(2004) 04 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

CHAIRMAN, L.I.C. OF INDIA — APPELLANT

Vs

SUDHIR SHAH — RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Citation : 2004 3 CLT 477 : 2004 4 CPJ 165 : 2005 1 CPR 276

Hon'ble Judges : D.P.S.Choudhary , Asma Ahmad J.

Final Decision : Appeal dismissed

Judgement

1. O.P. is the appellant who has preferred the appeal against the order dated 19.3.1997 passed by District Forum, Munger in Complaint Case No. 406/1996 whereby and whereunder the appellant has been directed to pay to the complainant a sum of Rs. 31,000/- only which includes the policy amount and the compensation and cost of litigation.

2. THE brief fact of the case is that complainant had obtained a money back policy which commenced from 28.11.1996. THE policy was obtained under table and term 74-15 for a sum of Rs. 25,000/- only. THE mode of payment of premium was quarterly. THE complainant paid premium regularly without any default from 28.1.1989 to 28.7.1989. THEreafter the complainant paid a sum of Rs. 1,623/- on 27.6.1994 against three quarterly premiums due on 28.10.1989, 28.1.1990 and 28.4.1990. THE reason disclosed by the complainant for delaying payment was that he has gone outside in connection with his business. THE above amount included three quarterly premiums with interest thereupon. It is further case of the complainant that on 27.11.1990 he paid premium of two quarters, 3.7.1990 and 22.10.1990 amounting to Rs. 1,067/-. This also included the interest thereupon. THE complainant did not pay further premium due to financial crunch on his part. THE complainant on 3.11.1993 requested the O.P. to do the needful for revival of the policy but no step was taken on the part of the O.P. in this regard. On 10.12.1994 the complainant again wrote a letter to the O.P. for revival of the policy and on his personal approach to the Divisional Office the entire dues of the sum of Rs. 6,250/- was adjusted in the premium which

amount was survival benefit lying with the L.I.C. and further Rs. 3,426.40 was paid by the complainant in cash for the revival of the policy as per demand of the L.I.C. THE complainant alleged that he thus deposited a sum of Rs. 9,676.40 and prayed for the revival of the policy. THE complainant received letter dated 28.8.1995 of the L.I.C. along with a cheque of Rs. 3,426.40 intimating that policy cannot be revived. According to the complainant the refusal to revive the policy is a case of deficiency in service on the part of the L.I.C. and thereafter he filed the complaint before the District Forum. The O.P.-L.I.C. appeared and filed show cause and in brief its case is that the entire claim of the complainant is vexatious. The claim of the complainant with regard to the payment of the policy on different dates is not correct. The amount of Rs. 1,623/- was paid for three quarters with interest but the policy could not be revived since the above amount was deposited in 8 months from the first unpaid premium. The complainant deposited the premium for 28.7.1990, 28.10.1990 and 27.11.1990 of Rs. 1,067/- without declaration of good health supported by medical certificate. This was also the ground for not reviving the policy. The policy of the complainant could not be revived after a lapse of five years as per terms and conditions of the policy bond. The payment made at Lakhisarai branch of Rs. 3,426.40 on 24.12.1994 was refunded back to the complainant by the said branch because the revival was not possible as per contract. The complainant has wrongly claimed Rs. 6,225/- for adjustment of amount dues on account of survival benefit. This amount was not payable to him because the policy has lapsed more than five years ago. The complainant claimed for adjustment of Rs. 9,076.40 against the fact of the case. The complainant was informed by the L.I.C. with regard to lapse of the policy vide letter dated 30.12.1994 and 28.8.1995, therefore, there was no deficiency in service on the part of the L.I.C.

The District Forum after considering the facts of both the parties held that L.I.C. was accepting the premium paid by the complainant after lapse of policy and has also accepted the interest thereupon, therefore, refusal to revive the policy on the ground that complainant had failed to submit doctor''s certificate and the policy has remained lapsed for more than five years was not accepted and it was held that not reviving the policy and payment of the policy amount to the complainant is a deficiency in service.

3. AT the time of argument before us the appellant''s lawyer placed the copy of the policy bond and drew attention towards Clauses 2 and 3 of the policy bond and it was submitted that when the premium is not paid within the dates of grace the policy lapsed. It may be revived during the life-time of the life assured but within a period of five years from the date of first unpaid premium and before the date of maturity on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be prevailing at the time of payment but not exceeding 9% per annum. The learned lawyer of the appellant contended that this clause has not been interpreted correctly by the District Forum, therefore, the impugned order is bad in law as well as on fact. The learned

Lawyer appearing on behalf of the respondent-complainant submitted that L.I.C. has not asked for payment of all the arrears of premium together with interest at the prescribed rate from the complainant. The complainant was informed that the period of five years from the date of first unpaid premium it expired although the period of five years had not expired from the date of last unpaid premium which was due from 28.1.1991 after the premium due on 28.7.1990 and 28.10.1990 have already been paid to and received and accepted on 27.11.1990 by the L.I.C. together with interest due on these premiums. Therefore, the L.I.C. has wrongly calculated five years period from the first unpaid premium. It was also argued on behalf of the respondent that L.I.C. has never asked for submission of medical fitness certificate for acceptance of due premium. On the other hand the L.I.C. has accepted the premium paid by the complainant without any objection. The complainant had no knowledge at all that any medical certificate is required.

4. WE have considered the submissions of both the parties, perused Clauses 2 and 3 of the policy bond and also carefully analyzed the order of the District Forum. The L.I.C. has repudiated the claim of the complainant mainly on two grounds as mentioned above: (i) No medical certificate was produced by the complainant when unpaid premiums were paid with interest. (ii) More than five years had lapsed from the date of first unpaid premium and hence the policy could not be revived. There is no material before us to show that before accepting the unpaid premium of unpaid policy with interest the L.I.C. has raised any objection and has asked for medical certificate from the complainant. The complainant is not supposed to know these rules and L.I.C. was duty-bound to ask for the medical certificate while accepting the due premiums. The premiums with interest were accepted without any objection and without demand of medical certificate amounts to acceptance of the premiums, which were due against the complainant. Therefore, on this ground the L.I.C. was not justified in not reviving the policy of the complainant. WE are in agreement with this finding of the District Forum that the L.I.C. has wrongly informed the complainant that the period of five years from the date of first unpaid premium has expired because the period of five years had not expired; from the date of last unpaid premium which would be due from 28.11.1991 after the premium due on 28.7.1990 and 28.10.1990 were already paid and received on 27.11.1990 with interest by the L.I.C. In the fact and circumstances Clause 3 of the policy bond is not applicable with the facts of the present case. From the facts mentioned above we are of the view that failure to revive the policy of the complainant was a deficiency on the part of the L.I.C. Therefore, the District Forum has rightly held that complainant is entitled for a sum of Rs. 25,000/- as the policy amount with bonus and interest thereupon. However, we are in agreement with the contention of the appellant that when L.I.C. has been directed to pay the bonus and interest on the premium amount the award of compensation of Rs. 5,000/- for mental agony would amount to double punishment which is not permissible. WE also agree with this contention of the appellant that rate of interest @ 18%

per annum is on higher side. It is reduced to 10% per annum. The cost of litigation to the tune of Rs. 1,000/- appears to be justified. In the fact and circumstances, the appeal is dismissed with above modification. The appellant-L.I.C. is directed to pay the complainant-respondent Rs. 25,000/- with bonus if payable and interest @ 10% from the due date till the date of payment and a litigation cost of Rs. 1,000/- within three months from the date of this order. Appeal dismissed.

