
(2019) 04 SC CK 0064

In the Supreme Court Of India

Case No : Civil Appeal No. 3962 Of 2019

Ashatai W/O Anand Duparte

APPELLANT

Vs

Shriram City Union Finance Ltd

RESPONDENT

Date of Decision : 16-04-2019

Acts Referred:

Insurance Act, 1938 — Section 21(b), 64VB(2)

Citation : AIR 2019 SC 1906 : (2019) 5 SCC 719 : (2019) 4 JT 297 : (2019) 6 Scale 469 : (2019) 2 CPJ 49 : (2019) 3 ALLMR 463 : (2019) 136 ALR 707 : (2019) 4 GLR 2750 : (2019) 4 MLJ 764 : (2019) 4 Supreme 567 : (2020) 1 WLN 41

Hon'ble Judges : Uday Umesh Lalit, J;Indu Malhotra, J

Bench : Division Bench

Advocate : Amol Nirmalkumar Suryawanshi, Deepak Goel, Kamal Kumar Pandey

Final Decision : Disposed Off

Judgement

Indu Malhotra, J

Leave granted.

1. The present Civil Appeal has been filed to challenge the Order dated 30.11.2018 passed in Revision Petition No. 472 of 2018 by the National Consumer Disputes Redressal Commission (hereinafter referred to as "the National Commission").

2. The factual matrix in which the present case has been filed is as under :

2.1. The Complainant/Appellant's husband Late Anand Duparte had obtained a personal loan of Rs. 2,00,000/- on 27.02.2015 from the Respondent - Finance Company.

The personal loan was advanced on 27.02.2015 after executing the loan agreement, and completing all legal formalities.

The Respondent - Finance Company secured the loan by issuance of an insurance

policy by its sister concern i.e. M/s Shriram General Insurance Company Ltd., on behalf of the Borrower.

In the Cover Note of the said policy, the Insured was shown as: M/s Shriram City Union Finance Ltd. i.e. the Respondent - Finance Company.

The insurance policy was a Group Insurance Policy issued to various borrowers, including the Appellant's husband, whose name was at Serial No. 263 of the list.

2.2. The loan was to be serviced by the Appellant's husband in 48 monthly instalments of Rs. 7,933/- each. The 1st loan instalment of Rs. 7,933/- was paid on 07.03.2015 vide Cheque No. 433931.

2.3. The Appellant's husband admittedly paid the premium of the insurance policy. The Respondent - Finance Company received a Demand Draft of Rs. 400/- from the Appellant's husband towards the insurance premium. The Group Insurance Policy was issued from 30.03.2015 to 29.03.2016.

2.4. On 17.03.2015 i.e. within 18 days after obtaining the loan, the Appellant's husband suddenly passed away. 2.5. The Respondent - Finance Company issued a notice to the Appellant for payment of the loan instalments.

2.6. The Appellant requested the Respondent - Finance Company to recover the loan through the insurance policy.

2.7. A Legal Notice dated 16.12.2015 was addressed by the Appellant to the Respondent - Finance Company, requesting that the loan amount be recovered from the Insurance Company.

2.8. The Respondent - Finance Company replied to the Legal Notice on 29.01.2016, and denied having received the Demand Draft of Rs. 400/- from the deceased husband of the Appellant. It was further contended that the amount of Rs. 2,120/- was deducted from the loan amount towards processing fee and stamp charges.

2.9. The Appellant filed a Consumer Complaint before the District Consumer Disputes Redressal Forum, Nanded. The Appellant submitted that after the loan was sanctioned on 27.02.2015, the amount was credited to the loan account after deducting the insurance premium. The Respondent - Finance Company obtained the insurance policy from its sister concern on 30.03.2015. Had the insurance policy been issued when the loan was advanced, the amount would have been recovered through the insurance policy. There was therefore a deficiency of service by the Respondent - Finance Company in delay in obtaining the insurance policy from its sister concern. The Respondent - Finance Company was not entitled to recover the loan from the Appellant.

The Appellant prayed that the Respondent - Finance Company be restrained from recovering the loan amount from her, since the recovery was wrong and unreasonable, and prayed for payment of compensation. 2.10. The District Forum allowed the Consumer Complaint filed by the Appellant vide Order dated

27.02.2017. It was held that since the Appellant's husband had paid the 1st loan instalment on 07.03.2015, it could be presumed that all the loan formalities had been completed by that date. This proved that the Appellant's husband had paid the insurance premium soon after the loan was sanctioned. The Respondent - Finance Company had been negligent in obtaining the policy late, since it had forwarded the premium amount to the Insurance Company after a delay of about 1 month.

As per Section 64 VB (2) of the Insurance Act, 1938 the risk was covered from the date of payment of insurance premium.

Section 64VB (2) - For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation - Where the premium is tendered by postal money-order or cheque sent by post, the risk may be assumed on the date on which the money-order is booked or the cheque is posted, as the case may be.

The District Forum held that there was deficiency of service on the part of the Respondent - Finance Company. It was ordered that the Respondent - Finance Company shall not recover any amount from the Appellant towards the loan obtained by her deceased husband; and ordered compensation of Rs. 10,000/- towards mental agony, and Rs. 3,000/- towards Costs.

2.11. The Respondent - Finance Company challenged the Order of the District Forum before the State Consumer Disputes Redressal Commission, Mumbai.

The State Commission dismissed the Appeal vide Order dated 19.09.2017. It was held that since the insurance premium was deducted from the loan account of the Appellant's husband, the District Forum had rightly allowed the Consumer Complaint.

2.12. Aggrieved by the Order of the State Commission, the Respondent - Finance Company filed a Revision Petition before the National Commission u/S. 21 (b) of the Consumer Protection Act, 1986.

The National Commission set aside the Order passed by the State Commission, and allowed the Revision Petition filed by the Respondent - Finance Company vide Order dated 30.11.2018.

The National Commission held that the Appellant - Complainant had taken a contradictory stand regarding payment of the insurance premium in her Legal Notice dated 16.12.2015. She had stated that a Demand Draft of Rs. 400/- was received by the Respondent - Finance Company from her husband. However, there was no document evidencing receipt of the said Demand Draft by the Respondent - Finance Company towards payment of premium.

It was further held that there was no evidence of any deduction of the insurance premium from the loan account either. The Respondent - Finance Company could not be held to be negligent in rendering services. 2.13. Aggrieved by the final Order dated 30.11.2018 passed by the National Commission, the Appellant has filed the present Civil Appeal.

3. We have heard learned Counsel for both parties, and perused the pleadings on record.

3.1. The National Commission, in exercise of its revisional jurisdiction, has set aside the concurrent findings of the District Forum and State Commission, by the impugned Order dated 30.11.2018.

The revisional jurisdiction of the National Commission is a limited jurisdiction, *Galada Power and Telecommunication Limited v. United India Insurance Company Limited & Anr.*, (2016) 14 SCC 161 to be exercised in case the State Commission lacked jurisdiction, or acted with illegality or material irregularity. *Rubi (Chandra) Dutta v. United India Insurance Co. Ltd.*, (2011) 11 SCC 269.

Section 21(b) reads as follows :

"call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

(emphasis supplied)

3.2. The National Commission has allowed the Revision Petition of the Respondent - Finance Company on two grounds; first, that the Appellant had failed to produce any evidence to prove that the insurance premium was paid to the Respondent - Finance Company; second, that there was no evidence to prove that the Respondent - Finance Company deducted the insurance premium from the loan account.

3.3. A perusal of the pleadings and record, would show that both these findings are factually incorrect.

With respect to the first ground, the Respondent - Finance Company in paragraph 4(c) of the Revision Petition filed before the National Commission, has itself admitted that it had received the Demand Draft from the Appellant's husband towards payment of the insurance premium.

The relevant extract is set out herein below for ready reference :

"That sometime in the month of March 2015, a request for availing the Personal Accidental Insurance Policy from Shriram General Insurance Company Limited (hereinafter referred to as the 'Insurance Company') was received from Late Sh.

Anand Duparte alongwith the Demand Draft towards the payment of the insurance premium, whereupon the same was forwarded to 'Insurance Company' and after carrying out their due diligence, the Group Personal Accidental Insurance Policy was thereon issued by 'Insurance Company'."

(emphasis supplied)

Hence, the first ground on which the National Commission has set aside the Order of the State Commission is factually incorrect.

3.4. With respect to the second ground, the Respondent - Finance Company has admitted that it had deducted an amount of Rs. 2,120/- towards processing of the loan, and payment of stamp charges.

However, it was contended by the Respondent - Finance Company that this deduction was not made towards payment of the insurance premium.

A perusal of the documents shows that the Respondent - Finance Company was providing a loan facility to the borrowers, which was secured by an insurance policy issued by its own sister concern viz. M/s Shriram General Insurance Company Limited. It was a composite inter-linked transaction.

The Cover Note issued by M/s Shriram General Insurance Company Limited, shows that the beneficiary of the insurance policy is the Respondent - Finance Company viz. M/s Shriram City Union Finance Ltd. The Cover Note further shows that the Group Insurance Policy dated 30.03.2015 was issued to 280 borrowers, with the loan amounts mentioned against their respective names.

Thus, the deduction of Rs. 2,120/- from the loan account was towards processing of the composite transaction.

3.5. The deceased husband of the Appellant had fulfilled his part of the transaction, by depositing Rs. 400/- by way of the Demand Draft towards the insurance premium, and also the charges of Rs. 2,120/- towards processing of the loan transaction.

3.6. The Respondent - Finance Company however delayed in forwarding the amount to the Insurance Company for obtaining the insurance policy, which was issued on 30.03.2015 for the period 30.03.2015 to 29.03.2016. Hence, there was a clear deficiency of service by the Respondent - Finance Company in delay in obtaining the insurance policy from its sister concern.

3.7. Section 64VB(2) of the Insurance Act, 1938 provides that :

"For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer."

It is the admitted position that the deceased husband of the Appellant had paid the insurance premium by a Demand Draft in favour of the Insurance Company. This has been acknowledged in paragraph 4(c) of the Revision Petition filed by

the Respondent - Finance Company, as referred to above.

As a consequence, the risk would be covered from the date of payment of the insurance premium. The loan was secured from the date on which the insurance premium was paid. The premium having been paid by the Appellant's husband during his life-time, the loan was to be adjusted from the insurance policy.

3.8. The National Commission has erroneously set aside the Order passed by the State Commission on factually incorrect grounds.

The Appellant has made out a clear case of deficiency of service on the part of the Respondent - Finance Company.

4. In view of the aforesaid discussion, the Order dated 30.11.2018 passed by the National Commission in Revision Petition No. 472 of 2018 is hereby set aside. The Civil Appeal is allowed.

5. The Appellant - widow has been unnecessarily dragged through legal proceedings on account of deficiency of service by the Respondent - Finance Company. We deem it appropriate to direct the Respondent - Finance Company to pay Compensation of Rs. 50,000/-, and Costs of Rs. 25,000/- to the Appellant.

All pending Applications, if any, are accordingly disposed of. Ordered accordingly.