

ITEM NO.22

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).21548/2011

(From the judgement and order dated 11/05/2011 in FA No.321/2004 of
The NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI)

NEW INDIA ASSURANCE CO.LTD.

Petitioner(s)

VERSUS

B SHANTILAL & CO.& ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for interim
relief)

Date: 19/08/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr. Rajesh Kumar Gupta,Adv.

For Respondent(s) Mr. Nikhil Nayyar,Adv.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against order dated 11.5.2011 by which the National Consumer Disputes Redressal Commission (for short, "the National Commission") allowed the appeal filed by the contesting respondents, set aside the order passed by the State Consumer Disputes Redressal Commission (for short, "the State Commission") and directed the petitioner to pay Rs.9,95,000/- with 10% interest and compensation of Rs.75,000/-.

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Respondent No.1 had taken "Jewellers' Block Insurance Policy" for the period 14.6.1989 to 14.6.1990. On 6.3.1990, the representative of respondent No.1 lodged First Information Report about the alleged robbery of diamonds which had taken place on 26.2.1990. The explanation for delayed filing of the First Information Report was that due to threat to their life, the partners of respondent No.1 had to flee from the place of work. The petitioner was informed about the robbery some time in March, 1990. The surveyor appointed by the petitioner submitted report dated 24.11.1994 with the finding that respondent No.1 had suffered loss of diamonds worth Rs.9,94,960/-. The petitioner had also appointed private investigator-M/s. Paras Bureau of (Private) Investigation and Consultancy. The investigator submitted report dated 18.11.1991 with the observation that the final opinion can be given only after conclusion of the trial of Mr.

and Mrs. Wadilal Vora and their associates, who were named in the First Information Report.

The State Commission dismissed the complaint by doubting the assertion of the complainants that there was a robbery at their business premises.

The National Commission reversed the order of the State Commission and held:

"14. In our view, the stand taken by the Insurance Company in not paying the loss assessed by the Surveyor appears to be totally unjustified. Even their advocate specifically stated that the amount may be reimbursed to the complainant on the condition that the assured would give full cooperation in the investigation, if necessary, by obtaining an undertaking from the assured, as stated in the aforesaid report. Even the investigators only stated that the independent facts may be ascertained, but did not opine not to reimburse the assured. After the police

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investigation, the accused are charge-sheeted and the criminal court may take a long time to decide the matter. That can hardly be stated as a ground for not reimbursing the assured.

15. Perusal of the impugned judgment and order of the State Commission goes to show that the report dated 24th November, 1994 submitted by Rashmi Desai and Associates surveyors, assessors and valuers appointed by the insurer was not duly considered. The observations of the surveyors, assessors and valuers are as follows:-

"OBSERVATIONS - We have visited the insured, the police, the office of the DRI, have inspected the books and records of the insured made available to us by the insured as well as the DRI officials, and have conducted inquiries to the best possible.

We now report our observations as under:-

This appears to be a genuine case of robbery (dacoity) and the liability of the insurers exist.

There has been a delay in informing of the loss and the claim to the insured as well as the police. However, in view of the circumstances of the loss and the identity of the persons who visited the office of the insured, the insurers may suitably decide on whether the delay can be condoned or not specifically when Mr. Shah had run away to Surat, out of the fear of physical harm to him and his family."

16. We are of the opinion that the State Commission was observed with suspicion and considered the complaint filed under Consumer Protection Act, 1986 likewise that of a criminal case. It is not necessary to highlight the point that standard of proof required in such inquiry before the State Commission was not as high as required in a criminal case. The State Commission appears to have shifted focus of attention from the core issue and gave importance to the circumstances in order to find fault with the story of the heist. The State Commission appears to have been influenced by the fact that the

insurer was justified in awaiting the result of

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the criminal proceedings. The insurer has placed on record the relevant copies of the FIR, charge sheet and copy of the judgment dated 03.05.2002 rendered by the Sessions Court in Sessions case no. 506/1993. The judgment of acquittal rendered by the additional session judge does not show that the alleged story of heist was fabricated or concocted by the complainant i.e. Bipin Shah. The criminal court has not recorded any specific finding about the falsehood in the case of prosecution. Complainant Bipin Shah was never prosecuted for holding of false FIR. Under these circumstances, the total claim of the appellants could not have been repudiated by the insurer."

We have heard Shri Rajesh Kumar Gupta, learned counsel for the petitioner and carefully perused the record.

In our view, the reasons assigned by the National Commission for holding that there was deficiency in service on the petitioner's part and that respondents were entitled to compensation in lieu of the loss suffered by them due to robbery do not suffer from any patent legal infirmity and the impugned order does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master