(2015) 09 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

ICICI PRUDENTIAL LIFE INSURANCE CO. LTD. — APPELLANT

Vs

Abhay Rishi — RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Citation : (2015) 09 NCDRC CK 0012

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Petition Dismissed

Judgement

1. PETITIONER /Opposite Party has preferred this revision petition under Section 21(b) of the Consumer Protection Act, 1986(for short, ''Act'') challenging impugned order dated 4.4.2011, passed by State Consumer Disputes Redressal Commission, UT, Chandigarh (for short, ''State Commission'') in First Appeal No. 20 of 2011. Along with it, an application seeking condonation of delay of 41 days has been filed.

2. BRIEFLY stated the facts are, that Respondent - -Complainant took Life Time Insurance Policy No. 00710159, by paying initial premium of Rs. 75,000/ - commencing w.e.f. 17.02.2004. According to respondent, he had to pay in total three installments of Rs. 75,000/ - p.a. each. Thereafter, no premium was required to be paid and his life was covered upto the age of 70 years. In the eventuality of any mishap, respondent was to be given insurance cover for Rs. 8 lacs, but if he had made any withdrawals, from the policy, then to that extent the cover was to come down proportionately. Further, as per clause 3.2 of the terms and conditions of the Policy, insured was allowed to make partial withdrawals of his deposited amount. Respondent made partial withdrawals on 16.04.07, 26.04.07 and 15.07.2008. On 18.04.2009, respondent requested petitioner for switching the funds. As per statement of account issued on 18.04.2009, respondent had a closing balance of 399 units, having market value of Rs. 60,000/ -, despite withdrawals. It is further stated that without any intimation, the policy was illegally foreclosed by the petitioner on 29.09.2009. However, the same was not revived after respondent''s repeated request. A legal notice dated

06.11.2009 was sent to the petitioner, but to no avail. Instead of reviving the insurance policy, petitioner refunded Rs. 6,600/ -. However, respondent did not accept the said refund and sent back the cheque to the petitioner, vide covering letter dated 10.11.2009. The aforesaid action of petitioner is illegal. Accordingly, respondent filed a complaint under Section 12 of the Act seeking following reliefs;

"a. Direct the opposite parties to pay to the complainant a sum of Rs. 8 Lacs by way of compensation, i.e. an amount equivalent to the insurance/life cover for which the complainant remained covered with the respondents right from the inception of the policy on 7.2.2004 till the age of 70 years in terms of the policy.

b. Still further the opposite parties be directed to pay a sum of Rs. 2 Lacs on account of undue mental harassment, mental agony, trauma, pain and suffering undergone by the complainant in the process. Opposite parties be also held liable to pay interest at the market rate with effect from the date of termination of the policy to the complainant, till its restoration.

c. Further, this Hon''ble Court be pleased to issue a direction to the Opposite Parties declaring their action in foreclosing the policy of the complainant, as illegal, and issuing directions to the Opposite Parties for providing life cover of Rs. 8 Lacs to the complainant, till the age of 70 years.

d. Still further the Opposite Parties be held liable to pay a sum of Rs. 35,000/ - towards the costs of litigation to the complainant."

3. PETITIONER in its reply has admitted issuance of life term insurance policy. It was also admitted, that in pursuance of request made by respondent for partial withdrawals, sum of Rs. 36,734.12 on 27.04.2007, Rs. 50,000/ - on 13.06.2007, Rs. 50,000/ - and Rs. 72,894.21 on 16.07.2008, totaling Rs. 2,09,628.33 were paid back him. It is further stated that as per clause 7.3 of the Policy, if premiums were paid for 3 policy years and thereafter no premium was paid, the policy remains continued till such time as the unit value was sufficient to pay the applicable charges and to meet the said requirement. Further, the policy get foreclosed when fund value becomes less than Rs. 10,000/ -. Since, fund value became less than Rs. 10,000/ -, so policy was foreclosed on 29.09.2009. Accordingly, cheque for Rs. 66,16.97P was sent to respondent on 2.11.2009. However, as an exceptional case, policy could be revived, on receipt of balance premium amount of Rs. 2,25,000/ -, subject to the terms and conditions of the policy. Since, petitioner has acted in accordance with terms, and conditions of the Policy, as such there is no deficiency on the part of petitioner.

4. DISTRICT Consumer Disputes Redressal Forum -II, U.T. Chandigarh (for short, ''District Forum'') vide order dated 22.11.2010, allowed the complainant and passed following directions; "This complaint is allowed with a following direction to the OPs to revive the insurance policy in question on receipt of the balance amount (Rs. 10,000/ - minus Rs. 6,610.97 = Rs. 3,389/ - and to provide the life coverage to the complainant up to the age of 70 years as per terms and conditions of the insurance policy. In the peculiar circumstances of the case, the

complainant is not entitled to any compensation for mental agony and harassment."

Being aggrieved petitioner filed appeal before the State Commission, which vide its impugned order dismissed the same.

5. I have heard learned counsel for petitioner as well as Mr. Abhinav Rishi son of respondent and gone through the record.

6. IT is submitted by learned counsel for petitioner, that petitioner is not under any obligation to assess the market risk weekly and communicate the same to the policy holder. The terms and conditions of policy does not oblige, petitioner to intimate the policy holder before foreclosing the policy. The policyholder has to pay the premium regularly for keeping the policy intact/alive. As per clause 4.1(ii) of the terms and conditions of the policy premiums are payable by policy holder, without any obligation of the petitioner to issue notice for the same. On the other hand it is contended on behalf of respondent, that petitioner cannot arbitrarily and without any intimation to the policy holder, foreclose the policy. Further, there are concurrent findings of the fact given by both the fora below and as such there is no infirmity or illegality in the orders passed by fora below.

7. DISTRICT Forum while allowing the complaint held; "Admittedly, the complainant got himself insured through ICICI Prudential Life Time Insurance policy No. 00710159 for sum assured of Rs. 8 lacs upto the year 70 years. Admittedly, the complainant paid regularly three annual premium of Rs. 75,000/ - each as per the terms and conditions of the insurance policy. The plea of the complainant to the effect that he was to pay three premiums only finds corroboration from clause 3.2 of the insurance policy read with the schedule attached with the policy. Clause 3.2 of the insurance policy reads as under;

3.2 Withdrawal Benefit

Withdrawal benefits are allowed only if all premiums have been paid for three full years and the policy has been in force for the full sum assured for these years.

No withdrawal of units, full or partial withdrawal shall be allowed in the first three policy years. The withdrawal benefit shall be the unit value as of the valuation date following receipt of withdrawal request.

6. From clause 3.2 of the insurance policy reproduced above, it is apparent that withdrawal benefits are allowed only if all premiums have been paid for three full years and the policy has been in force for the full sum assured for these years. Thus from this clause it is apparent that premiums have to be paid for three full years. In the illustration table also, only three premiums have been shown to be paid. Thus from the material placed on record it is proved that the complainant was required to pay only three annual premiums of Rs. 75,000/ - each. As per the terms and conditions of the insurance policy, his life on payment of the above three annual premiums of Rs. 75,000/ - each was insured upto the age of 70 years for a sum of Rs. 8 lakhs. However, the amount of insurance claim payable

shall depend upon the withdrawals.

7. Clause 7.3 of the insurance policy permits the policy holder to make withdrawals from the premiums paid by him. The said clause 7.3 of the insurance policy reads as under;

"7.3. To withdraw units from any plan by either specifying the number of units to be withdrawn or the amount to be withdrawn. The number of units to be withdrawn or the amount to be withdrawn shall be computed as specified in clause 6. This option shall be available to the proposer/life assured only after three years from the date of commencement of the policy. In case of a partial withdrawal of units, the minimum aggregate balance remaining across all the plans should be Rs. 10,000/ -. If the balance remaining across all the plans is less than Rs. 10,000/ -, the policy shall be terminated and the unit value under the policy shall be paid.

Xxxx"

8. From the bare reading of this clause, it is apparent that the complainant had the right to withdraw the amount. However, he was to maintain minimum credit of Rs. 10,000/ - to keep the policy alive. From Annexure C -3 which is the statement of account issued by OP itself, it is clear that on 01.07.2008, the complainant was having closing balance of Rs. 19,645.58 i.e. more than the required amount of Rs. 10,000/ - to keep the policy in force. There is no material on record to prove that thereafter any statement of account was sent to the complainant showing that said amount had reduced to less than Rs. 10,000/ -. On the other hand, the complainant had deposed that no statement of account was ever sent to him after Annexure C -3. According to the Ops, the balance of the complainant decreased less than Rs. 10,000/ - in the month of October, 2009 so the policy was foreclosed and the balance amount refunded to the complainant. It is pertinent to mention here that admittedly no notice was given to the complainant regarding the fact that the balance amount has decreased less than Rs. 10,000/ - and his policy was likely to be foreclosed in case he fails to maintain the minimum balance of Rs. 10,000/ - as per the terms and conditions of the insurance policy. Since no such notice was ever given to the complainant so the foreclosure of the policy is against the principles of the natural justice and is illegal. Had any notice been sent to the complainant and had he not paid the required amount, the policy could have been foreclosed. In the present case, no notice or any opportunity was granted to the complainant to maintain the minimum balance of Rs. 10,000/ -. In these circumstances, to our mind, the foreclosure of the insurance policy without any notice to the complainant amounts to deficiency in service and unfair trade practice."

8. WHEREAS , State Commission while affirming the order of District Forum, observed; "After giving our thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, we are of the considered opinion that the appeal is liable to be dismissed for the reasons to be recorded hereinafter.

Undoubtedly, ICICI Prudential Life Time Insurance Policy No. 00710159 for a sum of Rs. 8 lacs, upto the age of 70 years, was obtained by the complainant, from the OPs. There is also, no dispute, about the factum that the complainant paid three premiums @ Rs. 75,000/ - per annum regularly, as per the terms and conditions of the policy. The factum that it was required to pay only three premiums finds corroboration from clause 3. 2 of the insurance policy.

C -1. It is also evident from C -2, a document, nomenclatured as ''benefit illustration on life time cover'' issued by the OPs that the complainant was only required to pay three premiums @ Rs. 75,000/ - per annum. It is evident from the statement of account that the fund value/closing balance of the complainant on 18.4.2009 was shown to be Rs. 19,645.58 paise and closing balance of the units was 399.544100. No doubt, according to Clause 7.3 of the terms and conditions of the Policy, if the balance remaining across all the plans is less than Rs. 10,000/ -, the policy shall be terminated and the unit value under the policy shall be paid. However, it may be stated here, that there is no material, on the record, to prove that, after 18.4.2009 any statement of account was sent to the complainant, intimating him from time to time his fund value. There is, no material, on the record, that any prior notice was sent to the complainant, before foreclosing his policy, on the ground that since his fund value had decreased less than Rs. 10,000/ - as per clause 7.3, the Company was going to foreclose the said policy. The OPs were required to, resort to the principles of natural justice, by giving a prior notice to the complainant, that since his fund value had decreased less than Rs. 10,000/ -, his policy shall be foreclosed, if he did not maintain the minimum balance. Had the complainant been given such prior notice, he would have certainly made endeavour to raise the fund value to Rs. 10,000/ - or more. The District Forum was, thus, right in coming to the conclusion that foreclosure of the policy of the complainant, was violative of the principles of natural justice. The District Forum was also right in coming to the conclusion that, as such, the OPs, were deficient in rendering service to the complainant and they also indulged into unfair trade practice. The conclusion arrived at, by the District Forum, on the aforesaid aspects, being based on due appreciation of evidence, on record, is endorsed. The order rendered by the District Forum does not suffer from any illegality or perversity warranting interference of the Commission."

Petitioner along with present revision has filed an application for placing on record Methodology of ascertaining the unit value of the policy issued by it.

9. THIS application has been filed at revisional stage. There is no explanation as to why it was not filed before the District Forum or State Commission. At this belated stage, it cannot be taken into consideration. Therefore, this application stand dismissed.

10. IT is apparent from the record that for the first time, petitioner vide its letter dated 23.08.2011, intimated respondent that value of the units being Rs. 9,842.39P as on August 18, 2001. Thus, deficiency on the part of petitioner is

writ large. Moreover, both the Fora below have rightly relied upon Clause 3.2 of the Policy. According to this Clause (reproduced above) since respondent has paid the premium for full three years, therefore he is entitled for benefits of the policy. It is well settled, that under Section 21(b) of the Consumer Protection Act, 1986, scope of revisional jurisdiction is very limited. This Commission can interfere with the order of the State Commission only where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

11. THE Hon''ble Supreme Court in Mrs. Rubi (Chandra) Dutta v. M/s. United India Insurance Co. Ltd. : 2011 (3) Scale 654 has observed; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora "

12. FROM the examination above it is clear that findings of fact reached by Fora below are based on correct appreciation of the evidence on record. The impugned order does not suffer from any illegality, material irregularity or jurisdictional error which could justify our intervention in exercise of powers under Section 21(b) of the Act. Thus, present revision petition having no legal force, is hereby dismissed. No order as to cost.

