(1996) 07 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

GENERAL MANAGER, PRESS TRUST OF INDIA APPELLANT

Vs

BHASKAR BARIK RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Citation : 1997 2 CPJ 201

Hon'ble Judges : P.C.Misra , Biswanath Rath J.

Final Decision : Appeals allowed

Judgement

1. BOTH these appeals involve same questions of fact and law and were heard analogously. In both the cases, respondent No. 1 was the complainant before the District Forum. He insured his life under the Salary Savings Scheme and under one policy the insured amount was Rs. 35,000/- and the other was for Rs. 50,000/-. As regards each of the policies he admittedly paid some monthly premiums and thereafter discontinued. It being the policy under the Salary Savings Scheme according to tripartite agreement between the policy-holder, the Insurance Company and the employer of the policy-holder, the premium was to be deducted from the salary of the complainant each month by the employer to be remitted in favour of the Life Insurance Corporation of India Ltd. (for short, L.I.C.) against the premium to be payable for the aforesaid policies. The question before the District Forum and before us is not as to the reason why the premiums were not paid. The ultimate result was that the premium was not paid against the aforesaid-policies for which the policies have lapsed. The complainant filed a consumer dispute in relation to each of the aforesaid policies claiming refund of the premium impleading the L.I.C. and other opposite parties. The consumer dispute in respect of the policy for Rs. 35,000/- was registered as C.D. Case No. 324 of 1992 whereas in respect of the policy for Rs. 50.000/- was registered as C.D. Case No. 323 of 1992. The L.I.C. and the Press Trust of India filed separate versions and contested each of their cases. The stand of the L.I.C. was that since the premiums in respect of the each of the aforesaid policies were not received by them, the policies lapsed. The plea of the employer was that as no demand or invoice had been received from the L.I.C., no deduction was made

from the salary of the complainant for payment of the premiums and, therefore, they contended that there has been no deficiency in service by them. From the nature of the disputed claim of the complainant in these aforesaid cases, the question is as to for which premium could not be paid for which the policies have been lapsed, is the real question for consideration. The prayer made by the complainant in each of the aforesaid cases was refund of the amount which he had paid before the policies lapsed. The District Forum considering the case of both parties came to the conclusion that there has been no deficiency on the part of the L.I.C. as the policies lapsed due to the fault of the employer for not deducting the premiums from the salary of the complainant. The case of the complainant against the L.I.C., therefore, was dismissed by the District Forum. It, however, allowed the claim against the employer of the complainant who is the appellant in each of the aforesaid cases. The District Forum directed for refund of the premiums paid by the complainant together with interest at the rate of 15% per annum together with a compensation of Rs. 500/- in each of the aforesaid cases against the present appellant. Hence this appeal.

2. WE have already indicated that under the Salary Savings Scheme, premium was to be deducted from the salary of the complainant by the employer and was to be sent to the L.I.C. to be adjusted against the premium payable by the complainant. The agreement in that case was as to the payment of the premium for the concerned month by the employer of the complainant to the L.I.C. The complainant in this case does not claim the benefits under the policy. He has claimed for refund of the premiums paid by him together with compensation for the sufferings and mental agony. In this context, we express our view that there was deficiency giving rise to the lapse of the policies which was also the issue before the District Forum and we, therefore, enter into the discussion with regard to that. Admittedly whatever premiums had been paid have been received by the L.I.C. and there is ho dispute about the same. So if at all the refund of the premium is to be made by the L.I.C. and not by the employer, admittedly anything that has been deducted from the pay of the complainant by his employer and the premium that has been paid by the complainant himself while booking the policies. Thus, the direction if at all is to be issued against the L.I.C. for refund of the deposited premium against the policies which lapsed subsequently.

The learned Counsel appearing for the L.I.C. impleaded in this appeal as respondents 2 and 3 through their officers strenuously contended that according to the terms of the policy, the complainant is not entitled to refund of the premiums already paid as it provides for forfeiture of the same. He referred to Clause 5 of the said policy wherein it has been stated that: "In case the premiums shall not be duly paid or in case any condition herein contained or endorsed hereon shall be contravened..... this policy shall be void and all claims to any benefit in virtue hereof shall cease and determine and all moneys that have been paid in consequence hereof shall belong to the Corporation........"

Relying on the aforesaid clause it was contended by the learned Counsel for the L.I.C. that since the policies lapsed due to the non-payment of the premiums, the deposits made earlier will stand forfeited to the Corporation and the complainant would not be entitled to any portion thereof. This Commission had dealt with an identical question in C.D. Appeal No. 374 of 1992. In the said appeal, a contention was made that by virtue of the aforesaid terms in the policy, the premiums deposited by a policy-holder stands forfeited when the policies lapsed due to non-payment of the premiums. Analysing the spirit of law contained in Section 65 read with Section 74 of the Contract Act, this Commission came to the conclusion that the policy having not stipulated for payment of penalty by one party guilty of breach of contract, the L.I.C would not be entitled to appropriate the premiums paid by the policyholder due to the breach of the terms of the policy. The specific term stipulating otherwise in the policy of insurance is opposed to the aforesaid provisions of the Contract Act and, therefore, not enforceable. We will adopt the same view in this case that the forfeiture clause is unenforceable being opposed to the aforesaid provisions of the Contract Act. In the result, we allow these appeals, set aside the impugned order, modifying the same by directing the L.I.C. to refund the premiums paid by the complainant against each of the aforesaid policies which consequently lapsed together with interest at the rate of 12% per annum from the date of payment of the premium till the date of payment thereof pursuant to the direction of this Commission. The same must be done within two months from the date of receipt of this order, failing which it would be open to the complainant to get the order enforced in due course of law. Appeals allowed.