(2015) 05 NCDRC CK 0128

In the National Consumer Disputes Redressal Commission

Case No : 3177-3178 of 2010

BAJAJ ALLIANZ LIFE INSURANCE CO. LTD. &?ANR Vs K. JAYALAKSHMI

Date of Decision : 26-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 15, Section 17 - Jurisdiction of the National Commission - Appeal - Jurisdiction of the State Commission

Citation : 2015 3 CPJ 478

Hon'ble Judges : K.S. Chaudhari

Advocate : Siddharth Bawa, Shyamal Anand, Chandra Sekhar A. Pachhapur

Judgement

1. Both these revision petitions arise out of single order of State Commission, hence, decided by single order.

2. These revision petitions have been filed by petitioner against order dated 8.4.2010 passed by State Commission in Appeal No. 2650 & 2651 of 2009 - Bajaj Allianz Life Insurance Co. Ltd. & Anr. Vs. K. Jayalakshmi ; by which while dismissing appeals, order of District Forum allowing complaints was upheld.

3. Brief facts of the case are that complainant/respondent is natural mother and only legal heir of her son Shashi Kumar who obtained two life insurance policies from opposite party/petitioner(s) on 28.1.2008 for a period of 10 years and 20 years, for an assured sum of Rs. 1,25,000/- and Rs. 8,00,000/- with accidental death benefit respectively. It was further submitted that Shashi Kumar on 31.1.2008 due to fall from staircase died while taking to hospital. Complainant submitted claim to the opposite party which was repudiated by opposite party. Alleging deficiency on the part of opposite party, complainant filed two separate complaints before District Forum. Opposite party resisted both the complaints and submitted that as per investigating agency- Phantom Detective Agency, death of the insured was under suspicious circumstances. It was further submitted that complainant has neither given any report to the Police nor admitted her son to the hospital nor post mortem conducted and insured also gave wrong information about his earning and as per neighbours, insured committed suicide due to failure of love, so claim was rightly repudiated and

prayed for dismissal of both the complaints. Learned District Forum after hearing both the parties allowed both the complaints and directed opposite party to pay sum assured alongwith accidental benefit with 9% p.a. interest and further directed to pay Rs. 5,000/- as cost of litigation in both the complaints. Appeals filed by opposite party were dismissed by Learned State Commission vide impugned order against which these revision petitions have been filed alongwith application for condonation of delay.

4. Heard Learned Counsel for the parties and perused record.

5. These revision petitions have been filed with delay of 28 days. In application for condonation of delay, it was stated that copy of impugned order was received on 12.5.2010 and later on papers were sent to registered office in Pune and time was taken by local Advocate in giving opinion and in preparation of revision petition by another Advocate and in such circumstances, delay of 25 days occurred. Ass per office report, there is a delay of 28 days. As there is only delay of 28 days in filing revision petition, I deem it appropriate to condone the delay for the reasons mentioned in the application and delay of 28 days in filing revision petitions stands condoned.

6. Learned Counsel for petitioners submitted that in spite of death of insured in suspicious circumstances just after three days of obtaining policy and giving false information about income in the proposal form, Learned District Forum committed error in allowing complaints and Learned State Commission further committed error in dismissing appeals, hence, revision petitions be allowed and impugned order be set aside. On the other hand, Learned Counsel for respondent submitted that as claim of one more policy dated 13.1.2007 had already been paid, impugned order passed by Learned State Commission is in accordance with law, hence, revision petitions be dismissed.

7. It is not disputed that complainant''s son-Shashi Kumar obtained one insurance policy of Rs. 1,25,000/- and another policy for Rs. 8,00,000/- with accidental death benefit on 28.1.2008 and Shashi Kumar died on 31.1.2008. Opposite party repudiated claim on the basis of investigation done by Phantom Detective Agency which observed that insured expired due to high B.P. (pre-existing) and sudden heart attack. Learned Counsel for petitioner submitted that as per report of Shakti Nursing Home, Shashi Kumar was admitted in hospital on 21.12.2007 and was discharged on 24.12.2007 as he was complaining vomiting. Learned Counsel for petitioner submitted that insured consumed poison so he was admitted in Shakti Nursing Home. Perusal of Shakti Nursing Home''s case sheet does not reveal that insured consumed poison on account of which he was admitted in the Nursing Home. During the course of arguments, Learned Counsel for petitioner was directed to apprise what clinical findings have been mentioned in the case sheet and treatment chart. He submitted that he cannot explain and words are not legible and even in the typed copy it has only been mentioned that words are illegible. In such circumstances, it cannot be presumed that previously also insured attempted for suicide. Merely because insured was admitted in

Nursing Home on account of vomiting, it cannot be presumed that he falls within the purview of any Exclusion clause or he has suppressed material information in the proposal form. Not only this, petitioner has not filed any affidavit of investigator alongwith statement of neighbour recorded by him that insured''s body turned into bluish and committed suicide.

8. Perusal of record further reveals that insured had earlier taken policy of Rs. 2,25,000/- on 13.1.2007 and petitioner by letter dated 8.12.2008 allowed death claim and sent cheque for Rs. 2,25,000/- to the respondent. Once petitioner agreed to make payment of claim for earlier policy, there was no occasion for them to repudiate the claim for subsequent two policies as held by Hon''ble Karnataka High Court in 2011 (5) KCCR 3904 (DB)- B.U. Chaitanya Vs. The Managing Director, BMTC Division & Anr. ; in which it was observed as under:- " It is not in dispute that the Corporation has satisfied the said award. If that is so, the Corporation is estopped from contending that it is not liable to pay compensation in the other two claim petitions. It is well settled that once the Corporation has admitted the accident and paid the compensation in respect of a claim petition, it cannot raise a different stand in so far as its liability is concerned in the other claim petitions arising out of the same accident. They are estopped from doing so."

9. Learned Counsel for petitioner further submitted that insured mis-represented his income as Rs. 2,00,000/- p.a. as he had no income at the time of taking policy and was pursuing his studies. Learned Counsel for respondent submitted that insured was pursuing his C.A. course and was earning money during studies. Normally, CA students get stipend while pursuing CA articleship course. Petitioner has not placed any evidence on record by which it can be inferred that insured was not having any income to take policies. If insured was having income of Rs. 2,00,000/- p.a. and was a bachelor, there was nothing wrong in taking three policies and making payment of premium. Receipt of premium has not been denied by petitioners. In such circumstances, it cannot be presumed that deceased mis-represented his income.

10. I do not find any illegibility, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

11. Consequently, revision petitions filed by the petitioner are dismissed with no order as to costs.

