

Jan 2019 **RADKAR JEWELLERS V. ORIENTAL INSURANCE CO. LTD.**  
**MOOT PROBLEM-1**

Radkar Jewellers, is carrying a well known Jewellery business in the State of Goa. It was a Proprietary concern owned by Mr. Ramesh Radkar. It was established in the year 1995 in Margao. Soon, the turnover of the business increased swiftly and by the year 2015, they had outlets in every taluka of Goa. The success of their high turnover was their unique design and attractive rates.

Radkar Jewellers had a jewellery shop in Mapusa city. Similar to other branches of Radkar Jewellers, this shop too had obtained an Burglary and theft Insurance Policy from Oriental Insurance Co. Ltd., for a sum of Rs. 43,00,000/- (Rupees Forty Three Lakhs Only) for insuring the ornaments. The Insurance Policy was obtained on 26<sup>th</sup> June, 2018. Radkar Jewellers and Oriental Insurance Co. Ltd. had a relationship for over ten years.

The Insurance Policy issued by Oriental Insurance Co. Ltd., inter alia had a basic warranty clause in the terms of the Policy, which reads as under:-

***“Warranted that all property including cash and currency notes whilst at the premises specified in the schedule shall be secured in locked safe of standard make at all times out of business hours.”***

The terms and conditions of the Policy, however, did not define the terms ‘*locked safe of standard make.*’

On 5<sup>th</sup> October, 2018, at 8:00 a.m. a shop owner adjacent to Radkar Jewellers shop in Mapusa, noticed that the shop premises was burgled. He informed Mr. Ramesh Radkar, who immediately rushed to the shop and upon inspection, noticed that the shop premises was indeed burgled and gold ornaments worth Rs. 42,00,000/- were stolen away. Mr. Ramesh Radkar, immediately informed the Mapusa Police, following which a First Information Report was lodged in the police station. Soon thereafter, information was also furnished to the Oriental Insurance Co. Ltd.

The said Insurance Company appointed M/s Sameer Kerkar & Associates as surveyors who inspected the shop premises and submitted report on 5<sup>th</sup> December, 2018. The surveyor stated in its report that it was found that the ornaments were kept in a steel almirah with single lever of local make. The Insurance Company after perusing the surveyor’s report, repudiated the claim on the ground that the ‘***ornaments in the shop at the material time of burglary were kept in a steel safe of local make and not in burglar resistant safe.***’ The Insurance Company, vide letter dated 10<sup>th</sup> December, 2018, intimated the repudiation of claim to Radkar Jewellers.

Radkar Jewellers, upon receipt of the letter from Insurance Company, replied vide letter dated 12<sup>th</sup> December, 2018, stating that they are getting the shop insured from Oriental

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Insurance Co. Ltd. for last many years, and the agent of the said Insurance Company has inspected the shop many times, but never objected to the almirah, which was used to keep the jewellery and precious items. It was further stated that Insurance Company should not have given the insurance if they were not satisfied with the safe. It was also asserted that there is nothing like burglar resistant safe and this word is not present in the terms and conditions of the policy. The policy only mentions '*locked safe*' of '*standard make.*' Neither the word 'safe' is defined in the policy nor 'standard makes' have been mentioned in the policy. Radkar Jewellers, through this letter made a request to reconsider the decision and accept the claim and honour their long standing relationship.

The Oriental Insurance Co. Ltd., refused to accede to the request of Radkar Jewellers. Hence, Radkar Jewellers were compelled to approach the State Consumer Disputes Redressal Commission, Goa, with its grievance and instituted a Complaint before the said Commission. The matter is fixed for final arguments of both parties.

Argue.

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