

I. C. SHARMA

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v.

THE ORIENTAL INSURANCE CO. LTD.

(Civil Appeal No. 3167 of 2017)

JANUARY 10, 2018

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[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Insurance – Householder Insurance – Appellant purchased a householder insurance policy from the respondent-Insurance Company, wherein coverage of articles/items in the house of the appellant was “as per list” – However, “as per list” policies were discontinued by the respondent and fresh policies were issued for consolidated amounts, which were also taken by appellant– After an incident of burglary in appellant’s house, he claimed householder insurance – Plea of Insurance Company that a large number of items claimed to be stolen were not insured and there was a lot of under-insurance – Held: Under-insurance means that the insured has taken an insurance policy in which he has valued the insured items for a sum less than the actual value of the insured item – This is done to pay a lesser premium – However, it is harmful to the policy holder because even if the entire insured property is lost, the policy holder, at the maximum can only get the sum for which the property was insured – But, when all the goods are not destroyed, the Insurance Company can apply the principle of averaging out i.e. the insured is paid an amount proportionate to the extent of insurance as compared to the actual value of the goods insured – Therefore, when a group of items is insured under one heading and only some of the items and not all items are lost/stolen then the principle of under-insurance will apply – However, if all or most of the items of value covered under the policy are stolen, then the insurance company is bound to pay the value of the goods insured – Applying this principle, appellant directed to be paid accordingly – In addition, claimant awarded Rs.25,000/- as compensation and litigation expenses with interest @12% p.a. w.e.f. 01.01.2009 till payment – Insurance Company shall be entitled to adjust/deduct the amounts already paid/deposited by it – Consumer Protection Act, 1986.

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A *Insurance – Insurance Companies – Plea taken by the Insurance Company that the appellant-claimant did not produce invoices for the items claimed to be stolen – Held: On facts, the claim should not have been rejected only on the ground that invoices were not produced – Once the insurance company itself changed its policy from ‘as per list policies’ to ‘policies for consolidated amounts’, then an insured is not expected to give the item-wise details along with the valuation – Consumer Protection Act, 1986.*

B *Insurance – Insurance Companies – Duty of – Held: Insurance company must at the time of accepting the premium advise the policy holder properly – It cannot accept the premium without asking for any details and later deny its liability on the ground that such details were not given – Consumer Protection Act, 1986.*

C *Doctrines/Principles – Principle of ‘under-insurance’ – Explained.*

D **Disposing of the appeal, the Court**

E **HELD: 1.1 Under-insurance basically means that the insured has taken out an insurance policy in which he has valued the insured items for a sum which is less than the actual value of the insured item. In a country like India this is normally done to pay a lesser premium. This is, in fact, harmful to the policy holder and not to the Insurance Company because even if the entire insured property is lost, the policy holder will only get the maximum sum for which the property has been insured and not a paisa more than the sum insured. For example, in case a person takes out the householder policy covering fire insurance and gives the value of the structure of his house and goods stored therein at Rs.50,00,000/- even though the value of the same is Rs.1,00,00,000/- then even if the entire house and goods are completely lost in a fire, he cannot get an amount above Rs.50,00,000/- even though the value may be more. [Para 8] [577-F-H; 578-A-B]**

G **1.2 If all the insured goods are lost then there is no problem as then the insurance company is bound to pay the value of the goods insured. The insured is entitled to the amount for which the goods were insured even if that be less than the actual value of the goods. In case a person gets a painting insured for**

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Rs.1,00,000/- though the value of the same is Rs.10,00,000/-, if the painting is lost the insured is entitled to Rs.1,00,000/- only. If all the insured goods falling under one head are stolen or lost then the insurance company cannot apply the principle of averaging out because, though the loss may be Rs.10,00,000/-, the claimant will get only one Rs.1,00,000/-as per the value assessed and the insurance premium paid by him. [Para 9] [578-B-D]

1.3 The Insurance Company can however apply the principle of averaging out when all the goods are not destroyed. Supposing the entire house was insured for Rs.50,00,000/-, but on valuation it is found that the value of the structure and the goods was Rs.1,00,00,000/- and if the policy holder claims that he has suffered loss of Rs.40,00,000/- then he will be entitled to only Rs.20,00,000/-, by applying the principle of averaging out. What this means is that if the value of the goods is more than the sum for which they are insured then it is presumed that the policy holder has not taken out insurance policy for the un-insured value of the goods. The claim is allowed by applying the principle of averaging out, i.e. the insured is paid an amount proportionate to the extent of insurance as compared to the actual value of the goods insured. [Para10] [578-D-F]

1.4 Applying the aforesaid principle to the present case, it is now dealt as under-

i) Jewellery and valuables - The entire jewellery and valuables were insured for Rs.1,00,500/- but the claimant claimed that the value of jewellery stolen was Rs.1,84,150/-. In this case the entire jewellery was stolen. Therefore, the averaging out clause will not apply and the claimant is entitled to a sum of Rs.1,00,500/- under this head.

ii) Silver cutlery sets - The case of the claimant was that these were insured under the head of 'kitchenware/crockery/cutlery' items. According to him, the value of these sets is Rs.31,000/-. Obviously kitchenware/crockery/cutlery will include many other items lying in the kitchen and in the dining room. Silver cutlery sets would normally fall under the head 'jewellery and valuables' and since the claimant has been awarded the maximum amount payable under that head, now he cannot divert the claim for silver cutlery to the head 'kitchenware/crockery/

A cutlery'. This Court can take judicial notice of the fact that in any middle class household kitchenware/crockery/cutlery would value more than Rs.18,000/-. It is obvious that silver cutlery valuing Rs.31,000/- could not be insured under the head kitchenware/crockery/cutlery' which was valued only for Rs.18,000/-.

B Therefore, the National Commission was right in holding that there was no coverage for this item.

iii) Clothing - The appellant claimed that he had suffered a loss of Rs.87,000/-, as against the coverage of Rs.55,000/-. However, on perusing the statement of the appellant himself it is found that he had shown Rs.87,000/- to be the value of only six items of clothing. There must have been many other items of clothing in the house and when all the clothing was insured under one heading, it would include clothing items of all types, both expensive and in-expensive. Admittedly, all items of clothing were not stolen and, therefore, in this case the principle of under-insurance will have to apply and the National Commission was right in directing that the payment be made after applying principle of under-insurance.

iv) Electrical/Mechanical appliances- The coverage under this head was Rs.1,82,500/- and the claimant claimed only Rs.66,000/- and he gave the details of the items. This claim was rejected only on the ground that he had not produced invoices of the same. The case of the appellant was that those items were gifted by his son. The claim should not have been rejected only on the ground that invoices were not produced. Once the insurance company itself changed its policy from 'as per list policies' to 'policies for consolidated amounts', then an insured is not expected to give the item-wise details along with the valuation. If the insurance company desires that item-wise valuation should be given for items over and above a certain value then it is the duty of the insurance company to advise the insured at the time of issuing the first policy of insurance and at the time of each renewal. The insurance company must at the time of accepting the premium advise the policy holder properly. The insurance company cannot accept the premium without asking for any details and later deny its liability on the ground that such details were not given. Therefore, the claim of the claimant is accepted and he is entitled to Rs.66,000/- under this head.

v) **Miscellaneous items - The appellant claimed Rs.28,000/- for loss of miscellaneous item including watches valuing Rs. 20,000/- as against the coverage of Rs.41,000/-. On the same reasoning as given for electrical/mechanical appliances, the claim of the appellant of Rs.20,000/- for loss of four watches is accepted and, therefore, he is entitled to Rs.28,000/- under this head.**

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vi) **Repair of locks, doors, latches, safe etc.- The claimant is already awarded Rs.7,000/-under this head. [Para 12] [579-A-H; 580-A-F]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3167 of 2017.

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From the Judgment and Order dated 22.02.2016 of the National Consumer Disputes Redressal Commission, New Delhi in RA/311/2015 in Revision Petition No. 2361 of 2014.

I. C. Sharma (Appellant-in-person).

Rajesh Kumar Gupta, Adv. for the Respondent.

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The Judgment of the Court was delivered by

DEEPAK GUPTA, J. 1. This appeal filed by the complainant/consumer is directed against the order dated 29.09.2014 passed by the National Consumer Disputes Redressal Commission (for short 'the National Commission'), New Delhi, disposing of the revision petition filed by the parties and also against the order dated 22.02.2016 disposing of the review petition filed by the appellant.

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2. Briefly stated the facts of the case are that the appellant had first purchased a householder insurance policy from the Oriental Insurance Company ('the Insurance Company' for short) on 23.12.2000. This policy was renewed till 22.12.2005. As per this policy the coverage of articles/items in the house of the appellant was "as per list". It is not disputed that thereafter the Insurance Company discontinued "as per list" policies and instead started issuing policies for consolidated amounts. The original policy had expired on 22.12.2005 and fresh policy as per new scheme was taken out on 19.01.2006 and this was renewed from time to time. The last renewal was from 19.01.2007 to 18.01.2008.

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3. The appellant had gone to the United Kingdom. Some time, between 27.01.2008 to 30.01.2008, a burglary took place inside the premises of the appellant, and he was informed about the same by a neighbor on 31.01.2008. The appellant requested his nephew to inform

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A the Insurance Company and an FIR was also registered with the Mehrauli Police Station in South Delhi. The Insurance Company was also informed about the burglary on 31.01.2008 or on the next day. The police could not trace out the crime.

B 4. The Insurance Company first offered a sum of Rs. 3,500/- to the appellant sometime in November, 2008 which he refused to accept. He, thereafter, met certain higher officials of the Insurance Company and an amount of Rs.29,920/- was offered to him. Being dissatisfied, the appellant filed a claim before the District Consumer Disputes Redressal Forum (for short 'the District Forum'), which was disposed of by the District Forum on the ground that the articles mentioned therein were not mentioned in the list. Thereafter, the appellant filed an appeal before the State Consumer Disputes Redressal Commission (for short 'the State Commission') which was allowed on 15.01.2014 and he was awarded a sum of Rs.4,03,150/-.

C 5. Revision petitions were filed both by the appellant claiming interest and compensation and by the Insurance Company against the order of the State Commission. The main ground in the petition filed by the Insurance Company was that a large number of items which had been claimed to be stolen were not insured and there was a lot of under-insurance. The National Commission held that once the appellant had supplied a list of articles for the first policy, if there was any change he should have filed a fresh list and since a large number of articles were not mentioned in the list the claimant was only entitled to an amount of Rs.21,000/- towards the value of stolen gold articles; Rs.5,929/- towards the depreciated value of Citizen watch; Rs.7,000/- for repair of door latches etc.; and Rs.16,000/- towards the value of stolen clothes after making appropriate deduction for under-insurance of clothing. The complainant was also awarded compensation of Rs.5,000/- towards the cost of litigation etc. The appellant filed an SLP before this Court and he was granted liberty to file a review petition before the National Commission mainly on the ground that the policy of 2008-2009 was not considered by the National Commission.

D 6. The National Commission in the review petition took into consideration the fact that the new insurance policy did not require a list of items to be given. It, thereafter, awarded amounts under various heads as follows:-

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i) Jewellery and valuables - Claimant claimed that the jewellery lost was worth Rs.1,84,150/- but the insurance package was only for Rs.1,00,500/-. The National Commission ordered the Insurance Company to pay the amount after making adjustment for under-insurance; A

ii) Two cutlery sets in silver valuing Rs.31,000/- - The National Commission held that these items were not insured and did not fall under the heading of 'kitchenware/crockery/cutlery sets'. B

iii) Clothing - The insured value of clothing was Rs.55,000/- and the claimant claimed Rs.87,000/-. The National Commission directed payment of this amount after making adjustment for under-insurance.

iv) Electrical/Mechanical appliances - The appellant claimed a sum of Rs.66,000/- for loss of electrical and mechanical appliances, as against the coverage of Rs.1,82,500/-. This claim was rejected on the ground that the claimant failed to produce bills of invoices towards this amount. C

v) Miscellaneous items - The appellant claimed Rs.28,000/- for loss of miscellaneous items including watches valuing Rs.20,000/- as against the coverage of Rs.41,000/-. He has been awarded only Rs.8,000/- - and the claim for watches of Rs.20,000/- has been rejected on the ground that he failed to produce purchase invoices. D

vi) Repair of locks, doors, latches, safe etc. - The appellant was awarded Rs.7,000/- for repair of locks, doors, latches, safe etc., as claimed by him. E

vii) The claimant was also awarded compensation of Rs.10,000/- and interest @ 9% per annum.

7. Aggrieved, the appellant is before this Court. F

8. The only legal issue which arises for consideration is "what is under-insurance – and the effect thereof?". Under-insurance basically means that the insured has taken out an insurance policy in which he has valued the insured items for a sum which is less than the actual value of the insured item. In a country like India this is normally done to pay a lesser premium. This is, in fact, harmful to the policy holder and not to the Insurance Company because even if the entire insured property is lost, the policy holder will only get the maximum sum for which the property has been insured and not a paisa more than the sum insured. To give an example, in case a person takes out the householder policy G H

A covering fire insurance and gives the value of the structure of his house and goods stored therein at Rs.50,00,000/- even though the value of the same is Rs.1,00,00,000/- then even if the entire house and goods are completely lost in a fire, he cannot get an amount above Rs.50,00,000/- even though the value may be more.

B 9. If all the insured goods are lost then there is no problem. The insured is entitled to the amount for which the goods were insured even if that be less than the actual value of the goods. In case a person gets a painting insured for Rs.1,00,000/- though the value of the same is Rs.10,00,000/-, if the painting is lost the insured is entitled to Rs.1,00,000/- only. If all the insured goods falling under one head are stolen or lost then the insurance company cannot apply the principle of averaging out because, though the loss may be Rs.10,00,000/-, the claimant will get only one Rs.1,00,000/- as per the value assessed and the insurance premium paid by him.

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D 10. The Insurance Company can however apply the principle of averaging out when all the goods are not destroyed. Supposing the entire house was insured for Rs.50,00,000/-, but on valuation it is found that the value of the structure and the goods was Rs.1,00,00,000/- and if the policy holder claims that he has suffered loss of Rs.40,00,000/- then he will be entitled to only Rs.20,00,000/-, by applying the principle of averaging out. What this means is that if the value of the goods is more than the sum for which they are insured then it is presumed that the policy holder has not taken out insurance policy for the un-insured value of the goods. The claim is allowed by applying the principle of averaging out, i.e. the insured is paid an amount proportionate to the extent of insurance as compared to the actual value of the goods insured.

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F 11. To clarify the matter further, we may give another example. Supposing, the insurer owns two paintings of Rs.5,00,000/- each but pays premium for insurance cover of Rs.1,00,000/- for both the paintings. If one painting is lost, even though the value of the painting may Rs.5,00,000/- he will not get Rs.1,00,000/- but will get only Rs.50,000/-, as proportionate amount. Therefore, when a group of items is insured under one heading and only some of the items and not all items are lost/ stolen then the principle of under-insurance will apply. However, if all or most of the items of value covered under the policy are stolen, then the insurance company is bound to pay the value of the goods insured.

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12. Applying this principle we may now deal with this case. A

i) Jewellery and valuables - The entire jewellery and valuables were insured for Rs.1,00,500/- but the claimant claimed that the value of jewellery stolen was Rs.1,84,150/-. In this case the entire jewellery was stolen. Therefore, the averaging out clause will not apply and the claimant is entitled to a sum of Rs.1,00,500/- under this head. B

ii) Silver cutlery sets - The case of the claimant is that these were insured under the head of 'kitchenware/crockery/ cutlery' items. According to him, the value of these sets is Rs.31,000/-. Obviously kitchenware/crockery/cutlery will include many other items lying in the kitchen and in the dining room. Silver cutlery sets would normally fall under the head 'jewellery and valuables' and since the claimant has been awarded the maximum amount payable under that head, now he cannot divert the claim for silver cutlery to the head 'kitchenware/crockery/cutlery'. This Court can take judicial notice of the fact that in any middle class household kitchenware/crockery/cutlery would value more than Rs.18,000/-. It is obvious that silver cutlery valuing Rs.31,000/- could not be insured under the head kitchenware/crockery/cutlery' which was valued only for Rs.18,000/-. Therefore, the National Commission was right in holding that there was no coverage for this item. C
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iii) Clothing - The appellant claims that he has suffered a loss of Rs.87,000/- , as against the coverage of Rs.55,000/-. However, on perusing the statement of the appellant himself we find that he has shown Rs.87,000/- to be the value of only six items of clothing. There must have been many other items of clothing in the house and when all the clothing has been insured under one heading, it will include clothing items of all types, both expensive and in-expensive. Admittedly, all items of clothing were not stolen and, therefore, in this case the principle of under-insurance will have to apply and the National Commission was right in directing that the payment be made after applying principle of under-insurance. E
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iv) Electrical/Mechanical appliances - The coverage under this head was Rs.1,82,500/- and the claimant claimed only Rs.66,000/- and he gave the details of the items. This claim has been rejected only on the ground that he had not produced invoices of the same. The case of the appellant was that those items were gifted by his son. The items such as CD changer, video camera, DVD player, Camera etc. could be found in any middle class household. It is not the case of the Insurance G
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- A Company that these items were not stolen. The claim should not have been rejected only on the ground that invoices were not produced. The affidavit of the appellant clearly indicates both the nature of the items lost and the value thereof. This is supported by corroborative evidence of the list of items given to the police. Once the insurance company itself changed its policy from 'as per list policies' to 'policies for consolidated amounts', then an insured is not expected to give the item-wise details along with the valuation. We may also add that if the insurance company desires that item-wise valuation should be given for items over and above a certain value then it is the duty of the insurance company to advise the insured at the time of issuing the first policy of insurance and at the time of each renewal. The insurance company must at the time of accepting the premium advise the policy holder properly. The insurance company cannot accept the premium without asking for any details and later deny its liability on the ground that such details were not given. Therefore, we accept the claim of the claimant and he is entitled to Rs.66,000/- under this head.

D v) Miscellaneous items - On the same reasoning as given for electrical/mechanical appliances we accept the claim of the appellant of Rs.20,000/- for loss of four watches and, therefore, he is entitled to Rs.28,000/- under this head.

E vi) Repair of locks, doors, latches, safe etc. - The claimant has already been awarded Rs.7,000/- under this head.

F 13. In addition thereto, we are of the view that the claimant should be awarded Rs.25,000/- towards compensation and litigations expenses etc. On the aforesaid amounts the appellant shall be entitled to an interest @12% per annum w.e.f. 01.01.2009 till payment. The Insurance Company shall be entitled to adjust/deduct the amounts already paid/deposited by it.

14. The appeal is disposed of in the above terms. Pending applications, if any, shall also stand disposed of.

G 15. The Registry is directed to send a certified copy of this judgment to the appellant, who appeared in person.