(1993) 01 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

DARSHNA DEVI — APPELLANT

Vs

L.I.C.OF INDIA — RESPONDENT

Date of Decision : 06-01-1993

Acts Referred:

Citation : 1993 0 CPC 156 : 1993 1 CPJ 185

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Complaint dismissed

Judgement

1. THE threshold question is whether the pleadings herein give rise to such complicated question of facts and law so as to preclude its trial in the somewhat summary consumer jurisdiction.

2. FOR the limited purpose of adjudicating on the preliminary jurisdictional objection raised by the opposite party (which we are inclined to up- hold) it is unnecessary to delve deeply into the facts and the merits. Suffice, it to mention that the complainant Darshna Devi is the widow and nominee of one Vishnu Chand Saini (hereinafter referred to as the deceased) who had allegedly taken out a life insurance policy No. 170415378 for Rs. one lac on the 30th of March, 1991. The case set up in the complaint is that the deceased had come to the house of his in-laws where he got his life insured at Jind on the 30th of March, 1991, but within a day thereof, he died on the 31st of March, 1991 in a disastrous bus accident in which alongwith him 33 other persons lost their lives by drowning due to the bus falling into a canal. The dead body of the deceased could only be recovered from the canal 4 days later on the 4th of April, 1991 and thereafter the autopsy thereof was performed and the death certificate obtained. An insurance claim to the tune of Rs. three lacs on the basis of the policy covering a triple risk was then lodged with the Life Insurance Corporation (hereinafter referred to as the Corporation). However, the Corporation took its time to investigate the matter and virtually repudiated the claim compelling the unfortunate widow to knock at the door of this Commission. In the written reply and in particular the amendment thereto, a firm preliminary objection has been

raised, apart from controverting the complainant''s averments on merits. It is pointed out that in the present case a blatant fraud has been attempted on the opposite party in setting up the insurance policy. The very identity of the deceased and the proponent who allegedly put in the proposal papers and paid premium is disputed. The suspicious circumstances in which the policy is alleged to have been procured on the very last day of the financial yearon 31st of March, 1991 and the alleged circumstantial improbabilities and the forgery have been highlighted. The firm stand taken is that plainly on the pleadings a mass of detailed evidence on deeply contentious issues on points of fact and law would necessarily have to be examined on behalf of the opposite party which cannot appropriately be adjudicated in the present summary jurisdiction.

Mr. Brij Jit Singh, the learned Counsel for the opposite party has with ability projected the deeply entangled questions herein which would need apart from other evidence, expert testimony and equally contentious legal issues with regard to the validity or otherwise of the insurance policy.

3. WE find patent merit in the stand taken on behalf of the opposite party. What first meets the eye herein is the fact that a responsible public organisation like the Corporation after investigation is setting up the plea that a blatant fraud has been committed in the present case wherein after the accidental death of the deceased on the 31st of March, 1991 a triple risk policy in his name has been forged and fabricated to secure financial benefits for the complainant and her family. It has been forcefully submitted that the very surrounding circumstance of the execution of the policy is clouded with a suspicion. The deceased, forgetting a insurance policy is allegedly to have gone to the house of his in-laws and secured the insurance cover on the 30th of March, 1991 and thereafter died within hours thereof on the 31st of March, 1991. It is pointed out that the complainant''s brother is himself an agent of the Corporation who is probably instrumented in setting up the policy, but in order to ward off suspicion had the same executed through another agent. In this fact situation, what will have to be adjudicated herein is the unravelling of an ingenious and designed fraud allegedly committed in collusion with the Corporation''s agents. As already noticed, the very identity of the person, who allegedly was the proponent and that of the deceased is frontally questioned on be half of the opposite party. It is rightly pointed out that whilst the complainant mentioned her husband''s name as Shri Vishnu Chand Saini which is so recorded in the policy also, the post-mortem conducted on the 4th of April, 1991 mentions the name of the deceased as Vishnu Parshad. The matter herein has to be examined in the context that there was the mass tragedy of 34 bus passengers being drowned in the accident on the31stof March, 1991 and the post-mortem being conducted four days thereafter on decomposed or defaced human bodies, where the identify of so many persons was in issue. Further confusion then arises from R-2, the certificate of the Haryana School Education Board, allegedly pertaining to the deceased. Herein the recorded name is that of Vishnu Dutt Saini. On these premises Mr. Brij Jit Singh''s stand was that herein the very identity of the

deceased and the alleged proponent of the insurance policy has been put in serious dispute which cannot easily be determined before the redressal agencies under the Act.

4. THE primal stand then on behalf of the opposite party is that the insurance papers have been manipulated soon after the death of the deceased to reap a financial benefit therefrom inclusion with the corporation''s agent. It is rightly highlighted that the very address and the place from where the insurance policy has been allegedly taken out a few hours before the death of the deceased is a glaringly mysterious circumstance. Counsel then highlights the fact that on 30th of March, 1991 was a Saturday, when the office of the Corporation closed for the half day at 1.30 p.m. Somewhat curiously the medical examination of the deceased for the purposes of the policy was done at 3.30 p.m., but the relevant papers were attempted to be interpolated into the Corporation''s record after the closure of its offices. In this context, reliance was placed on R-12 which is a communication from the medical examiner concerned taking up the plea that the two medical examiners diaries alongwith some other articles had been taken away on the 22nd of April, 1991, thus deeply thickening the mystery of the purported medical examination at that time. On behalf of the opposite party reliance was also placed on R- 9 and the signatures thereon were disputed and it was further pointed out that some of them were so designedly illegible as to be beyond the scope of deciphering. Yet again the opposite party''s plea based on enquiries and resting on R-13 as well is that the deceased was not at all of a financial status who could envisage a insurance policy of Rs. one lac with triple benefits etc. Equally it was highlighted that the alleged completion of the policy took place only after the death of the proponent and as a matter of law difficult questions as to the very validity of it inevitably arise. From the aforesaid resume of the pleadings, facts and the documents brought on the record, it is somewhat plain that the lis here raises deeply contentious and entangled issues of both law and facts which cannot be decided without a close appraisal of a mass of intricate and detailed evidence including medical and hand-writing experts testimony. It is well settled that this is not the province of the consumer jurisdiction and has best to be left appropriately in the hands of the Civil Courts. If authority is needed for the proposition the same is available in plenty. Reference may be instructively made to the binding observations of the National Commission in II (1992) CPJ 487 (NC) ''Pana Lal v. Bank of India & Others'' and II (1992) CPJ 517 (NC) ''A. Jayachandra Kumar v. Chairman State Bank of India & Another''. More particularly the same view has been expressed in the particular context of insurance claims in I (1991) CPJ 234 (NC) ''Janta Machine Tools v. Oriental Insurance Co. Ltd.'', II (1992) CPJ 640 ''Janki Devi v. The New India Assurance Co. Ltd.'', II (1991) CPJ 354 ''Continental Chemical Limited v. Oriental Insurance Co. & Anr: and II (1991) CPJ 437 ''Pradeep Bleaching Works v. Branch Manager, United India Insurance Co. Ltd. & Ors.''

5. TO conclude for the detailed reasons recorded above, we would uphold the preliminary objections raised by the Corporation. Consequently, we relegate the

complainant to resort to the more appropriate remedy in the Civil Court, if so advised. This complaint is disposed of in these terms without any orders as to costs. Complaint dismissed. _____

