(2005) 07 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

G Padmavathi APPELLANT

Vs

ANDHRA BANK RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Citation : 2005 4 CPJ 543

Hon'ble Judges : M.SHREESHA , P.Jagannadham Naidu J.

Judgement

1. AGGRIEVED by the order in C.D. No. 66/2001 on the file of District Forum, Anantapur, the complainant preferred this appeal.

2. THE brief facts as set out in the complaint are that the complainants husband opened an account ''Abhaya Gold Savings Bank Account No. 79 in Andhra Bank on 25.3.1998 paying Rs. 1,100 for which he would be insured for Rs. 1,00,000 with the second opposite party, insurance company. The complainant is the nominee. On 13.6.1999 when the complainants husband was in the house the associates of Dharmavaram M.L.As. brother K. Pedda Reddy, J. Sreerami Reddy, Linga Reddy, Prathapa Reddy and Siva Reddy forcibly took the insured in a jeep. Even after lapse of two hours, he did not return home. Thereafter on inquiry, the complainants family was told that the insured had left to his village. When the insured did not turn up on 14.6.1999 a complaint was lodged at Yellanur Police Station and the same was registered in Crime No. 35/1999. After investigation, the police informed the complainant that her husband was murdered and the body was burnt to ashes. After receipt of information from the police, the complainant made a claim before the first opposite party for payment of the insurance amount of Rs. 1,00,000 and submitted all the documents. The complainant even got issued a legal notice on 6.9.2000 to both the opposite parties for which opposite party No. 1 replied on 11.9.2000 stating that they have already submitted the claim to the second opposite party and a reminder was also written but there was no response. Vexed with their attitude, the complainant approached the District Forum seeking direction for payment of the policy amount. First opposite party filed counter admitting the opening of Abhaya

Gold Savings Account by the insured. They submit that since the complainants husband is a factionist, the terms and conditions of the account will not attract the complainants claim and that the complainant failed to submit the relevant information.

3. SECOND opposite party filed counter contending that the complaint is barred by limitation and contended that there is no documentary evidence to show that the insured was murdered on 13.6.1999 and even if it is proved that the deceased was murdered on 13.6.1999, it is a result of the deceased committing breach of law with criminal intent and this is violation of the terms and conditions of the policy and, therefore, they are not liable to pay the policy amount. They further contend that the complainant failed to comply with the necessary documents and, therefore, there is no deficiency of service on their behalf. Based on the evidence adduced i.e., Exs. A1 to A11 and Exs. B1 and B2, the District Forum dismissed the complaint.

4. AGGRIEVED by the said order, the complainant preferred this appeal. The learned Counsel for the appellant submitted that a charge -sheet has been filed for the murder of the life assured and the District Forum has erred in observing that the accused in that case were acquitted because the body of the policy holder was not recovered intact and there was no evidence of his murder.

5. THE learned Counsel for the respondent/complainant submitted that there is absolutely no evidence to prove that it is a murder and the complaint is hopelessly barred by limitation.

6. ON perused of the material on record, we observed that the correspondence filed by the appellant/complainant, Exs. A1 to A3 and also Exs. A8 and A9 show that the matter was under consideration by the second respondent and the last document received by the appellant dated 30.1.2002 (Ex. A9) is the letter addressed by the second respondent to first respondent regarding the claim of the policy of the appellant. Taking into consideration these documents we are of the considered opinion that the complaint is not barred by limitation, Ex. A4 is the death certificate issued by M.R.O., Yellanur and Ex. A10 is the certificate issued by Inspector of Police with respect to investigation of the case wherein he stated that on the confession of the accused the scene of offence where the dead body was burnt was located and half burnt bones and ashes of the deceased were seized from the scene of crime. Based on the evidence of the case and the circumstantial evidence, the police have filed case under Section 302, I.P.C., which conclusively establishes that the assured has been done to death. Merely because the dead body was burnt into ashes and the physical body was not found intact, we cannot conclusively come to a decision that the death did not take place. In Ex. A11 the Forensic report given by N.C. Obulesu, Professor of Forensic Science, Kurnool Medical College submitted that the bones were human bones belonging to a male person. In a decision reported in Smt. Manda Savarna v. The Branch Manager, L.I.C. of India & Another, 1998 (3) CPR Page 5 (NC), this Commission has held that death by murder is also an accident. In view of the

well -settled legal proposition we hold that the death of the assured is an accident.

7. FROM the records, we notice that a detailed inquiry was conducted relating to the murder of the assured by the police authorities. Merely because the physical body of the deceased was not found intact, the respondent, insurance company cannot draw an adverse inference and escape its liability to pay the insured amount. The acquittal by the Sessions Court had no bearing on the inquiry conducted under Consumer Protection Act. The inquiry under the Act relates to deficiency of service and it is a settled legal proposition that Murder is also accident, therefore, we allow the appeal and set aside the order of the District Forum.

8. IN the result the appeal is allowed directing the opposite parties to pay the policy amount with interest at 9% p.a. from the date of legal notice i.e., 6.9.2000 till the date of payment together with costs of Rs. 5,000 and the order of the District Forum is set aside in C.D. No. 66/2001. Appeal allowed.