(2005) 06 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

CHUMAN BAI APPELLANT

Vs

INTUC BHILAI STEEL PLANT UNION RESPONDENT

Date of Decision : 17-06-2005

Acts Referred:

Citation : 2006 1 CPJ 150

Hon'ble Judges : V.K.Agrawal , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. BY this appeal, under Section 15 of Consumer Protection Act, 1986 the order dated 17.2.2005 in Complaint No. 159/2003 by District Consumer Disputes Redressal Forum, Durg (hereinafter called the ''District Forum'' for short) has been challenged. BY the said order, District Forum has dismissed the complaint of the appellant.

2. INDISPUTABLY, Dirween Das Verma, husband of the complainant, was an employee of Bhilai Steel Plant (BSP for short) and was a member of Indian National Trade Union Congress (INTUC for short). It is further not in dispute that there was a memorandum of understanding between INTUC and respondent No. 2- Oriental Insurance Company for covering the risk on the life of the member of INTUC and their spouse, who were the employees of BSP. It is also not in dispute that in pursuance of the said memorandum of understanding, Janta Personal Accident Insurance Policy (''Janta Policy'' for short) was issued by responded No. 2 covering the risk on the life of the said Dirween Das Verma from 9.1.1999 to 8.1.2011. According to the averments of the complainant, her husband insured Dirween Das Verma was murdered on 30.10.2000 and thus died on accidental death. The complainant, wife of the insured, intimated the incident to respondent No. 1 INTUC. However, since the claim amount was not paid to her, she filed an application on 31.1.2003 to the respondent No. 2-insurer. The claim was repudiated by respondent No. 2-insurer by their letter dated 26.2.2003 on the ground that the claim was submitted by the complainant belatedly after 27 months. Feeling aggrieved, she filed the complaint.

Respondent No. 1-INTUC remained absent and did not take part in the proceedings of the complaint.

3. RESPONDENT No. 2-insurer resisted the complaint mainly on the ground that the complainant did not approach them promptly and intimated about the incident after about 27 months. It was also averred that as the deceased was murdered, he did not die an accidental death. It was, therefore, averred that repudiation of the complainant''s claim was justified. District Forum in the impugned order upheld the contentions of respondent No. 2-Insurer and held that as the intimation of the incident of death of the deceased was given with great delay after 27 months, there was breach of terms of policy by the complainant and, therefore, she could not succeed in her complaint. The complaint was accordingly dismissed.

4. LEARNED Counsel for the parties were heard and record perused. As noticed above, Dirween Das Verma was indiputably covered under Janta Policy issued by respondent No. 2-insurer covering the risk from 9.1.1999 to 8.1.2011. According to the complainant the deceased was murdered. The above fact is fully fortified by the F.I.R. and other documents relating to the said incident, copies of which have been placed on record. In fact, respondent No. 2 insurer has also not disputed that the deceased was murdered. In fact their plea was that since the deceased insured was murdered, his death cannot be treated as accidental one. The plea as above, is not sustainable. It is clear that the deceased did not die a natural death. He was murdered and thus as the end of the life of the deceased was not in normal course and as he was murdered, his death will be treated as an accidental one. It may also be noticed that the repudiation of the complainant''s claim was also not based on the ground that the deceased did not die of accidental death. It may further be noticed that letter of repudiation of respondent No. 2-insurer dated 26.2.2003 addressed to the complainant states: "We are in receipt of your letter dated. 31.1.2003 along with enclosures. We would like to inform you that we are not able to consider your claim as per our policy condition No. 1 i.e., on happening of any accident insured''s family member have to inform the company immediately. You had submitted your claim on 31.1.2003 i.e., after 27 months, we would further like to inform you that we have cancelled our policy on 26.11.2001."

It may be noticed, that though in the letter of repudiation it is stated that the policy was cancelled on 26.11.2001, neither the plea as above has been raised in their written version, nor such a plea appears to have been raised before the District Forum. Moreover, there is no material on record to show that cancellation of policy was ever communicated to the insured. Therefore, the plea that the policy was cancelled cannot be accepted.

5. IN view of the above, the only question that requires consideration is: as to whether the complainant''s claim having been submitted to respondent No. 2/ insurer belatedly, the same would result in its frustration?

6. IT appears that the complainant in para 5 of the complaint averred that she intimated respondent No. 1-INTUC about the death of her husband/insured. The plea as above has not been denied by respondent No. 1-INTUC. In fact, as already noticed, respondent did not appear and did not file any written version. Respondent No. 2-insurer has also not specifically denied the complainant''s pleading as above. Hence the allegation of the complainant that she informed the INTUC, deserves to be accepted. Learned Counsel for respondent No. 2-insurer drew our attention to condition No. 1 of the policy, which states that the insurer was to be intimated about the event on the basis of which the claim arose. However, in case the condition No. 1 as above is held to be applicable in terms thereof, then the deceased/insured, could possibly not carry out the same; because the event on the basis of which the claim was to arise under the policy, was the death of the insured. Therefore, there was no question of the insured intimating the insurer about his death. IT appears that the said clause in fact relates to intimation by the insured INTUC as mentioned in the memorandum of understanding, copy of which has been filed as Annexure-B2 in this appeal. That being so, it was obligatory for the INTUC to have intimated respondent No. 2 insurer company about the event i.e., death of the deceased Dirween Das Verma. Therefore, non-performance of the condition No. 1 as above by the respondent No. 1, would not result in frustration of the claim of the complainant. Moreover, it may be noticed that the complainant is illiterate lady and she appears to have preferred claim to respondent No. 2 later on 31.1.2003 presumably on being so advised. That being so, she cannot be faulted with for not preferring the claim promptly. Accordingly, her claim could not have been repudiated on that ground.

Learned Counsel for respondent No. 2 submitted that delay amounts not only to frustration of the claim of the complainant but the complaint was also barred by limitation. He relied upon the decision of Supreme Court in Kerala Agro Machinery Corporation v. Kumar Roy & Others, II (2002) SLT 267=2002 (3) CPR 107 (SC). In the said case it appears that claim was barred by limitation and the said aspect of the matter had not received due consideration by Consumer Fora. Therefore, Supreme Court allowed the appeal and set aside the judgment of District Forum, State Commission and National Commission. However, the ratio of the said case does not apply to the case in hand. As noticed earlier, the complainant intimated about the incident to respondent No. 1 and, therefore, she could reasonably expect that her claim would be duly processed by INTUC and that it shall forward the same to the competent authority i.e., respondent No. 2 insurer. However, as her claim was repudiated on 26.2.2003, the limitation for filing complaint would start running from that date. Even if the complaint was to be treated as filed beyond limitation, in the foregoing circumstances we consider that there was reasonable cause for delay and the same deserved to be condoned. In fact the plea that the complaint was barred by limitation, has not been raised by respondent No. 2 in their written version. In fact their plea was to the effect, that the complainant''s claim was not entertainable as the intimation was given to the insurer belatedly.

7. LEARNED Counsel for respondent also relied upon the decision of Tamil Nadu State Consumer Disputes Redressal Commission, Chennai in Minor M. Lakshmidharan v. National Insurance Co. Ltd. & Another, IV (2004) CPJ 614=2005 (1) CPR 521, and that of State Consumer Disputes Redressal Commission, Karnataka, Bangalore in Valerian S.J. Lobo v. The Oriental Insurance Co. Ltd. & Another, II (2002) CPJ 375=2002 (2) CPR 367, wherein it was held that if the insured commits violation of terms of policy, repudiation of his claim would be justified. Here in the instant case, we do not find any violation of terms of policy by the complainant. Learned Counsel also relied upon the decision of Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad in Branch Manager, Life Insurance Corporation of India v. Kolli Venketeswara Rao, I (2004) CPJ 78=2004 (1) CPR 333, wherein it was held that claim was repudiated as per terms of the LIC. It was accordingly held that there was no deficiency in service by LIC. As noticed, we do not find that there was violation of terms of policy by the complainant/appellant, hence the ratio of the said case would also not render any assistance to respondent No. 2''s stand.

8. ACCORDINGLY, dismissal of the complaint by the District Forum was not justified. The impugned order is set aside. The complaint and the appeal is allowed. It is directed that respondent No. 2 insurer shall pay the assured amount of Rs. 5,00,000 to the complainant/appellant with interest @ 9% p.a. payable thereon from the date of the complaint. The above amount shall be deposited by respondent No. 2 within 2 months from the date of this order, failing which interest @ 12% p.a. shall be payable from the date of default. Appeal allowed.