

(2017) 03 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Case No : 1233 of 2016

AMAR BHUSHAN PRAKASH S/O LATE RAM PRAKASH SINGH APPELLANT

Vs

BRANCH MANAGER MANAGER, LIFE INSURANCE CORPORATION OF INDIA & ANR. RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : (2017) 03 NCDRC CK 0024

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Moti Chandra Kumar, Rajesh K. Gupta

Final Decision : Petition Allowed

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 01.02.2016, passed by the Bihar State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in Appeal No. 212/2013, "Amar Bhushan Prakash vs. Branch Manager, Life Insurance Corporation of India," vide which, while dismissing the said appeal, the order dated 20.05.2013 in consumer complaint No. 38/2010, passed by the District Forum Samastipur, was upheld.

2. The facts of the case are that the complainant/petitioner Amar Bhushan Prakash filed consumer complaint No. 38/2010 before the District Forum at Samastipur, Bihar alleging deficiency in service towards the opposite party/OP LIC on various counts. The said complaint was, however, dismissed in default vide order dated 27.09.2011 passed by the District Forum which reads as follows:- "No pairvi on behalf of the complainant. OP files hazri. On call no body speaks on behalf of the complainant. The learned lawyer of the OP is present. Heard the learned lawyer of OP. Perused the record. Much time have been given to do pairvi to the complainant. But he is absenting regularly for which unnecessary delay is causing to dispose of the case. It seems that the

complainant has got no interest in this case. It is why this case is dismissed in lack of pairvi."

3. The complainant filed a review petition against the above order dated 27.09.2011 of the District Forum, saying that the father of the complainant had expired in May 2011 and moreover, the complainant was a handicapped person and hence, he could not ensure proper follow-up of the consumer complaint. The said review application was, however, dismissed by the District Forum vide order dated 20.05.2013, saying that the District Forum had no powers to review their own orders in view of the judgment of the Hon'ble Supreme Court in "Rajeev Hitendra Pathak & Ors. vs. Achyut Kashinath Karekar & Anr." [2011 (9) SCC 541]. Being aggrieved against the said order, the complainant challenged the same by way of an appeal before the State Commission. However, the State Commission also held that the District Forum had rightly dismissed the application for restoration, as they had no power to restore/recall their own order in the light of the judgment, "Rajeev Hitendra Pathak & Ors. vs. Achyut Kashinath Karekar & Anr. (supra)". Being aggrieved against the said order of the State Commission, the petitioner is before this Commission by way of the present revision petition.

4. The learned counsel for the petitioner argued that the complainant could not put in appearance before the District Forum on 27.09.2011, as his father had died in May 2011 and he remained engaged in different family liabilities etc. Moreover, the complainant is a handicapped person and suffering from several diseases. He should, therefore, be given a chance to plead his case on merits before the District Forum.

5. The learned counsel for the respondent LIC stated that the District Forum had observed that the complainant had been absenting regularly before them and hence, they had rightly dismissed the consumer complaint for non-prosecution. Learned counsel also stated that the father of the complainant died in May 2011, whereas the complaint had been dismissed on 27.09.2011. The complainant had, therefore, not given any valid reasons about his absence in proceedings before the District Forum.

6. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

7. In his restoration application filed before the District Forum, the complainant/petitioner has explained that he was a handicapped person and suffering from several diseases and also, he was under mental tension due to the sudden demise of his father. He has also stated that he remained engaged in the disposal of various family liabilities. The petitioner has also stated that the LIC had indulged in deficiency in service towards him by not providing him the requisite benefits under the insurance policy of 2,89,000/- taken by him. It is made out from these facts that the complainant should be given an opportunity to plead his case on merits before the District Forum. Both the State Commission and the

District Forum dismissed his restoration application on the only ground that they had no jurisdiction to do so in view of the judgment of the Hon'ble Supreme Court in " Rajeev Hitendra Pathak & Ors. vs. Achyut Kashinath Karekar & Anr. (supra) ". It is felt that it would be in the interest of justice, if the complainant is given a chance to plead his case based on merits. The consumer complaint filed by the petitioner/complainant before the District Forum is, therefore, ordered to be restored and the District Forum is directed to hear the same on merits and pass their judgment after considering all relevant aspects of the case, and after giving an opportunity to both the parties to plead their case. The revision petition is accordingly allowed. There shall be no order as to costs.