**(2002) 08 NCDRC CK 0037**

**In the National Consumer Disputes Redressal Commission**

Chinnasamy APPELLANT

Vs

PEERLESS FINANCE AND INVESTMENTS LTD. RESPONDENT

**Date of Decision :** 02-08-2002

**Acts Referred:**

**Citation :** 2003 1 CLT 633 : 2003 1 CPR 186 : 2003 3 CPJ 438

**Hon'ble Judges :** M.S.Janarthanam , Kayal Dinakaran J.

**Final Decision :** Appeal allowed

# Judgement

1. FACTS as culled out from the materials placed on record may in brevity be related in order to understand the crux of the issue arising for consideration in this action.

2. ONE C. Mariyathal, since deceased, was the wife of one A. Chinnasamy residing at No. 129, Venkatesapuram Colony, Perambalur, Trichy District. The Peerless General Finance and Investment Company Limited (1st opposite party) is having its head office at No. 3, Esplanade East, Calcutta - 700 069. The branch office (2nd opposite party) of the 1st opposite party is located at No. 521, Heber Road, Cantonment, Trichy-620 001.

One Rajeshwari (3rd opposite party) of Thozhudur village, it is said, is the agent of the 1st and the 2nd opposite parties.

3. NEW India Assurance Company Ltd., (4th opposite party) is located at Jerome Buildings, Fort Station Road, Trichy. The 1st opposite party floated a scheme going by the name Social Welfare Endowment Scheme - 10 Year Welfare Endowment Certificate. In the said social welfare scheme, C. Mariyathal, since deceased, whilst alive joined by remitting a payment of Rs. 1,000/- on 4.3.1994. As per the scheme, she has to remit a sum of Rs. 1,000/- every year for a period of 10 years. The maturity value after the elapse of 10 years in the said scheme is to the tune of Rs. 17,530/- as per the Tables 21 and 23 of the 1st opposite party. In case of death due to any accident prior to the maturity period, the member of the scheme will be paid the maturity amount to the nominee of the member in

the scheme by the 4th opposite party Insurance Company Limited with whom the 1st opposite party took a policy of insurance covering the members of the scheme. She appears to have joined the scheme at the instance of the 3rd opposite party agent.

4. THE said Mariyathal died on 4.1.1995 whilst engaged in cleansing operation of her house due to snake bite. THE nominee of C. Mariyathal is none else than her husband Chinnasamy (complainant). Subsequent to her death by snake bite, she made a claim with the opposite parties 1 and 2 who in turn referred the matter to the 4th opposite party Insurance Company. THE 4th opposite party Insurance Company intimated the 1st opposite party by their letter stating that death due to snake bite and dog bite is not covered under the scheme evolved by the 1st and 2nd opposite parties and consequently they are not liable to pay the maturity value to the nominee/complainant of the deceased Mariyathal. The complainant in such a backdrop and setting knocked at the doors of the Forum below alleging deficiency in service on the part of the opposite parties and claiming certain reliefs as prayed for in the complaint. The opposite parties 1 and 2 filed a common counter while the opposite parties 3 and 4 filed separate counters. The 1st and 2nd opposite parties in pith and substance would contend that under the scheme death due to accident of snake bite or dog bite is not at all covered and, therefore, it is the nominee of the deceased, namely the complainant is not entitled to the maturity amount. The complainant as per the scheme is entitled to refund of the money on priority basis on the amount deposited and on such basis, the complainant is entitled to receive Rs. 1,082.85 from the 1st and the 2nd opposite parties. As such, it cannot be stated that there is any sort of a deficiency in service on their part. The complaint as such is liable to be dismissed as against them.

5. THE 3rd opposite party in her counter would state that she after all received the amount of Rs. 1,000/- from the deceased Mariyathal and remitted the same in the office of the 2nd opposite party and she has no objection for the nominee of the deceased, namely the complainant to receive the maturity amount under the scheme as a consequence of the death of the deceased due to snake bite.

6. THE 4th opposite party Insurance Company would contend that the opposite parties 1 and 2 had not at all informed the alleged snake bite claim with documents to substantiate such a claim of death. THEy are further duty bound to inform the accidental death by collecting all relevant documents by routing through them. THErefore, on their failure to do so, liability if any, has to be borne by the opposite parties 1 and 2 on the violation of the terms and conditions for the tie-up agreement entered into between them and the opposite parties 1 and 2. Liability arising out of death due to snake bite is excluded by the terms and conditions of the agreement entered into with the opposite parties 1 and 2. To be specific, the cause of death out of snake bite, dog bite and insect bite are clearly out of the purview of nomenclature called accidental death. THErefore, there cannot be any liability fastened upon this opposite party. Further, liability cannot

 

be mulcted upon them since the opposite parties 1 and 2 themselves deny their liability for the accidental death of snake bite. THE complaint as such deserves to be dismissed as against them. The Forum below after taking into consideration the materials placed on record dismissed the complaint without costs holding that death due to snake bite is not covered under the scheme. The order of the Forum below is dated 11.3.1999.

Aggrieved by the order as above the complainant resorted to the present action by engaging a Counsel of his choice, namely learned Counsel Mr. B. Sundar.

7. ON service of process, the respondents 1 and 2/opposite parties 1 and 2 entered appearance through a Counsel of their choice, namely learned Counsel M/s. S.S. Rajesh. Respondent No. 3/opposite party No. 3 also entered appearance through her learned Counsel M/s. M. Jothi. Respondent No. 4/opposite party No. 4 entered appearance through a Counsel of their choice, namely learned Counsel M/s. Lakshmipriya Associates. When the matter came up for hearing before us today, learned Counsel Mr. B. Sundar appearing for the appellant/complainant is called absent and no representation is made on his behalf. This apart, learned Counsel M/s. M. Jothi representing the 3rd respondent/3rd opposite party is also called absent and no representation is made on her behalf. Learned Counsel M/s. Lakshmipriya Associates, representing respondent No. 4/opposite party No. 4 is also called absent and no representation is made on their behalf. The fact that learned Counsel appearing for the appellant/complainant, respondent No. 3/ opposite party No. 3 and respondent No. 4/opposite party No. 4 were absent does not mean that we cannot dispose of the appeal on merits of course after hearing arguments of learned Counsel M/s. S.S. Rajesh appearing for the respondents 1 and 2/opposite parties 1 and 2. That is exactly what we have done in this case.

8. WE perused the grounds of appeal. Learned Counsel Mr. S.S. Rajesh appearing for respondents 1 and 2/opposite parties 1 and 2 would with all force and vehemence contend that under the scheme, any member like the complainant/ nominee''s wife Mariyathal if died due to snake bite or dog bite, the nominee of such member is not entitled to the payment of the maturity amount. What is further submitted by the said learned Counsel is that in such an event, the nominee of the deceased member like the complainant would be entitled to the refund of the amount on prorata basis on the amount of the deposit and if calculation is made on such a basis, the complainant/nominee would be entitled to receive a sum of Rs. 1,082.85 from the opposite parties 1 and 2. What is further contended is that the opposite parties 1 and 2 took a policy of insurance covering the risk of accident to the members of the scheme with the 4th opposite party Insurance Company which alone is liable to make the payment to the nominee of the deceased member under the scheme. The 4th opposite party Insurance Company, he would say, also intimated by means of a letter to the 1st and the 2nd opposite parties stating that death due to snake bite or dog bite is not covered under the scheme. From the perusal of the Grounds of Appeal and

 

other materials placed on record and from the pith and submission of learned Counsel M/s. S.S. Rajesh appearing for the respondents 1 and 2/opposite parties 1 and 2, the points as below emerge for consideration. (1) Whether death due to accident of snake bite or dog bite is excluded from the purview of the Social Welfare Scheme evolved by the opposite parties 1 and 2 ? (2) To what relief the complainant is entitled to ?

9. POINT No. 1 : There is no pale of controversy that Mariyathal, since deceased, joined the 10 Year Social Welfare Scheme evolved by the opposite parties 1 and 2 by remitting a sum of Rs. 1,000/- on 4.3.1994. It is also not in dispute that the scheme she joined is to enure for a period of 10 years. What is not further in dispute is that in case she happened to be alive for the entirety of the period of 10 years, she will be paid the maturity value to the tune of Rs. 17,530/- as disclosed by the Tables 21 and 23 of the opposite parties 1 and 2. It is also not in dispute that the opposite parties 1 and 2 entered into a tie-up arrangement with the 4th opposite party Insurance Company. It is further admitted that the 3rd opposite party acted as an agent of the opposite parties 1 and 2 in canvassing the members of the public to join the scheme as evolved by the opposite parties 1 and 2.

10. EX. A2 is the copy of the Endowment Certificate issued by the opposite parties 1 and 2 in favour of C. Mariyathal, since deceased while EX. B1 is the original. We have carefully perused the terms and conditions, provisos, exclusions, if any, in the 10 Year Social Welfare Endowment Scheme as evolved by the opposite parties 1 and 2 marked as EX. A2/B1. On such perusal, we are unable to find any sort of an exclusion clause of death arising as a consequence of bite death due to snake or dog. We are able to trace a clause in the said scheme which runs as under : "Personal Accident Insurance Coupon (Age Limit : 12-45 Years) Whereas the insured named herein or on his/her behalf, the Peerless General Finance and Investment Co. Ltd., has paid to the New India Assurance Company Limited (hereinafter called the Insurance Company) the premium for the insurance of the risk of death due to any bodily injury resulting solely and directly from accident caused by outward violent and visible means, the Insurance Company shall pay the capital sum insured provided such injury shall within six calendar months of its ocurrence be the sole and direct cause of death of the insured to the NOMINEE or Legal Representative stated in the Welfare Endowment Certificate stated in the Schedule overleaf issued by The Peerless General Finance and Investment Co. Ltd., Calcutta subject to the terms, exclusions, definitions, conditions stated herein or otherwise expressed hereon:"

From what has been extracted above, it is rather crystal clear that the 1st and 2nd opposite parties, it is said, had paid the necessary and requisite insurance premium to the 4th opposite party Insurance Company covering the risk of the member of the scheme like the complainant - nominee''s wife Mariyathal. The member of the scheme has to sustain an injury resulting solely and directly from accident caused by outward violent and visible means. The death must have to be caused due to such injury within six calendar months of its occurrence. In such an eventuality, the nominee or the legal representative of the insured shall be paid the capital sum insured by the Insurance Company. What is further stated therein is such payment is subject to terms, exclusions, definitions and conditions stated therein.

The moot question that arises for consideration herein is as to whether the clause as extracted above will take in its fold, the accident of death due to snake bite. In order to answer this question, we have to understand the synonym or the meaning of the word ''accident'' used therein. The meaning of the word ''accident'' as provided by Chambers 20th Century Dictionary, New Edition 1983 at page 7 is reflected as below : "accident" - that which happens; an unforeseen or unexpected event; a chance; a mishap;...." The meaning of the word ''violent'' as given by the Concise Oxford Dictionary Tenth Edition at page 1600 is as below : "violent" - using or involving violence; very intense, forceful, or powerful :" The meaning of the word ''visible'' is traceable to the same Oxford Dictionary at page 1602 and it is as below : "visible" - able to be seen; ...able to be perceived or noticed easily."

11. FROM the synonym or meaning of the word ''accident'' as stated above, it is crystal clear that the ''accident'' is an unforeseen or unexpected event. The accident or so to say an unforeseen or unexpected event happened to the insured Mariyathal in the case on hand was snake bite while she was engaged in cleansing operation of her house on the eve of Pongal. She could have never expected or anticipated that while she was engaged in such act of cleansing operation that too within the house in broad day light she would have been stung by a snake resulting in injury and then taken to the hospital for treatment wherein she died as a consequence of a bite by a snake. The Doctor''s certificate had been marked as Ex. A4. FROM a perusal of the said certificate, we are able to perceive that her death was caused as a consequence of a snake bite. FROM the certificate issued by the Doctor marked as Ex. A4 pointing out the death of the deceased due to snake bite in crystal clear terms, it is permissible to infer that the Doctor could have seen the visible injury on the body of the assured Mariyathal caused as a consequence of a snake bite culminating in her death. Such being the case, to say that the clause in the said scheme does not cover death due to snake bite cannot at all be expected to commend acceptance at our hands. We feel sorry to state that the Forum below perhaps being in an oblivious state did not scan or scrutinise the documents marked in the case and that perhaps was the reason for it to have committed a very grave serious blunder in dismissing the complaint without affording any sort of a relief to the nominee of the deceased/assured, namely the complainant. The injury caused as a consequence of snake bite resulting in the death of the assured Mariyathal happened within the prescribed time as contemplated by the clause. The accident of snake bite happened on 4.1.1995 and she also died on the very same date despite treatment. Therefore, the assured deceased died within six months from the date of causation of the injury as a consequence of snake bite. No tangible

material in the shape of any document had placed on record by the opposite parties 1 and 2 pointing out that in case of death due to snake bite, the assured deceased is not entitled to the sum assured but only entitled to the payment of the refund of amount on prorata basis of the deposit amount as urged by learned Counsel appearing for the opposite parties 1 and 2. We are also unable to trace any sort of such terms or conditions traceable to the 10 Years Social Welfare Scheme as evolved by them.

12. FOR the reasons as above, we are of the view that the scheme as evolved by the opposite parties 1 and 2 take in its fold death due to accident of snake bite. This point is thus answered. Point No. 2 : Though the scheme evolved by the opposite parties 1 and 2 which had been marked as Ex. A2 specifically stated that he had paid the insurance premium covering the risk of accidental death of the assured/deceased to the 4th opposite party Insurance Company, yet the opposite parties 1 and 2 did not place any tangible material in the shape of document that they in face paid the insurance premium to the 4th opposite party Insurance Company for covering the risk of the accidental death of the assured/ deceased. This apart, though it is admitted that the opposite parties 1 and 2 had some sort of a tie-up arrangement or agreement to the 4th opposite party with regard to the payment of the assured sum in the event of death caused as a consequence of accident, yet the tie-up arrangement that had been entered into by the parties had not been placed on record. The 4th opposite party Insurance Company nowhere in the counter filed admitted the payment of the premium paid by the opposite parties 1 and 2 covering the risk of the death of the assured due to accident. It is simply stated in their version that they were not at all informed as respects the event of snake bite caused to the assured/deceased by the opposite parties 1 and 2. What is further stated in the version so filed is an opinion expressed as respect what ''accident'' mens. It is none of the business of the 4th opposite party Insurance Company to give any verdict or opinion as to the synonym or the meaning of ''accident''. It is for the Fora constituted under the Act to consider the synonym or meaning of ''accident''. As such, it is crystal clear that the opposite parties 1 and 2 did not at all provide any insurance cover as respects the risk of death of the assured due to accident. The non-payment of the premium for taking a policy covering the risk of the death of the assured due to accident on the part of the opposite parties 1 and 2 would definitely tantamount to deficiency in service on their part. As already adverted to, the 3rd opposite party acted as the agent of the opposite parties 1 and 2 in collecting the instalment amount from the deceased Mariyathal who joined the scheme as evolved by the opposite parties 1 and 2. Such being the case, no liability can be mulcted upon the 3rd opposite party.

13. THE 4th opposite party Insurance Company cannot at all be mulcted with any liability for the payment of the sum assured inasmuch as already indicated no material worth the name had been placed on record by the opposite parties 1 and 2 pointing out that they, as a matter of fact, took a policy of insurance by remitting the premium amount covering the risk of death of the assured. Such

 

being the case, it goes without saying that the opposite parties 1 and 2 are squarely liable to pay to the nominee of the deceased/assured the maturity amount payable with reasonable interest.

14. THE assured/deceased died on 4.1.1995 and thereafter on 10.2.1995 she made a claim to the opposite parties 1 and 2 by despatching the necessary and relevant documents. THE claim so made however had not been honoured. For the consideration of the scheme by the opposite parties 1 and 2, a reasonable time of three months may be given from the date of the claim, i.e., 10.2.1995. Three months'' time reckon from 10.2.1995 will take us to 10.5.1995. Such being the case, the opposite parties 1 and 2 must have to be mulcted with the liability for payment of interest at the reasonable rate on and from 10.5.1995 onwards on the maturity amount, that is to say, Rs. 17,530/-. We feel it won''t be besides justice to award interest on the maturity amount of Rs. 17,530/- @ 12% p.a. on and from 10.5.1995 till realisation. We order accordingly. THE point is thus answered. In fine, the appeal is allowed; the order of the Forum below is set aside and the opposite parties 1 and 2 are directed to pay to the complainant, the husband of the assured/deceased Mariyathal, a sum of Rs. 17,530/- with interest @ 12% p.a. on and from 10.5.1995 till date of realisation. The appeal as against the 3rd respondent/3rd opposite party, 4th respondent/4th opposite party fails and no relief is granted to the complainant as against them. We however make no order as to costs on the facts and in the circumstances of the case. We make it crystal clear that the award as made by us as against the opposite parties 1 and 2 is required to be complied with by the opposite parties 1 and 2 within a month from the date of receipt of our order or otherwise the complainant would be perfectly at liberty to invoke the jurisdiction of Section 27 of the Consumer Protection Act, 1986. Appeal allowed.

 