(2009) 02 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Gangotri Devi And Others APPELLANT

Vs

National Insurance Company Ltd. And Another RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Citation : (2009) 02 NCDRC CK 0028

Hon'ble Judges : R.C.JAIN , ANUPAM DASGUPTA J.

Advocate : ASHUTOSH K.SINGH , R.C.MISHRA , Meera Aggarwal

Judgement

1. THIS appeal has been filed by the widow, Smt. Gangotri Devi and the children (hereafter, the complainants'') of one Ved Prakash Mall (deceased), resident of Ram Lakshman, Deoria who had taken a Janata Personal Accident Insurance Policy (hereafter, the policy'') for the sum of Rs. 5 lakh from the respondent insurance company (hereafter, the Insurance Company''). The policy was valid for the period 6.12.1996 - 5.12.1999. The complainants'' case is that the assured suffered snake -bite on 25.1.1997 because of which he died, at the Primary Health Centre (PHC), Gauri Bazar, Deoria the same day, within about an hour of his admission. The Insurance Company repudiated the insurance claim filed by the complainants on the ground that the assured did not die of snake -bite as claimed. Against this repudiation, the complainants first filed a consumer complaint before the District Consumer Disputes Redressal Forum (the District Forum''), Deoria and subsequently (in 2002) the Uttar Pradesh State Consumer Disputes Redressal Commission (hereafter, the State Commission''). This was because the District Forum lacked the pecuniary jurisdiction to adjudicate the complaint under the relevant provisions of the Consumer Protection Act, 1986 as applicable at that time. However, the District Forum did pass an order directing the Insurance Company to decide the complainants'' claim and convey to them the decision along with the grounds thereof. After hearing the parties and considering the documents on record, the State Commission, however, dismissed the complaint by its order dated 13.5.2005, which has been impugned in this appeal.

2. WE have heard the learned Counsel for the parties and considered the relevant record that was before the State Commission, copies of which have been filed by the appellants with the memorandum of appeal.

3. THE main issue in this case is whether the death of the assured was by snake -bite (a factor covered by the policy in force at the time his death) or any cause outside the purview of or affected by the exclusions of the terms of the policy. The complainants'' case is that on 25.1.1997 the deceased had gone out for morning ablutions, which is a rather common practice at places like the one where he lived. On his way back, a poisonous snake bit him. After that, he was first taken to PHC, Ram Lakshman, Deoria where he was given first aid and referred to PHC, Gauri Bazar, Deoria. At the latter PHC, he was treated for snake -bite but died. That the death of the deceased was on account of snake -bite was clearly established from the medical record of the PHC, Gauri Bazar and the death certificate issued by the doctor in charge of that PHC. One R.B.L. Srivastava, a retired Deputy Superintendent of Police, who was appointed by the Insurance Company to examine this claim, corroborated these contentions in his first report and recommended that decision on the claim be expedited in terms of the policy. On demand, the complainant No. 1 obtained and furnished to the Insurance Company a succession certificate in her favour. Yet, the insurance company did not settle the claim for long and thus committed deficiency in service. This deficiency was further aggravated when, despite the direction of the District Forum, the insurance company did not assign any reasons for repudiation of the claim. Before the State Commission, the complainants, therefore, prayed for award of the insurance claim of Rs. 5 lakh in full, with interest @ 18% per annum and Rs. 50,000 towards compensation for mental and physical agony and Rs. 25,000 towards costs.

On the other hand, the case of the Insurance Company is that the deceased, being a habitual heavy drinker, suffered from cirrhosis of the liver and died thereof. In support of its stand, it cited the second report of the same R. B. L. Srivastava. In addition, the Insurance Company contended that no first information report (FIR) of the assured''s death was filed with the Police Station concerned, no post -mortem examination was carried out to establish the cause of death and that about the same time the deceased had also obtained life insurance policy(ies) from the Life Insurance Corporation (LIC), which repudiated the claim arising from the death of the assured. We note at this stage that in its written version before the State Commission the Insurance Company did not raise any of these additional grounds as pleas. No document was ever produced to substantiate the contention regarding any life insurance policy alleged to have been taken by the deceased and also repudiated by the LIC. From the relevant records, we find that in his first report dated 29.8.1997, the investigator appointed by the insurance company had stated that the contention regarding the death of the assured by snake -bite was supported by the medical record of the case at PHC, Gauri Bazar. The recommendation in the report was that the claim should be expedited under the terms and conditions of the policy of insurance issued by the insurer''. The report, however, raised a doubt about the nominee recorded in the policy, viz., Ram Prakash Mall, younger brother of the deceased assured, instead of his wife and children. It was also contended by the Insurance Company that Ram Prakash, the brother had filed a claim too. The Insurance Company, therefore, asked the wife of the deceased, i.e. complainant No. 1 to obtain and produce a succession certificate from the competent authority, which she did. However, while the claim was being processed, the Insurance Company claimed to have received a letter from one Dr. B.P. Singh alleging that the death of the assured was not by snake -bite but because he was suffering for long from cirrhosis of the liver for which Dr. Singh had been treating him. This led the Insurance Company to depute the said investigator to make further inquiries into the matter. In the second report dated 21.8.1998 the investigator completely reversed his earlier findings and concluded, inter alia that the assured died not of snake -bite but cirrhosis of the liver, as alleged by the said Dr. Singh.

The later finding of the investigator regarding the cause of death of the assured was based on the statement of Dr. Singh recorded by the former and, according to the investigator, corroborated by only one person, Om Prakash Singh, the brother of the said Dr. Singh, who claimed to be an Advocate by profession. The Insurance Company did not produce and examine these two persons before the State Commission nor did the State Commission require it to do so. The Insurance Company did not examine even the investigator, who had filed a brief affidavit before the State Commission. The investigator''s report referred to the allegation of the said Dr. Singh that the deceased had also gone to the Post Graduate Institute (of Medical Education and Research), Lucknow (hereafter, the PGI'') and was there for quite some time for (in -patient) treatment of his alleged cirrhosis of the liver. However neither the investigator nor the Insurance Company made any attempt to obtain from the PGI, Lucknow the record of treatment of the deceased assured, particularly to ascertain if he did suffer from cirrhosis. If the allegation was valid, this record would have clinched the issue one way or the other.

The investigator also recorded in his second report that there was serious enmity between the extended families of the deceased assured and that of the said Dr. Singh on account some land dispute. The dispute was reportedly because Ram Prakash, the younger brother of the deceased had bought off some land of the father of the said Dr. Singh in an auction and there was allegedly an accusation of Ram Prakash firing at the father of the said Dr. Singh in that context, for which a criminal case was pending. It is, incidentally, also the contention of the appellants that the adverse statement of the said Dr. Singh is on account of the family feud, which has not been rebutted by the Insurance Company. Given these facts and circumstances, it is difficult to attach much credence to the investigator''s finding in his second report that the death of the assured was on account of his prolonged ailment, viz., cirrhosis of the liver. Per contra, the medical record at the PHC, Gauri Bazar clearly mentions snake -bite as a clinical observation and gives the details of the anti -snake venom treatment administered to the deceased assured and the death certificate issued by the doctor in -charge of that PHC also records snake -bite as the cause of death. These would need to be accepted. In discarding the evidence of the PHC medical report and the death certificate, the State Commission has unfortunately gone into a convoluted and disproportionately lengthy recording of the symptoms of poisonous snake -bites described in a medical textbook (clearly cited by the Counsel for the Insurance Company) and the absence of any mention of such symptom(s) in the PHC medical record of the case. The State Commission could have instead directed its energy to at least requiring the Insurance Company to produce the medical report, if any, of the alleged treatment of the deceased at the PGI, Lucknow, which, as we have already observed, would have clinched the issue. This could have been easily done in accordance with the provisions of Section 13(4) of the Consumer Protection Act, 1986.

4. AS regards the points of an FIR not being filed with the local Police and the absence of a post -mortem report, we have already noticed that in its written version before the State Commission, the Insurance Company did not even cite these grounds. In any case, it was primarily for the doctor in -charge of the PHC, Gauri Bazar, Deoria to have informed the local Police (or, cause it to be informed) about the death and also sent the body of the deceased for post -mortem. The Insurance Company did not also seek to examine this doctor before the State Commission. In these circumstances, we are not inclined to hold that the inability of the family of the deceased assured, who are from a semi -rural background and had then been just bereaved, to report the latter''s death to the local Police was such a serious lapse on their part as to disentitle them altogether to the insurance claim.

5. IN view of the foregoing discussion, we are inclined to allow thisappeal and set aside the impugned order. The Insurance Company is accordingly directed to settle the insurance policy claim of the appellant -complainants, viz. Rs. 5 (five) lakh, along with interest at the rate of 9 per cent per annum from the date of its repudiation to that of actual payment and also a cost of Rs. 5,000, by a bank draft in the name of complainant No. 1, within six weeks from the date of this order. Appeal allowed.

