(2014) 02 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Ajay Singh Bhambri APPELLANT

Vs

M/S Axis Bank Limited RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 79 : 2014 1 CPJ 544 : 2014 1 CPR 448

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : BRIJESH KUMAR TAMBER , Quisar Ali

Judgement

1. THIS appeal has been filed under section 19 of the Consumer Protection Act, 1986 against the impugned order dated 16.09.2012, passed by the Punjab State Consumer Disputes Redressal Commission (for short ''the State Commission '') in Consumer Complaint No. 16/2011, ''''Dr. Ajay Singh Bhambri versus M/s. Axis Bank Limited & Anr. '''' vide which, the said consumer complaint was ordered to be dismissed and it was held that no concluded contract had come into existence between the parties and hence, the OP No. 2 Insurance Company could not be held liable to pay the loan amount of the share of the deceased wife.

2. BRIEF facts of the case are that OP No. 1 M/s Axis Bank sanctioned a loan of Rs.52,08,975/ - for the purpose of purchase of a house to the complainant Dr. Ajay Singh Bhambri and his wife Smt. Vandana Bhambri. The loan was to be repaid in monthly instalments for the period of 1.12.2009 to 1.06.2031. There was an agreement executed between the parties, according to which, the loanees were to be insured for the said time period from the OP No. 2, M/s. Metlife Insurance Company. The premium amount of Rs.3,24,260/ - was also paid to the OP No. 2 by debiting the said amount from their account on 28.11.2009. As per the terms and conditions of the insurance policy, if any person died during the tenure of the loan, the rest of the payment with regard to loan was to be borne by the insurance company. The wife of the complainant, Smt. Vandana Bhambri died on 09.12.2009 due to heart attack and hence, the complainant requested the Insurance Company to pay the rest of the loan amount to OP No. 1. However, he was told that some medical examination with regard to taking of the

insurance policy was pending, due to which the insurance policy had not been issued and hence, the insured amount could not be paid by the insurance company to the Bank. The complainant filed the consumer complaint in question, alleging deficiency in service on the part of the OPs and stated that he was never told about any medical examination at the time of charging the insurance premium. He demanded that the OP / respondent should be directed to adjust the loan amount of Rs.48.70 lakh and should also be directed to pay compensation for deficiency in service and harassment at Rs.5 lakh. Vide impugned order, the State Commission held that in the absence of a concluded contract between the parties, the Insurance Company could not be held liable to pay the loan amount of the share of Smt. Vandana Bhambri, who died just within 12 days of signing the proposal form and merely debiting the premium amount by OP No. 1 and sending it to OP No. 2, was not sufficient to fix any liability on OP No. 2. The complaint was ordered to be dismissed. It is against this order that the present petition has been made. At the time of hearing before us, the learned counsel for the appellant while narrating the facts of the case, stated that the Insurance Company had accepted the proposal for insurance and hence, they were liable to pay the amount in question for the repayment of loan. The proposal form does not mention about any medical test. It was the duty of the OP No. 2 to intimate them about any medical test before accepting the premium amount. The Insurance Company had deliberately delayed the issuance of the policy and hence, the complainant should not be allowed to suffer. Learned counsel, however, could not put forward any reasons to say that mere acceptance of a premium had resulted in a concluded contract between the parties.

3. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us at admission stage.

4. ALONGWITH the memo of appeal, the complainant has filed an application for condonation of delay saying that the delay of 99 days in filing the appeal should be condoned. It has been stated that the final judgement was passed by the State Commission on 16.09.2013 but the appellant was not aware about the same till 21.11.2013, when they applied for getting a copy of the same and were given a copy on 21.11.2013 itself. The date of filing the appeal is 24.12.2013. It is very clear that from the date of the impugned order 16.09.2013 the appeal has been filed after a period of 99 days. The time of 30 days is allowed for filing the appeal as per the procedure prescribed and hence, even if it is presumed that the appellant was aware of the order on 16.09.2013 itself, there is a delay of 69 days. In case, the version of the appellant that they came to know about the order on 21.11.2013 is believed, there is a delay of only 3 days in filing the appeal. The appellant has stated that he is already suffering because of death of his spouse and is in a state of struggle and stress. In view of the position explained, the delay in filing the appeal is condoned. The factual matrix of the case makes it very clear that although the proposal form was submitted and the premium was also paid to the Insurance Company, the Policy in question had not

been issued, when the death of the wife of the complainant took place. We have, therefore, no reasons to differ with the findings of the State Commission that no concluded contract had come into existence between the parties. The State Commission, in their well -reasoned order have relied upon the order of the Hon ''ble Supreme Court in ''''Life Insurance Corporation of India versus Raja Vasireddy Komalavalli Kamba and Ors. '''' [1984 (2) SCC 719] saying that merely filling any proposal for insurance and depositing first premium with the Life Insurance Corporation, do not create a binding contract between the parties. The State Commission has also placed reliance on the order passed by this Commission in ''''ELSA Tony Phillip versus LIC of India and Ors. '''' [I (2009) CPJ - 18 (NC)], in which similar view has been taken.

5. FROM the above discussion, it is very clear that the State Commission have rightly concluded that there was no liability on the OP Insurance Company to pay the loan amount in question, to the OP No. 1 Bank on behalf of the complainants. The order passed by the State Commission, therefore, does not suffer from any illegality, irregularity or jurisdictional error and the same is upheld. The appeal is, therefore, ordered to be dismissed. There shall be no order as to costs.

