(2015) 08 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

Case No : 1387 of 2010

HDFC STANDARD LIFE INSURANCE CO LTD & ANR — APPELLANT

Vs

BABU RAM JAIN — RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0057

Hon'ble Judges : K S Chaudhari

Advocate : Joydip Bhattacharya, Mayak Sharma, Kanishk Ahuja

Final Decision : Petition allowed

Judgement

K.S. Chaudhari, Presiding Member

[1] This revision petition has been filed by the petitioner against the order dated 19.01.2010 passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (in short, ''the State Commission'') in Appeal No. 2170 of 2008 Baburam Jain Vs. HDFC & Anr. by which, while allowing appeal order of District Forum dismissing complaint was set aside.

[2] Brief facts of the case are that Complainant/respondent''s son Akhil Kumar, now deceased had taken HDFC Unit Linked Endowment policy from the OP Petitioner for a sum of Rs. 1 lac bearing policy no. 10062188 on 14-08-2004 for twenty years and a sum of Rs.2500/- was paid by the deceased as first premium on 14-08-2004 through cheque dated 13-08-2004 to the office of the respondents. It was further stated in the complaint that the premium was to be paid in four quarterly installments in a year and second installment of the year 2004 was paid by the deceased on 05-11-2004 and premiums of the year 2005 were paid by the deceased on 14-02-2005, 20-05-2005 and on 11-08-2005 but unfortunately on 17-08-2005 the deceased was found dead in his office and a Mug FIR bearing no. 13/05 was registered under section 174 CRPC with the Police. Complainant preferred claim which was repudiated by opposite party on the ground that deceased committed suicide within period of one year. Alleging

deficiency on the part of opposite party complainant filed complaint before District Forum. Opposite party resisted complaint and admitted that proposal form was filled by deceased on 14-08-2004 and premium was deposited through cheque dated 13-08-2004 but submitted that proposal was accepted by opposite party on 20.08. 2004 so policy came into force w.e.f. 20-08-2004 and claim was rightly repudiated and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint. Complainant filed appeal before State Commission and learned State Commission vide impugned order allowed appeal and directed opposite party to pay Rs. 1 lakh with 9% p.a. interest form 19-05-2006 till payment and further directed to pay Rs.5,000/- as cost, against which this revision petition has been filed.

[3] Heard learned counsel for the parties and perused record.

[4] Learned counsel for the petitioner submitted that inspite of death of insured by committing suicide within a period of one year from issuance of policy, learned State Commission committed error in allowing appeal, hence revision petition be allowed and impugned order be set aside and order of District Forum be affirmed. On the other hand, learned counsel for the respondent submitted that as risk commenced from 14-08-2014 and suicide was committed on 17.08.2005 order passed by learned State Commission is in accordance with law, hence revision petition be dismissed.

[5] It is not disputed that deceased submitted proposal form on 14.08.2004 and deposited premium vide cheque dated 13.08.2004. it is also not disputed that policy was issued by opposite party on 20.08.2004. It is also not disputed that insured committed suicide on 17.08.2005.

[6] Now the core question to be decided is whether insured committed suicide within one year from the policy.

[7] No doubt in the policy issued by opposite party date of commencement of policy has been shown as 14.08.2004 at number of places, but it has been signed on 20.08.2004 by authorized signatory of opposite party. Learned counsel for the petitioner has drawn my attention towards judgment of Hon''ble Apex Court in (SC) Life Insurance Corporation of India & Anr. Vs. Shri Dharam Vir Anand, 1998 CPJ 3 in which similar controversy was before Hon''ble Apex Court and it was held as under:-- "Having examined the rival submissions and having examined the policy of insurance which is nothing but a contract between parties and having considered the expressions used in Clause 4-B of the terms of policy we are persuaded to accept the submissions made by Mr. Salve, the learned Senior Counsel appearing for the appellant. In construing a particular Clause of the Contract it is only reasonable to construe that the word and the terms used therein must be given effect to. In other words one part of the Contract cannot be made otiose by giving a meaning to the policy of the contract. Then again when the same Clause of a contract uses two different expressions, ordinarily those different expressions conveying one and the same meaning. Bearing in

mind the aforesaid principle of construction, if Clause 4-B of the terms of policy is scrutinized, it become crystal clear that the date on which the risk under the policy has commenced is different from the date of the policy. In the case in hand undoubtedly the date on which the risk under the policy has commenced is 10.5.89 but the date of the policy is 31st of March, 19990 on which date the policy had been issued. Even though the Insurer had given the option to the Insured indicated that the policy should be dated back to 10.5.89 and did pay the premium for that period, thereby the risk under the policy can be said to have commenced with effect from 10.5.89 but the date of the policy still remains the date on which the policy was issued i.e. 31st of March, 1990. The death of the life assured having occurred as a result of suicide committed by the assured before the expiry of three years from the date of the policy, the terms contained in Clause 4-B of the policy would be attracted and, therefore, the liability of the Corporation would be limited to the sum equal to the total amount of premium paid under the policy without interest and not the entire sum for which the life had been insured. The Forums under the Consumer Protection Act committed gross error in construing Clause 4-B of the policy and given the same meaning to the two expressions in the aforesaid Clause 4-B namely "the date on which the risk under the policy has commenced" and the date of the policy". The construction given by us to the provisions contained in Clause 4-B get support, if the proviso to Clause 4-B is looked into. Under the proviso if the life assured commits suicide before expiry of one year reckoned from the date of the policy then the provisions of the Clause under the heading "suicide" printed on the back of the policy would apply. In a case therefore a policy is dated back for one year prior to the date of the issue of the policy the proviso contained in Clause 4-B cannot be operated at all. When parties had agreed to the terms of the contract it is impermissible to hold that a particular term was never intended to be acted upon. The proviso to Clause 4-B will have its full play if the expression "the date of the policy" is interpreted to mean the date on which the policy was issued and not the date on which the risk under the policy has commenced.

In the light of aforesaid observations it becomes clear that as policy was issued on 20.08.2004 it will be effective from 20.08.2004 irrespective of the fact that risk commenced from 14.08.2004.

[8] Exclusion clause of this policy runs as under:-- "We shall not be liable to pay any benefit indicated in your policy Schedule if the death the Life Assured is caused directly or indirectly by suicide within one year of the date of commencement or the date of issue or date of reinstatement of the policy, whichever is later."

[9] Perusal of aforesaid clause reveals that liability to pay under the policy arise only when suicide is not committed within one year from the date of commencement or date of issue or date of reinstatement, whichever is later. Admittedly date of commencement is 14.08.2004 whereas date of issue is 20.08.2004 and in such circumstances no claim was payable if suicide is

committed before 20.08.2005 whereas this insured committed suicide on 17.08.2005. Learned counsel for the petitioner has also drawn my attention towards judgment of Hon''ble Apex Court in Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. Ltd. & Anr., 2010 10 SCC 576 in which it was observed that terms of contract of insurance have to be strictly considered and no exception can be made on the ground of equity and it is not open for the court to add, delete or substitute any words. When exclusion clause specifically prescribed that whichever is later from the date of commencement, date of issuance or date of reinstatement word "Whichever is later" cannot be ignored and it is to be held that no liability arise if suicide is committed within one year from the date of issuance of policy. Perusal of record reveals that by letter dated 20.08.2004 policy was sent by opposite party to the complainant. In this letter it has specifically been mentioned as under:--

"In case you are not agreeable to any of the previsions stated in the Policy and the details in the proposal form, you have the option of returning the Policy to us stating the reasons thereof, within 15 days from the date of receipt of the Policy. On receipt of your letter along with the original Policy documents, we shall arrange to refund the premium paid by you."

It becomes clear that if exclusion clause was not agreeable to insured he should have availed free look period of 15 days for returning policy and claiming refund of premium. Once he has accepted policy along with the exclusion clause he cannot take benefit on the ground that date of commencement of policy was 14.08.2004.

[10] Learned counsel for the respondent submitted that in Dharam Vir Anand case policy was back dated so aforesaid observations are not applicable to the case in hand. This argument is devoid of force because ratio-deciendi of aforesaid case is to be seen in which it was held that policy will be effective from the date of issuance. He also placed reliance on judgment of Delhi High Court in RSA No. 164/2004 Life Insurance Corporation of India Cs. Smt. Anti Rani & Ors., in which it was observed that where there are to interpretations which are reasonably possible, the one which favors the policy holder should be favored as the same advances the purpose for which a policy is taken and would be in consonance with the object to be achieved for getting lives assured. Observations in aforesaid judgment are not helpful to the respondent because there is specific exclusion clause in the policy and there is no scope of two interpretations while interpreting exclusion clause.

[11] In the light of aforesaid discussion it becomes clear that as insured committed suicide within a period of one year from issuance of policy no claim was payable as per Exclusion Clause and learned District Forum rightly dismissed complaint but learned State Commission committed error in allowing appeal and revision petition is to be allowed.

[12] Consequently, revision petition filed by the petitioner is allowed and

impugned order dated 19.01.2010 passed by learned State Commission in Appeal No. 2170 of 2008 Baburam Jain Vs. HDFC & Anr. is set aside and order of District Forum dated 19.05.2006 in Complaint No. 10/2008 Baburam Jain Vs. HDFC & Anr. is affirmed and complaint stands dismissed with no order as to costs.