(2008) 07 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

ICICI LOMBARD GENERAL INSURANCE CO LTD APPELLANT

Vs

RAJU KACHHAWA RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Citation : 2008 4 CPJ 312

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta , Vimla Sethias J.

Advocate : Jitendra Mitruka , S.P.Gandhi

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") has been filed by the appellants (opposite party Nos. 1 and 2 in the original complaint) against the order dated 26. 11. 2007 passed by the learned District Forum, Ajmer in case No. 141/2007 by which the complaint filed by the complainant-respondent under Section 12 of the Act of 1986 was allowed in the manner that the appellants-Insurance Company were directed to pay to the complainant-respondent a sum of Rs. 5 lacs as insured amount along with interest @ 9% p. a. from the date falling after two months of presenting the claim till payment was made and Rs. 1,500 as cost of litigation.

2. THE necessary facts giving rise to this appeal are as follows: the complainant-respondent had filed a complaint under Section 12 of the Act of 1986 before the District Forum, Ajmer on 17. 4. 2007 stating inter alia that her husband Ramswaroop (hereinafter referred to as deceased) had taken a housing loan to the tune of Rs. 5 lacs from the ICICI Home Finance Co. Ltd. under loan account No. ABASM 00000350076 and along with the housing loan, insurance of deceased was also made through personal accident insurance policy bearing No. 4005a/0000536 for Rs. 5 lacs in the manner that in case deceased dies in an accident, the appellants would pay Rs. 5 lacs. It was further stated in the complaint that on 26. 12. 2005, the deceased slipped in the house as a result of which he fell down on the ground and became unconscious and received injuries and he was taken to Mittal Hospital and Research Centre, Ajmer where he was

admitted on 26. 12. 2005 and when the treatment was going on, deceased had died on 1. 1. 2006. It was further stated in the complaint that deceased had died because of head injury, which was received by him as a result of falling on the ground due to slipping in the bathroom of house and thus, death of the deceased was accidental one. After the death of the deceased, a claim was preferred by the complainant-respondent before the appellants on 28. 1. 2006 being nominee and wife of the deceased, but that claim was repudiated by the appellants through letter dated 23. 2. 2007 (Annex. R/l) stating inter alia that on the basis of available documents, the deceased expired out of natural death, which was not covered under the terms and conditions of the policy. Hence, the present complaint. A reply was filed by the appellants-Insurance Company on 2. 8. 2007 in which they took the same pleas which were taken by them in the repudiation letter Annex. R/1 dated 23. 2. 2007. It was further replied that some documents were demanded from the complainant-respondent, but they were not supplied and in absence of that, especially FIR and post-mortem report, the death of the deceased could not be regarded as accidental one and thus, claim was not payable under the policy and the same was rightly repudiated through Annex. R/1 and the present complaint deserves to be dismissed. After hearing the parties, the learned District Forum, Ajmer through order dated 26. 11. 2007 allowed the complaint of the complainant-respondent in the manner as indicated above holding inter alia: (i) That from the materials and evidence available on record especially discharge summary Annex. R/5 of Mittal Hospital, it was very much clear that deceased slipped in the bath room, as a result of which he fell down on the ground and became unconscious and received head injury resulting in his death. Thus, death of the deceased was accidental one.

(ii) That in the cases like the present one where deceased had died on account of receiving head injury due to falling on the ground because of slipping in the bath room, there was no necessity of lodging FIR and getting the post-mortem done and thus, if these documents were not produced and furnished by the complainant-respondent, it would not affect her case, as non-furnishing of FIR and post-mortem report would not mean that no accident took place.

(iii) That repudiation of claim of complainant-respondent was not justified and it amounted to deficiency in service on the part of the appellants. Aggrieved from the said order dated 26. 11. 2007 passed by the learned District Forum, Ajmer, the appellants Insurance Company have preferred this appeal.

In this appeal, the main contentions of the learned Counsel for the appellants-Insurance Company are: (i) That in this case, ICICI Home Finance Co. Ltd. was necessary party and in absence of that, the complaint was not maintainable. (ii) That in absence of FIR and post-mortem report, the death of deceased could not be treated as accidental one especially when as per the hospital record, the deceased was discharged on 1. 1. 2006 from the Hospital against medical advice and thus, claim of the complainant-respondent was not payable under the policy in question and the same was rightly repudiated through letter Annex. R/1 dated

23. 2. 2007 and the learned District Forum has committed serious error and illegality in decreeing the claim. The findings of the learned District Forum are wholly illegal, erroneous and perverse one and therefore, the same cannot be sustained and liable to be set aside and this appeal deserves to be allowed.

On the other hand, the learned Counsel appearing for the complainant-respondent has supported the impugned order of the learned District Forum.

3. WE have heard the learned Counsel appearing for the appellants-Insurance Company and the learned Counsel appearing for the respondent-complainant and gone through the entire materials available on record. Point No. 1 So far as the point No. 1 is concerned, it may be stated here that this plea was not taken by the appellants in their reply before the District Forum and even such plea was not taken in the memo of appeal filed before this State Commission and therefore, argument No. 1 deserves to be rejected at the very outset, especially when from the letter of the ICICI Home Finance dated 24. 2. 2003, it appears that loan to the tune of Rs. 5 lacs was granted to the deceased and along with loan, personal accident insurance cover was also issued in favour of the deceased to the extent of the principal amount outstanding for the term of the loan. Hence, argument No. I stands rejected. Point No. 2-whether death of deceased was accidental one or not.

4. BEFORE proceeding further, something should be said about the word "accident". The word "accident" is constantly used in ordinary English and therefore, in law, in two senses, one much wider than the other. Strictly an occurrence only be said to be accidental when it is due neither to design nor to negligence. For, if an act be intentional it is clearly no accident; if it be result of culpable negligence, then by due care it could have been avoided and the negligent person could not be allowed to excuse himself by declaring it an accident. In this narrower sense of the word, an accident must be "nobody''s fault". The word "accident" generally denotes an event that takes place without one''s foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause and therefore, not expected; chance, casualty, contingency; an event happening without the occurrence of the will of the person by whose agency it was caused.

5. THE word "accident" is derived from the Latin verb "accidere" signifying "fall upon, befall, happen, chance". In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling a chance; a happening; an accident; an occurrence or event.

6. THE ordinary meaning of the word "accident" is an unintended occurrence which had an adverse physical result. The expression "accident" has been defined as an unlooked for mishap, an untoward event which is not expected or designed. It is used in the popular and ordinary sense and means a mishap or an untoward event not expected or designed.

An accident is not the same as an occurrence but something that happens out of normal or ordinary course of things.

7. KEEPING the above aspect in mind, the facts of the present case are being examined. In this case, there is discharge summary which shows that the deceased was got admitted in Mittal Hospital on 26. 12. 2005 and he was discharged on 1. 1. 2006 and the diagnosis which was made at the time of admission was dm-2, htn, CVA Brainstem Haemorrhage. It was further stated in the discharge summary that deceased was having sudden onset of headache, loss of consciousness and vomiting, it was also stated in the discharge summary that deceased was slipped in bath room and found unconscious by relatives.

8. THUS, from the above, it is very much clear that deceased slipped in the bath room on 26. 12. 2005 as a result of which he fell down on the ground and received injury on head including brainstem haemorrhage and died on 1. 1. 2006 as is evident from the death certificate issued by the Municipal Council, Ajmer. No doubt in the discharge summary, it was mentioned that deceased was discharged against medical advice on 1. 1. 2006, but since deceased had died on 1. 1. 2006 itself, therefore, it would not make any difference. However, the facts, which are found mentioned in the discharge summary, clearly reveal that the death of the deceased was accidental one and not natural one. Apart from this, since head injury was the direct result of the slipping of deceased in the bath room, therefore, that would be treated as mishap or untoward event not expected or designed. Furthermore, the slipping of deceased in the bath room was certainly unintended occurrence, which had an adverse physical result and thus, death of the deceased was accidental one.

9. MOREOVER, an accidental injury means an injury resulting from external violent and unanticipated cause; especially a bodily injury caused by some external force or agency operating contrary to a person''s intentions, unexpectedly and not according to the usual order of events. In this case, this has happened.

10. THUS, for the reasons stated above, it is held that the death of the deceased was accidental one as the event which happened and occurred in the present case was merely by chance and was covered by the word "accident" and the learned District Forum has rightly observed so. Non-production of documents i. e. fir and post mortem report. No doubt in this case, FIR and post-mortem report were not produced, but non-furnishing of FIR and post-mortem report would not mean that no accident had taken place. Furthermore, since deceased had died because of receiving head injury due to slipping in the bath room, therefore, there was no necessity of lodging any fir and getting the post-mortem examination done as there was no crime or offence committed by any one under the provisions of Indian Penal Code or any other enactment.

Therefore, if the documents (FIR and post-mortem report) as demanded by the appellants through letter Annex. R/2 dated 3. 3. 2006, were not furnished and produced by the complainant-respondent, it cannot be said that the claim of complainant-respondent was false one.

11. IN view of the discussion made above, it is held that the appellants were not justified in repudiating the claim of the complainant-respondent and it amounted to deficiency in service on the part of the appellants and the learned District Forum has rightly observed so. The findings and conclusions of the learned District Forum decreeing the claim are based on correct appreciation of entire materials and evidence available on record and they do not suffer from any basic infirmity or illegality or perversity. Hence, no interference is called for with the same and this appeal deserves to be dismissed. Accordingly, this appeal filed by the appellants is dismissed. Appeal dismissed.