(1998) 01 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

Branch Manager, State Bank of India APPELLANT

Vs

USHA KUMARI S. RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Citation : 1999 1 CPC 156 : 1999 1 CPJ 102 : 1999 1 CPR 508

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order passed by District Forum, Idukki in O.P. No. 170/1993. The second opposite party is the appellant.

2. SHORTLY stated, the allegations in the complaint are follows : The complainant purchased a cow by availing a loan under the I.R.D.P. Scheme from the second opposite party-Bank on 3.7.1993. The complainant paid Rs. 419/- to the second opposite party-Bank for insuring the said cow with the first opposite party. The complainant also produced relevant documents with the second opposite party for getting the cow insured with the first opposite party. Accordingly the second opposite party represented that the cow is insured with the first opposite party. The complainant''s cow died on 13.7.1993 due to some sudden illness and the matter was intimated with the second opposite party and post-mortem examination was conducted by Veterinary Surgeon. The claim was forwarded to the first opposite party. The first opposite party rejected the claim on the ground that the Insurance Company has received the insurance premium only on 5.8.1993 whereas the cow died on 13.7.1993. Though the complainant requested to reconsider the matter the first opposite party rejected the claim. Hence the complaint. The first opposite party contended that the premium amount was not paid prior to the death of the cow and therefore there is no valid contract of policy.

The second opposite party filed a version stating that as per the understanding between the opposite parties and the instruction from the first opposite party, the second opposite party collects premium for getting insurance policy from die customers and all the premiums so collected will be sent to the first opposite party by the end of every month. The period of insurance will be from the date of acceptance of premium at the branch level. At the end of the particular month all the premiums received in the month will be sent in a lump alongwith details like the date of receipt of the premium, period the policy covers, sum insured, premium amount etc. It is prepared in a format supplied by the second opposite party. Accordingly the premium of the complainant was collected by this opposite party on 3.7.1993. The amount collected from customers till that date was Rs. 3,869/- vide the D.D. No. 556321 dated 27.7.1993. The particular format also was sent alongwith the D.D. On 24.7.1993 the Bank received a letter from the first opposite party requesting the Bank to send the premiums collected immediately on the receipt of the amount. The letter elated 2.3.1993 is received in the Bank only on 24.7.1993. Immediately on receipt of the said letter, the second opposite party stopped the practice made so far and started to send all the premia collected till that date. In the circumstances there is no deficiency on their part.

3. IT is not disputed that policy was issued by the opposite party insuring the cow with effect from 3.7.1993 for three years. A copy of said policy has been produced here. We are told that before the District Forum also a copy of policy was produced marked as Exhibit B2(a). The District Forum took the view that both the opposite parties committed deficiency and passed an order directing both the opposite parties to pay insurance amount. An amount of Rs. 1,000/- also was awarded for mental agony besides cost of Rs. 250/-. Feeling aggrieved by the said order this appeal has been preferred by the second opposite party.

4. AS pointed out by us earlier policy of insurance was issued by the first opposite party covering the risk from 3.7.1993 itself before the death of cow. The only contention taken by the Insurance Company is that the amount was received only later by D.D. dated 27.7.1993. The opposite party would not have issued the policy but for understanding and guarantee given by the Bank about the premium amount and the practice followed between Bank and the Insurance Company by which the Insurance Company was collecting the premium only by the end of each month. Of course subsequent to this incident, the opposite party has sent a letter to send premium as and when collected and it reached the Bank only on 24.7.1993 after the death of the cow. The issue of policy by the opposite party without receiving the amount can be explained only on the basis that there is such a guarantee from the Bank. We may also mention that the Insurance Company has not filed any appeal against the order passed by the District Forum fastening liability on the Insurance Company as well. If there is no valid contract normally one would expect the Insurance Company making reliance on Section 64(5)(b) but that provision can hardly have an application to this case for the reasons we have already stated. In the circumstances there is no justification for fastening liability on the second opposite party in this case. We therefore allow the appeal and hold that the first opposite party is liable to pay the entire amount. It is submitted before this commission that half of the award amount

has already been paid by the first opposite party. The balance will be paid by the first opposite party within a month from today. Appeal allowed.

