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(2001) 01 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

GIRDHARILAL JAMANDAS GEHANI APPELLANT

Vs

DIVISIONAL MANAGER, ORIENTAL INSURANCE RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Citation : 2001 2 CPJ 460

Hon'ble Judges : M.S.Parikh , Mahendra K.Joshi J.

Final Decision : Appeal No. 455/97 dismissed

Judgement

1. THE complainant Girdharilal Jamandas Gehani filed complaint (Consumer Disputes Redressal Petition) No. 122 of 1996 against the opponent Oriental Insurance Company Limited before the Consumer Disputes Redressal Forum, Valsad District at Valsad for recovery of Rs. 3,00,000/- as personal accident claim compensation with interest @ 18% p.a. from 14.5.1992 and damages in the sum of Rs. 10,000/- for mental torture and cost of the petition. It was the case of the complainant that his father Jamandas Chandiram Gehani had taken the insurance for his Maruti van No. GJ-15-C-162 from the opposite party on 3.4.1992 under Policy No. 30/93/00145 which was in force from 4.4.1992 to 3.4.1993 and that on 14.5.1992 the said Maruti van met with an accident with truck No. GQB 4362 coming from the opposite direction from Ahmedahad to Valsad, when the van reached near village March, near Nabhipur, District Bharuch. As a result of the accident, except the driver, four occupants of the van (passengers of the van) died on the spot. THEy were : (1) complainant''s father Jamandas Chandiram Gehani, (2) complainant''s mother Khimiben Gehani, (3) complainant''s uncle Mulchand Dharamdas Gehani, and (4) Lajvanti Mulchand Gehani. THE claim for the damage to the car in the accident and for the occupants was lodged with the opposite party, who paid compensation in respect of the damage to the Maruti van on 28.8.1992, but the claim for compensation regarding personal accident cover for the above occupants was not paid. THE complainant wrote letters dated 29.5.1992, 17.12.1992, 18.12.1995 and 22.1.1996. THE opponent informed the complainant by letter dated 9.2.1996 that the matter was referred to the concerned office and upon hearing from the

said office, necessary reply would be given. THEreafter, the complainant again wrote letter dated 28.3.1996 to do the needful in the matter but without any result. He, therefore, gave notice through Advocate on 23.9.1996 to the opponent and since the notice was not complied with, he filed the complaint as aforesaid.

2. THE opponent contended that the complaint-application was not maintainable at law and was misconceived, that the complainant had no right, title or interest to file the complaint, that the complainant was not entitled to Rs. 3 lakhs together with interest as claimed, that all the legal heirs of the occupants of the van filed MAC Petition Nos. 598/1992, 599/1992, 600/ 1992 and 601/1992 and the opponent Insurance Company has paid interim compensation to the claimants of the said petitions and that the complainant''s petition would not be maintainable at law on that count also. Upon hearing of the matter, the learned Forum held that the complaint-petition was maintainable at law, that the complainant would be entitled to Rs. 2 lakhs only as per the personal accident policy, that he would be entitled to Rs. 2,00,000/- by way of compensation, Rs. 10,000/- for mental torture and to interest as claimed and that the jurisdiction of the Forum was not barred on account of pendency of the Motor Accident Claims Petitions before the Motor Accident Claims Tribunal. THE order in that respect rendered on 24.7.1997 has been subjected to challenge in both these appeals. Appeal No. 455/97 has been filed by the original complainant for enhancement of the amount as per the amount claimed in the complaint petition and Appeal No. 456/1997 has been filed by the opponent challenging the impugned order. In the first place, it was submitted on behalf of the complainant that on correct and proper construction of the relevant clause of the insurance policy, the complainant would be entitled to compensation in the sum of Rs. 3,00,000/- and not Rs. 2,00,000/-. In the second place it was submitted on behalf of the opponent Insurance Company that the complainant being not only heir and legal representative of deceased Jamandas Chandiram Gehani and Khimiber Gehani, father and mother respectively, the complaint could not be said to be maintainable at law and that in any event he was certainly not the heir of remaining deceased occupants of the van, namely Mulchand Dharamdas Gehani and Lajvanti Mulchand Gehani, respectively his uncle and aunt. In this connection it was further submitted that the heirs of Mulchand Dharamdas Gehani and Lajvanti Mulchand Gehani have not lodged any claim and have not filed any complaint and, therefore, simply because they had tendered affidavit in favour of the complainant, the claim in the policy could not be awarded in favour of the complainant. Lastly, it was submitted on behalf of the opponent Insurance Company that the complainant cannot be said to be ''consumer'' within the meaning of term ''consumer'' as defined under Section 2(1)(d) of the Consumer Protection Act, 1986 (Act for short). Reference in this connection has been made to a couple of decisions of the Honourable Supreme Court. Having heard the rival submissions made before us, we proceed to consider the same.

Taking the first submission made on behalf of the complainant for consideration it

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would be proper to reproduce the relevant clause under which full claim of Rs. 3,00,000/- is sought to be canvassed as against the claim of Rs. 2,00,000/- allowed by the learned Forum. Now, in I.M.T. 5 regarding personal cover, provision has been made in these words "in consideration of payment of additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver, attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen''s Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into, dismounting from or travelling in but not driving the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calender months of the occurrence of such injury result in : Scale of Compensation xxx xxx xxx 4th proviso to this condition reads as under : "Such compensation shall be payable only with the approval of the insured and directly to the injured person or to his/her representative whose receipt shall be a full discharge in respect of the injury to such person."

Coupled with the aforesaid clause, following further clause appearing at Annexure-C reads as under : "PA rate Rs. 5/- per person per annum for Rs. 10,000/- according to carrying capacity of the vehicles subject to max. S.I. Rs. 2 lacs." It is not in dispute that the abbreviation ''max. S.I.'' would mean ''maximum sum insured''. Now, according to the submissions of the learned Advocate appearing for the complainant it would mean maximum sum insured is Rs. 2 lakhs per person if the premium of Rs. 100/- per person is paid. It cannot mean Rs. 2 lakhs for all the persons occupying the vehicle as per its carrying capacity. What the Forum has done is that it has fixed maximum limit of Rs. 2 lakhs available to the complainant on the construction of the clause as maximum limit of sum insured to the extent of Rs. 2 lakhs. In the present case premium paid is Rs. 150/- and the sitting capacity stated in the policy is 3+1. It was, therefore, submitted that if P.A. rate of Rs. 5/- per person per annum is worked out it would come to Rs. 1,00,000/- per person for premium of Rs. 50/- per person. In the present case, for three persons premium of Rs. 150/- per annum is paid. It was, therefore, submitted that the entitlement under the accident cover would be to the extent of Rs. 1,00,000/- per passenger, in all Rs. 3,00,000/-, since other than the insured, three passengers who were occupants in the van in question died in the accident. Now, it is not disputed before this Commission that there is no accident cover with regard to the insured himself. Therefore, the complainant would be entitled to claim Rs. 3 lakhs as heir of his deceased mother Khimiben Gehani and as heir of deceased insured who would be required to pay the amount to the heirs of other two occupants who died in the accident, namely Mulchand Dharamdas Gehani and Lajvanti Mulchand Gehani, respectively uncle and aunt. As against this it was submitted on behalf of the opponent Insurance Company that maximum cover for all passengers together is

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Rs. 2 lakhs. In our considered opinion and upon true and correct construction of aforesaid clause in Annexure-C, it would clearly appear that maximum sum insured of Rs. 2 lakhs is refundable to ''per person'' and not to ''all persons'' occupying in the vehicle. The words ''per person'' and qualifying premium of Rs. 5/- would also assume importance in construing the maximum sum insured limit of Rs. 2 lakhs. Even if the clause is read as a whole it would be clear that maximum sum insured of Rs. 2 lakhs is per person. In the present case premium paid per person is Rs. 50/- and for three persons it is Rs. 150/- per annum. Therefore, the submissions made on behalf of the complainant with regard to construction of the aforesaid clause in the policy to the effect that maximum amount claimable under the aforesaid clause for all the three passengers who died would be Rs. 3 lakhs merit acceptance. We accordingly accept the first submission. II

3. THE second question relates to whether the present complainant can be said to be ''consumer'' in respect of the covered amount of Rs. 3 lakhs as aforesaid. In this connection, reference has been made to the policy in question in the first instance. It is admittedly in the name of Jamandas Chandiram Gehani, father of the claimant who died in the accident which the covered Maruti van met with on 14.5.1992. Admittedly, in respect of the personal accident benefits, Jamandas Chandiram Gehani was not entitled and, therefore, was not beneficiary for the said cover of insurance. Admittedly, the benficiaries were unnamed passengers, three in number. THErefore, in case of death of such passengers it can be said that their heirs and legal representatives as per their respective personal law would stand as the beneficiaries. It was submitted that in fact three unnamed passengers should be treated as beneficiaries and not their heirs and legal representatives. It would be clear that now the claim is payable to the heirs and legal representatives even under the policy in question. Fourth proviso to I.M.T. 5 clearly indicates that compensation would be payable to the injured person or to his legal representative/ s with the approval of the insured. That would on the face of it go to show that in case of death of the unnamed passengers, their legal representatives would be entitled as beneficiaries of the amount covered under the accident insurance as aforesaid. Now, the complaint in question was filed by the son of Jamandas Chandiram Gehani, the named insured in respect of different classes of insurance. Had he survived he would have been the insured so as to claim benefit of the insurance available to him. In case of death of passengers travelling in the covered Maruti van his approval would have been necessary for making payment of compensation to the legal representatives of the deceased passengers : However, in that event also he could not have said to, be beneficiary of the cover of insurance on the head of personal accident benefit. THErefore, the arguments on behalf of the complainant that he being the heirs of the insured would be entitled to claim compensation or covered amount of insurance for and on behalf of the heirs and legal representatives of the unnamed passengers cannot be accepted. At best, he can be said to be ''consumer'' being a beneficiary of the cover of insurance in his position as a legal

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representative in respect of death of his mother who was a covered passenger but in that event also he will not be the only beneficiary. Alongwith him, other heirs of deceased Khimiben will also stand in the position of beneficiary of the cover of insurance. However, for the amount of Rs. 1,00,000/- in respect of death of his mother, he can be said to be ''consumer'' even qua his share in the-claim and for that matter he can be said to be ''complainant'' within the meaning of definition of both words appearing in Section 2(1)(c) and 2(1)(d) respectively. It is not understandable how he can either be said to be a ''consumer'' or ''complainant'' in respect of claims arising from death of other two passengers. It is not in dispute that he is the nephew of the said passengers and they died leaving behind heirs of Class I under the Hindu Succession Act, 1956. It has been submitted on behalf of the complainant that they had given affidavits in favour of granting of the claim to the complainant. However, giving of affidavit or filing of affidavit by the heirs of the other two passengers will not go to make them the complainants before the Consumer Forum. At best it can be said that grant of claim of cover of insurance under the personal accident benefit to the legal heirs was with the approval of one of the heirs of the insured. THErefore, on proper consideration and construction of the policy of insurance in question coupled with the relevant personal accident benefit clauses and the endorsements in respect thereof it would clearly emerge that the complaint was maintainable to the extent of claim of Rs. 1 lakh and in absence of other complainants as aforesaid it cannot be said to be maintainable in respect of the other claims. It has however been submitted from the decisions which we will soon proceed to consider that the heirs of deceased beneficiaries of the personal accident benefit cover of insurance could not be said to be beneficiaries and they merely had right to sue for the amount that might be available to the unnamed passengers who died in the accident. In order to substantiate the argument, reliance has firstly been placed on a decision of the Honourable Supreme Court in the case of New India Assurance Company Limited v. B.N, Sainani, III (1997) CPJ 1 (SC) . In that case the complainant was assignee of two insurance policies respectively in the sum of Rs. 5,87,000/- and Rs. 4,04,000/- to cover the risk from the Port of Antwero to Bombay in respect of 244 bales of computer wastes computer print and 170 bales of computer wastes computer print respectively. The consignee being the insured preferred claim for Rs. 1,74,708.52 and Rs. 3,99,007.52 on account of shortlanding of the consignment under transhipment. It would appear from the letter dated July 25, 1989 of the insurer to M/s. National Consultants (proprietor Mr. S.N. Sainani, the complainant) that the policies had been assigned by the consignee in favour of M/s. National Consultants and by that letter insurer acknowledged letter dated July 18, 1989 of the assignee. On July 23, 1992, the assignee instituted two complaints before the Consumer Disputes Redressal Commission, Maharashtra State at Bombay against the insurer alleging deficiency in service. The State Commission considered the question and by order dated 29.10.1994 the Commission held against the insurer. The National Consumer Disputes Redressal Commission by order dated September 30,1996, dismissed the appeal filed by the insurer. That is how the Insurance Company

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was before the Honourable Supreme Court. Considering the question whether the assignees in the complaint could be said to be ''consumer'' within the meaning of that word appearing in Section 2(1)(d) of the Act, the Apex Court has observed as under : "The interest of the insured must exist in the case of marine insurance at the time of loss and the assured must have some relation to or concern in the subject of the insurance. The service which the insurer offers is with reference to the goods and the insurable interest has to be in respect of the goods. To put it in other words, insurable interest in property would be such interest as shall make the loss of the property to cause pecuniary damage to the assured. To come under the scope of the word "consumer" as defined in the Act it should be possible for the assured to assign his insurable interest in the goods subject-matter of the policy for the assignee as a consumer to enjoy the benefit of the policy with reference to the goods which are insured. What has been assigned in the present case is the amount of loss suffered by the assured on account of short-landing of the goods, meaning thereby that right to recover the loss is assigned to the assignee and not that any service is to be rendered under the policy by the insurer with reference to the goods. We are looking at the whole thing from the point of the consumer under the Act with reference to certain relevant provisions of the Marine Insurance Act. Unless the assignee has some insurable interest Li the property subject-matter of the insurance until the time the policy terminates he cannot be beneficiary of any service required to be rendered by the insurer under the policy. Admittedly it was much after the goods had reached ''the port of destination and appropriated that the policy was transferred by the insured to the complainant to recover the amount of loss suffered by the assured. Thus, what is assigned is in effect a mere right to sue for the loss on account of short-landing of the goods. It is difficult to see as to how it could be said that the respondent, that is the assignee, is the beneficiary of any service under the policy. He may, however, have right to recover the loss from the insurer by filing a suit in a Civil Court but certainly to'' seek remedy under the Act, he must be a consumer. If the policy had been assigned during the course of its validity and before the goods were appropriated after their arrival at the port of destination, it could perhaps be said that the assignee had beneficial interest therein but not otherwise." From what is held by the Apex Court as appearing in the aforesaid observations it can be seen that during the period of insurance it was not to the benefit of the assignee and what the assignee has received by way of assignment is right to sue. In the present case, factually the cover of insurance enures to the benefit of heirs and legal representatives of unnamed passenger who died in the accident and on account of his death his heirs and legal representatives are directly entitled to the cover of insurance and entitled to claim insurance as per the cover. Therefore, by virtue of the nature of the insurance cover and by virtue of nature of entitlement of legal heirs as aforesaid they become beneficiaries under the policy itself. Reference may be made to the definition clause at this very stage. It would read as under : "2(1)(d). Consumer means any person who, (i) buys any goods for a consideration which has been paid or promised or partly paid and partly

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promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or party paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

It may be noted from the aforesaid definition clause that beneficiary is also included within the definition clause. It has however been submitted that the words "when such services are availed of with the approval of the first mentioned person" should be read with reference to the words "any beneficiary" and if so read unnamed passengers would be the beneficiaries so covered under the insurance and their legal representatives cannot be said to be beneficiaries. This submission is per se not tenable as a dead person, even if treated as a beneficiary, his beneficial interest vests in his heirs and legal representatives by virtue of the relevant clause/s in the policy as also by operation of law.

4. NEXT is the decision in the case of Spring Meadows Hospital & Anr. etc. v. Harjol Ahluwalia through K.S. Ahluwalia & Anr., reported in I (1998) CPJ 1 (SC). This decision further clarifies and illustrates the meaning of the word ''consumer'' as defined in Section 2(1)(d)(ii) of the Act. This is what the Apex Court has said in para 13 of the citation, "...if the parents of the child having hired the services of the hospital are consumer within the meaning of Section 2(1)(d)(ii) and the child also is consumer being a beneficiary of such services hired by his parents in the inclusive definition in Section 2(1)(d) of the Act, the Commission will be fully justified in awarding compensation to both of them for the injury each one or them has sustained". The last decision of the Apex Court is in case of Oberai Forwarding Agency v. New India Assurance Company Limited & Anr., reported in I (2000) CPJ 7 (SC)=II (2000) SLT 86=2000 (2) CPR 20 (SC). By virtue of this decision Insurance Company claiming relief as a beneficiary pursuant to the right of subrogation cannot be said to be a consumer within the meaning of the definition of that word in the Act inasmuch as Insurance Company invariably takes all rights of the insured which is something more than subrogation. In the present case, there is no question of assignment or subrogation by way of assigning all rights of the insured and/or beneficiary. Apart from the entitlement under the policy itself, by virtue of operation of law the legal representatives of deceased beneficiary would be entitled to the services of the Insurance Company and if there is any deficiency they would be entitled to file complaint under the provisions of the Act. III Net result of the above discussion in the present case would be that although the complainant would be entitled as beneficiary in respect of cover of insurance regarding death of his mother travelling in van in

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question, he will not be the only beneficiary under that cover. In order that he can give effective discharge to the Insurance Company, he will have to obtain necessary succession certificate under the provisions of the Indian Succession Act. Therefore, insofar as the award of claim by the Forum is concerned, it deserves to be reduced to Rs. 1,00,000/- upon production of necessary succession certificate.

5. INSOFAR as other deceased passengers are concerned, their heirs and legal representatives were not before the Forum. They have not been joined as complainants. Therefore, there is no question of awarding any claim in their favour when they were not the complainants. Merely filing of affidavit/s or any such document will not entitle the complainant to succeed to a claim awardable to them as beneficiaries as per the principle laid down by the Apex Court in the decision of New India Assurance Co. Ltd. v. B.N. Sainani (supra). Even Endorsement No. 4 in the Tariffs styled as Indian Motor Tariff 1.8.1989) provision with regard to discharge has been made as under : "(4) Such compensation shall be payable only with the approval of the insured and directly to the injured person or to his/her legal representative whose receipt shall be a full-discharge in respect of the injury to such person." It is clear that if there are more than one legal representative of injured person who died in the accident, receipt would obviously be required to be issued by all of them or say one of them in whose favour appropriate Court has issued succession certificate or any other legal entitlement so as to give valid discharge.

6. IN the result, following order shall have to be passed in both the appeals. The claim awarded by the learned Consumer Disputes Redressal Forum, Valsad in the sum of Rs. 2,00,000/- shall be modified as under : (a) The opponent shall pay Rs. 1,00,000/- (Rupees one lac only) to the complainant-applicant upon furnishing a succession certificate in his favour. He shall deposit back the amount of Rs. 1,00,000/- withdrawn by him from this Commission by furnishing bank guarantee, within a period of 8 weeks from today failing which the bank guarantee shall be enforced and the amount shall be recovered from the Bank by the Registrar of this Commission. The amount so deposited/recovered shall be invested in fixed deposit for a period of one year in the first instance. Upon production of a valid succession certificate by the complainant, the amount of Rs. 1 lakh should be paid over to him by Account Payee cheque. (b) It is hereby recommended that as and when heirs and legal representatives lodge their claim before the Insurance Company (opposite party), their claim shall be considered sympathetically in the light of the observations made in the judgment. Needless to say, their claim shall be limited to the sum of Rs. 1,00,000/- for their respective deceased predecessors covered under the policy in question. Direction of interest and cost will stand set aside. Accordingly complainant''s Appeal No. 455/1997 will stand dismissed, although with the observations made in the judgment. Opponent''s Appeal No. 456/1997 shall stand partly allowed as aforesaid. There shall be no order as to costs. Appeal No. 455/97 dismissed. Appeal No. 456/97 partly allowed.

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