(1992) 08 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

DHANU DANTA APPELLANT

Vs

SANGEETA KUMARI DEVI RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : 1992 2 CPR 381 : 1992 3 CPJ 217

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi , J.Patnaik J.

Final Decision : Appeal allowed as indicated

Judgement

1. THIS is an appeal by the complainants under Section 17(a) (ii) of the Consumer''s Protection Act, 1986 (hereinafter referred to as the Act).

2. CASE of the complainant is that their son Pradip Kumar Danga, was a driver of Respondent No. 1 in Vehicle bearing registration No. DAV 4055. Respondent No. 2 was the insurer. On 22.9.90 at about 3.A.M. the vehicle driven by the deceased met with an accident which resulted in his death. To get compensation of Rs. 76,385/- complaint was filed before the District Forum. District Forum having held complainants are not consumers dismissed the complaint. This is grievance of appellants.

''Consumer'' has been defined in Section 2(d) of the Act to be a person who buys goods and also includes persons who use the goods with approval of the purchaser. A person who hires services of another or who is a beneficiary of such service availing of the same with approval of the person who hires the service Consumer is authorised to file complaint in respect of defect in the goods purchased or used or deficiency in service hired or benefits obtained.

3. CAR is the goods in this case. No defect is alleged in respect of the car. Therefore, it need not be examined whether dependents of a driver who died in the accident of the car while driving it, are consumers. That question does not arise for consideration. Dependents of a driver employed by owner of a car do not hire any service of the owner. Accordingly, there is no service rendered by owner of the car to them which can be said to be deficient. Payment of

compensation under Workmen''s Compensation Act is not a service rendered. Complaint against the owner is liable to be dismissed.

4. THERE can be no doubt that owner of the car has hired the services of the insurer to cover the risk in respect of the driver of the vehicle if the terms of the policy, cover the same. THEREfore, driver is a beneficiary of the service of the insurer with approval of the owner who has hired the 2 service of the insurer on payment of premium, if terms of policy cover the same. Payment of compensation to driver for injuries sustained by him while driving the vehicle in course of employment and arising out of it is the benefit to be received by the driver injured or (in case of fatal injuries) dependents of the driver. In such circumstances they are the beneficiaries using the service with approval of the owner who has hired the services of the insurer. District Forum is not correct in its conclusion that complainants are not consumers. It is not asserted by the insurer that the conditions of the policy do not cover the risk for which the compensation amount is not paid. No payment of compensation for which insurer is liable is a deficiency in service of the insurer and direction can be given by the redressal agency constituted under the Act to render the service by paying the compensation. There is no assertion of the complainants that they made a demand to the insurer. It is also not asserted that the owner made a claim but insurer did not take such claim into consideration. Absence of reasonable consideration of a claim made to it by an insurer is a deficiency in service. In absence of any period or limitation, even though delay may not be a deficiency in service, latches which caused delay would be a deficiency in service.

5. INSURER is now a nationalized organisation. It has its own procedure for entertaining a claim are considering it These procedures are laid down by the insurer itself. They are not statutory and are thus not known to everybody. Being a nationalised organisation it is to work for welfare of people. When information of injury or death is received by insurer which is said to be on account of accident of a vehicle stated to be under insurance of the insurer, it should first find out the policy and its terms. For that purpose it has to take assistance of the owner who has paid the premium and obtained the policy. If any proforma is to be filled up, it should get the same from the owner or workman driver/cleaner or dependents whose risk is covered. Thereafter, it should make an enquiry to be satisfied that the claim is justified so that it can avoid unscrupulous claims. Once it is satisfied, it should come forward to settle the claim. Non-settlement even after satisfaction in fear that the claim may not be genuine is a deficiency in service. Attitude to be clothed with order of a court or tribunal for settlement has to be given up.

6. IN case we direct payment of compensation to dependents when no enquiry has been made by the insurer it would be unjust. Accordingly, we direct the insurer to make its own investigations, collect the materials and consider the entitlement of the complainants to compensation and finalise the same within three months from the date of this order failing which compensation shall be

payable at the rate of Rs. 20/- per day till the claim is settled or repudiated. IN case of repudiation or settlement at lesser amount, reason for such repudiation shall be clearly intimated to the claimants, where the claim is settled, amount paid at the rate of Rs. 20/- per day as directed shall be adjusted but interest at the rate of 18% per annum on the amount settled shall be paid from after three months as directed till payment In result, appeal is allowed to the extent indicated. Direction gives in this appeal shall be treated to be of the District Forum for the purpose of Section 25 and 27 of the Act. Appeal allowed as indicated.

