(2004) 06 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

ARAVAPALLI OMKARAM APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 07-06-2004

Acts Referred:

Citation : 2004 4 CPJ 305 : 2005 1 CLT 74 : 2005 1 CPR 329

Hon'ble Judges : I.Venkatanarayana , M.Shreesha J.

Advocate : Posani Venkateshvarlu , Manne Haribabu , P.Gopal Das

Judgement

1. THE brief facts as set out in the complaint are that the complainant''s son insured his life under ''Janata Personal Accident Insurance Policy'' No. 150904/47/51/01130/98 for Rs. 5 lakhs and that the complainant herein is the nominee. On 5.8.1998 an amount of Rs. 1,625/- by way of a cheque No. 935771 drawn on Andhra Bank was paid to the opposite party towards premium amount for the insurance period from 5.8.1998 to 4.8.2011. On 31.10.1998 at 5.00 a.m., the complainant''s son was kidnapped by one Ramakrishna Reddi and some others, and the complainant''s wife lodged a complaint before the Station House Officer, Narasaraopet Town Police Station and the same was registered as a case in Cr. No. 518/1998. During the course of investigation, the Police arrested the said Ramakrishna Reddi and brought out certain facts which were disclosed by him that he, with the help of other three persons who are the hired goondas, kidnapped the insured and murdered him, and the corpse was destroyed to avoid evidence on that score, the Station House Officer, Narasaraopet Town P.S. altered the section of law from 364, IPC to Sections 302 and 201 of IPC and Ramakrishna Reddi was sent to judicial remand. As such, the complainant came to know about the death of his son. THEreafter. the complainant and his wife made several representations to secure information and also requested for transfer of the case to CBCID, but received no response. At that stage, the three hired killers were also arrested by the police and gave their confessional statements stating that they have thrown out the dead body of the insured in Nagarjuna Sagar Canal in Prakasam District. Later, the case was transferred to CBCID and the complainant came to know that even the Tissue Culture revealed

that the skeleton, which was traced by the police, is that of the son of complainant. On 26.11.1998, the complainant got issued a notice to the opposite party but did not receive any reply. Despite repeated requests, the opposite party did not settle the claim and, therefore, the complainant approached this Commission seeking a direction to the opposite party to pay a sum of Rs. 5 lakhs with interest at 18% p.a. from 26.11.1998 together with compensation of Rs. 2 lakhs and costs of Rs. 5,000/-.

2. THE opposite party filed a counter admitting that the insured has taken ''Janata Personal Accident Insurance Policy'' by paying an amount of Rs. 1,625/- on 5.8.1998 covering the period of insurance from 5.8.1998 to 4.8.2011. It submits that as per the conditions of the policy, if the insured shall sustain any bodily injuries during any accident caused by outward, violent and visible means, then, the company shall pay the insured sum, that was set forth in the conditions and the same was given to the insured at the time of taking of the policy. THE opposite party denies the knowledge of the alleged kidnap and murder of the insured and the subsequent declaration of the police authorities. THE main contention of the opposite party is that the Insurance Company is liable only when the insured is involved solely and directly in the accident, otherwise, they are not liable to pay the insurance claim amount, much less, the compensation and, therefore, they submitted that there is no deficiency in service on their behalf and prayed for dismissal of the complaint with costs. The complainant filed affidavit by way of evidence and also Ex. A-1 to Ex. A-7 are marked on his behalf.

The point for consideration is, whether there is any deficiency in service on the part of the opposite party, and if so, whether the complainant is entitled to the relief as sought for in the complaint.

3. THE complainant filed evidence affidavit reiterating the facts given in the complaint submitting that the insured was kidnapped on 31.10.1998 and was later murdered and the corpse were destroyed and the police case was transferred to CBCID and the complainant came to know that the Tissue Culture revealed that the skeleton traced by the police is that of the insured. THEreafter, they approached the opposite party for settling the claim. But in spite of repeated requests, they did not do so. Ex. A-1 is the report of the Director, A.P. Forensic Sciences Laboratories, Government of Andhra Pradesh dated 21.1.1999, stating that he is of the opinion that the skull in item No. 1 could have belonged to the person in the photograph marked as item No. 2. Ex. A-2 is the FIR filed under Sections 154 and 157, Cr.P.C. Ex. A-3 is the Certificate copy of the charge-Sheet filed before the Hon''ble VII Addl. Munsif Magistrate Court, Guntur, wherein, the detail of the persons accused is written, together with the post-mortem report, which states that the approximate time of the death was more than 10 days prior to the post-mortem and that the decomposed body is being sent for further investigation. Ex. A-4 is the copy of the insurance policy for the period from 5.8.1998 to 4.8.2011. Ex. A-5 is the legal notice dated 26.11.1998 got issued by the complainant to the opposite party to settle the claim together

with postal acknowledgement.

4. THE opposite party did not file any affidavit by way of evidence nor any documents. The complainant filed brief submissions stating that they filed charge-sheet in PRC 12/2001 in the murder of the policy holder and certified copy of the charge-sheet is marked as Ex. A-3. The Laboratory Officials after investigation declared that the dead body belongs to Mr. Aravapalli Ramesh. Further, the Government Hospital conducted the post-mortem dated 7.11.1999 confirmed that Mr. Aravapalli Ramesh is murdered. The opposite party, apart from contending that there is no proof that the insured died by any violent and visible means of accident, has not filed any affidavit by way of evidence or documentary proof to sustantiate their arguments. The opposite party raised objections that as per the terms such ''death'' is not covered under policy since the policy holder did not sustain any bodily injury in the accident by outward, violent and visible means. On perusal of the exhibits filed, it is clear that the policy holder was kidnapped and murdered by violent means and, as such, death is covered under the policy. The complainant drew our attention to the judgment of this Hon''ble Commission in FA 33/2000 between Life Insurance Corporation of India and Another v. Smt. Gantla Narayanamma, wherein, it was held that "death is not caused by natural consequences of events in the life of the deceased and he was dragged from the house and the injuries inflicted upon him lead to his death." It is also held by the National Consumer Disputes Redressal Commission, in 1998 (3) CPR 5 (NC), that "the insured was dragged out of his house by a group of naxalites and was beaten, injuries proved fatal and the National Commission observed that "the death of the insured was accidental and that the claim does not fall within the exception clause of the policy". The learned Lord Lopes held in his concurring judgment observed that- "the cause of the injury was accidental in the sense that the injury was a casualty and unforeseen and unexpected"

5. KEEPING in view the facts and circumstances of this case, we are of the opinion that the death resulted from such events in the life of the deceased can be termed as "unforeseen and unexpected", and, therefore, deemed to be an accident. The policy holder was kidnapped and was murdered by violent and visible means. The opposite party, except, denying the entire course of events and relying on that particular clause which states that, only, death is caused by violent and visible means, they are liable, did not come up with any sufficient grounds, to support their plea that the repudiation made by them is correct. Taking into consideration, the facts and circumstances of the case and the exhibits filed, we are of the view that the opposite party committed an act of deficiency in service in repudiating the complainant''s claim. Therefore, we are of the opinion that they are liable to pay the policy amount of Rs. 5 lakhs together with interest at 9% p.a. from the date of filing of the complaint i.e., 25.2.2000 till the date of realization together with costs of Rs. 2,000/- to be paid within six weeks from the date of this order.

6. IN the result, this complaint is partly allowed directing the opposite party to

pay an amount of Rs. 5 lakhs to the complainant with interest at 9% p.a. from the date of filing of the complaint i.e., 25.2.2000 till the date of realization together with costs of Rs. 2,000/- to be paid within six weeks from the date of this order. Complaint partly allowed.

