy that there was failure of due diligence to avoid/diminish loss and Clause 5 that the vehicle where the jewellery was kept would not be left unattended. Complainant filed CC No. 610 of 2016 before the District Consumer Disputes Redressal Forum, UT, Chandigarh which was withdrawn and filed before the State Commission which came to be decided on contest. The impugned order partly allows the complaint and directs the respondent/opposite party to

- (i) pay Rs 9,87,425/- to the appellant/complainant along with simple interest @ 9% from 24.10.2015 till payment;
- (ii) pay litigation cost of Rs 20,000/- to appellant/complainant;
- (iii) ensure payment within 2 months of the order failing which the rate of interest would be 12% on the amount at (i) above and 9% on amount at (ii) above from the date of complaint till realization.

This order is impugned before us with the prayer to

- i. Allow the appeal with costs and direct the payment of the entire claim amount of Rs 18,11,097.57 with interest @18% p.a. till realization;
- ii. Direct respondent to pay compensation of Rs 20 lakhs for mental agony, harassment, and escalation in prices; and
- iii. Pass such other order(s) as deemed fit and proper.

3. We have heard the learned counsel for the parties and perused the records. In the interest of justice, the delay of 11 days in preferring FA Nos. 1528 and 1600 of 2017 is condoned.

4. Appellant has assailed the impugned order on the grounds that (i) the State Commission erred in overlooking the fact of an error in the surveyor's report dated 25.08.2015 which records that though the appellant had mentioned loss of 15 items in the incident of theft, the FIR recorded it as 5 items and therefore valued the loss at Rs 9,87,425/-; (ii) the value of the

items was not in dispute as retail invoices had been produced by the appellant; (iii) the impugned order had failed to award compensation of Rs 20 lakhs claimed for mental agony, physical harassment and escalation in prices; and (iv) the letter of repudiation dated 08.04.2016 was unjustified and amounted to unfair trade practice and deficiency in service. Appellant contended that the repudiation was illegal as the special conditions/exceptions were not communicated and as held by this Commission in ***Oriental Insurance Co. Ltd. Vs. Brahmdeo Panjiwara***, 2012 (2) CPJ 349 the claim was liable to be allowed for this reason.

5. *Per contra*, respondent insurance company contended that appellant had suppressed material facts about ownership of stolen property since the FIR revealed that the stolen items of jewellery were taken from the shop at Chandigarh while the claim lodged indicated that the property belonged to the appellant's shop in Mohali, Punjab. As per respondent, the relevant policy (No. 420200/46/14/1700000043) pertained to the shop at Mohali, Punjab for the period 13.02.2015 to 12.02.16 whereas the Jewellers Block Insurance Policy (No. 420200/46/3700000036) for the period 27.11.2014 to 26.11.2015 pertained to the shop located in Manimajra in Chandigarh. This policy is stated to not cover risk under Section II and hence did not indicate any sum insured in Section II. The appellant/complainant had had the incorporation effected by way of an endorsement dated 22/06.2015 which was after the date of loss. An enquiry had been initiated by the respondent against its employee for this act of collusion. As no premium had been paid, no risk could be assumed according to the respondent. Respondent denied that the complete Policy document had not been provided. It was also contended that the loss occurred in the presence of an employee and the act of leaving the bag unattended facilitated the theft. It was submitted that insurance was a contract between the parties and its terms and conditions are required to be interpreted strictly on an "as is" basis. The fact that both the partner and the driver (employee) were out of the car at the same time, standing before the front of the car indicated negligence on their part in leaving the vehicle unattended which was a Policy condition. It is therefore contended that the repudiation was in order.

6. It is also apposite to consider the report of the surveyor, M/s Consolidated Insurance Surveyors & Loss Assessors Pvt. Ltd. dated 25.08.2015, as per which it was held under "Assessment of Loss" that:

10.1 to 10.7

The reason for limiting the claim assessment to only 5 items is stated to be that the FIR registered mentioned only these items.

7. The appellant is before us seeking enhancement of the claim amount awarded by the State Commission as its case is that 15 items were covered under the theft as against 5 concluded by the surveyor, based upon the FIR. Respondent, on the other hand, would have us believe that the impugned order of the State Commission was erroneous in that it failed to appreciate the fact that the conditions of the Policy were violated. It is also moot whether the conditions stated to have been violated apply in this case since the Policy had not been delivered in full to the Appellant.

8. From the foregoing, it is not in dispute that a theft of the appellant's jewellery occurred while in transit on 13.06.2015. The claim has been repudiated on the basis of violation of

Policy conditions requiring the insured to be diligent in securing the goods and not leaving it unattended.

9. The State Commission cannot be faulted for accepting that only one gold chain and five diamond sets were stolen, the valuation of which was Rs 9,87,425/-. It has been held by the Hon'ble Supreme Court in *Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited & Anr*, in Civil Appeal No. 4487 of 2004 decided on 24.08.2009, (2009) 8 SCC 507 that while an arbitrary or perverse report of a surveyor can certainly be interfered with on these grounds, where it is based on cogent reasoning, the report is required to be accepted and it shall not be open to courts to subject it to further forensic examination. In the instant case, given the fact that the impugned order relies upon the FIR report, which has not been challenged by the appellant, there is no reason for us to interfere with the order of the State Commission on this ground.

10. In light of the foregoing, the contention of the appellant to allow the claim for items other than the five items listed in the FIR cannot be sustained. The claim for compensation of Rs 20 lakhs for mental agony and harassment also cannot be considered since there cannot be multiple compensations for a singular act of default as held by the Hon'ble Supreme Court in *DLF Homes Panchkula Pvt. Ltd., vs D S Dhanda* in CA nos. 4910-4941 of 2019 decided on 10.05.2019 and the fact that the State Commission has already awarded 9% p.a. on the amount to be paid by way of compensation.

11. In view of the discussion above, and the facts and circumstances of this case, the appeal fails and is disallowed with no order as to costs. Order of the State Commission is affirmed. Pending IAs, if any, stand disposed of with this order.

12. As regards FA 1600 of 2017, it has been held by the Hon'ble Supreme Court in *Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited & Anr*, in Civil Appeal No. 4487 of 2004 decided on 24.08.2009, (2009) 8 SCC 507 that while the appointment of a surveyor is mandated under the Insurance Act, 1938 in all claims of insurance in excess of Rs 20,000/-, insurance companies cannot go on appointing surveyors in order to obtain a favourable report. This position has been reiterated in IRDA Regulation No. 64 UM dated 07.09.2016. In the present case, the respondent/opposite party had appointed 2 surveyors (apart from Loss Assessor) and has relied upon the report of the second surveyor (Anoop Mehta) to repudiate the claim. The State Commission has also accepted this position without appreciating that no reason for the appointment of this surveyor was provided by the respondent to the appellant nor the procedure of approval of the IRDA followed by it. The argument of the respondent that the repudiation of the claim was in order on this ground cannot be sustained. FA 1600 of 2017 is also dismissed.

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SUBHASH CHANDRA
PRESIDING MEMBER

.....
DR. SADHNA SHANKER

