(2013) 05 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

CANARA BANK — APPELLANT

Vs

DEEP CHAND , LAL CHAND , The New India Insurance Co. Ltd. Through Its Divisional Manager — RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 483 : 2013 3 CPJ 225

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : VIJAY KUMAR , M.MOHAN , ANKIT GUPTA , R.B.SHAMI

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 03.02.2012 passed by the Haryana State Consumer Disputes Redressal Commission (for short ''the State Commission '') in FA No. 1297/2010, Canara Bank versus Deep Chand and Ors. " vide which, while dismissing the appeal, the order dated 02.06.2010 passed by District Consumer Disputes Redressal Forum, allowing the complaint filed by the respondents/complainants, Deep Chand and Lal Chand, was upheld.

2. BRIEF facts of the case are that both the complainants/respondents nos. 1 and 2 Deep Chand and Lal Chand applied for a loan for purchase of a tractor in the year 1994 which was sanctioned by petitioner/OP No. 1 Canara Bank for a sum of Rs.1,80,000/-. A hypothecation/hire-purchase agreement was also executed in respect of the said tractor between the complainants and the petitioner/OP No.1. As stated by the complainants, it was agreed between the parties that the tractor would be got insured by the petitioner/OP No.1 from time to time and the amount of premium payable to the insurance company would be debited to the account of the complainants. The tractor was got insured at the time of purchase with respondent no.3/OP No.2 in December 1994. Thereafter, the insurance policy was renewed for another year and was valid upto 4.12.96. The complainants have alleged that the petitioner failed to get the insurance policy renewed for a further period and in the meantime, the tractor met with an accident. At the time of settlement of motor accident claim, an amount of

Rs.2.65 lakh had to be paid by the complainants, because the insurance company refused to make payment in the absence of a valid insurance policy. It has also been stated that for further period before December 1996, the insurance was again got made by the petitioner. The complainants then filed consumer complaint before the District Forum alleging deficiency in service on the part of the petitioner and demanding a total sum of Rs.3 lakh with interest @12% p.a. as damages/compensation. The District Forum vide order dated 02.06.2010 directed the present petitioner to pay a sum of Rs.2.65 lakh along with interest @9% p.a. from the date of complaint till the date of payment. The petitioner was also directed to pay a sum of Rs.2200/- as litigation expenses to the complainants. An appeal filed against this order was dismissed by the State Commission on grounds of limitation as well as on merits. It is against this order that the present petition has been filed. While arguing the case, the learned counsel for the petitioner Canara Bank has drawn our attention to a document with the title ''Memorandum of Agreement for agricultural loans '' which was signed on 30.11.94 between the two complainants and the petitioner Bank. It has been stated in para 21 of this document that it was the duty of the borrower to take comprehensive insurance cover in respect of the said tractor. The learned counsel argued that if the party authorises the Bank to take insurance cover, then it becomes the duty of the Bank to get that cover. In the instant case, there was no deficiency in service on the part of the petitioner as the obligation to take insurance cover was upon the complainants.

3. LEARNED counsel for the respondents argued that the State Commission had rightly dismissed the appeal of the petitioner on grounds of limitation as well as on merits. There was a delay of 68 days in filing the appeal before the State Commission and it was explained that since the parents of the counsel for the petitioner before the District Forum were sick, he could not communicate the order of the District Forum to his client. The ground for condonation of delay was not found to be sufficient by the State Commission. Further, it was clear from the facts of the case that the Bank had obtained the insurance policy in the beginning and got it renewed for one more year. However, the Bank could not renew the policy for the year 1996 - 1997 but in subsequent years, the Bank has been getting the policy renewed and charging the premium to the account of the complainants. There was deficiency on the part of the Bank and insurance company because they had not intimated to the complainant that insurance policy had not been renewed. Only because of the negligence of the petitioner Bank, the complainants had to pay the amount of motor accident claim of Rs.2.65 lakh. There was, therefore, no infirmity in the orders passed by the State Commission and District Forum and the same should be upheld.

4. THE learned counsel for the respondent insurance company stated that since there was no insurance policy for the period, in question, the company was not liable to pay any compensation in the matter. In reply, the learned counsel for the petitioner stated that the delay of 68 days in filing the appeal before the State Commission should have been condoned looking at the facts and

circumstances of the case. Before the District Forum, the petitioner Bank was represented by Sh. Atul Mangla, Advocate, who was present at the time of pronouncement of order. However, the said Advocate could not convey the order to his client, because he was in great personal difficulty because both of his parents were admitted in the hospital at the same time for serious illness. Shri Mangla has filed an affidavit in this behalf and also stated these facts in his letter dated 21.08.2010 to the petitioner. Regarding the illness of his parents, copies of medical record have been placed on file which indicates that the parents of Shri Mangla had to be taken to different hospitals for treatment. The State Commission should, therefore, have condoned the delay in filing the appeal before it.

5. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. In so far as the delay in filing the appeal by the petitioner before the State Commission is concerned, the material on record makes it clear that the parents of the counsel for petitioner Bank before the District Forum were seriously ill and hence, the reasons explained for delay in communicating the order of the District Forum by the Advocate to his client are convincing. The State Commission should have condoned the delay in filing the appeal before it.

6. THE main issue involved in the present case is regarding the obligation for taking the insurance policy for the vehicle in question. It is true that as a matter of practice, the insurance policy was obtained by the Bank and the premium was charged to the account of the complainants. Barring period of one year, i.e., 1996-1997 during which the accident took place, the Bank has been obtaining the policy from the insurance company. The reasons for non-action on the part of the Bank for the year 1996-1997 have not been explained. However, from a strict legal point of view, the picture is clear that the owner of the vehicle is duty bound to take the policy and unless he authorises the bank in writing, the bank is under no obligation to take policy on his behalf. The clause 21 in the hypothecation agreement also makes it clear that it was the duty of the owner to get the insurance policy. We, therefore, find weight in the contention raised by the petitioner that he was not duty bound to take the insurance policy on his behalf and hence, there is no question of deficiency in service on the part of the petitioner. Based on the discussion above, we find that this revision petition deserves to be accepted because the orders passed by the State Commission and the District Forum do not stand the test of legal scrutiny. We, therefore, order accordingly. The revision petition is accepted and the orders passed by the State Commission and the District Forum set aside, with no order as to costs.

