(2011) 07 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Jai Krishna Sah — APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD — RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Citation : 2011 4 CPJ 125

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Revision Petition dismissed.

Judgement

1. CHALLENGE in this revision is to the order dated 3.12.2009 passed by the Jharkhand State Consumer Disputes Redressal Commission, Ranchi (''State Commission'' for short) passed in F.A. No. 545/07 by which, the appeal of the respondents was allowed and the order of the District Forum dated 15.12.2006 accepting the complaint of the petitioner was set aside. Petitioner herein is the original complainant before the District Forum and the respondents who represent the Insurance Company were the three opposite parties. For the sake of convenience, the parties are being referred to as complainant and the opposite parties.

2. BRIEFLY stated, one Guliram Sah had purchased a Janta Personal Accident Insurance Policy from the OP/Insurance Company wherein he made his grandson who is the complainant, as nominee. The insured died during the currency of the policy. The complainant as nominee under the policy made the insurance claim, but it was not allowed by the OP/Insurance Company. A consumer complaint was, therefore, filed by the complainant before the District Forum. The District Forum accepted the complaint and directed the OP/Insurance Company to pay the insurance claim of Rs. 5,00,000 vide Janta Policy and Rs. 5,000 towards compensation to the complainant within a period of two months from the date of order. Aggrieved by the order of the District Forum, the OP/Insurance Company challenged the same in appeal before the State Commission, which allowed the appeal and set aside the order of the District Forum and hence, the revision petition.

3. WE have gone through the orders of the Fora below, perused the record and heard the Counsel for the parties, at length. The District Forum while accepting the complaint of the complainant recorded the following reasons in favour of its order: "The grandfather of the complainant had obtained Janta Policy from United India Insurance Co. Ltd. and premium was also paid on time. In an accident, he sustained the head injury and on account of said injury he died on 22.10.1997 for which he was shown to the doctor and had obtained the certificate in which cause of death is also shown. According to the doctor, the cause of death is the head injury. The original and photocopy of Insurance policy are on record in which complainant has been shown as nominee of the insured person who is grandson of policy holder. The complainant''s claim of Rs. 5,00,000 from the aforesaid Insurance Company was repudiated on the ground that the cause of death was not satisfactory whereas it is on record that the complainant soon after the death, the deceased was taken to the civil doctor and the certificate of the doctor was obtained wherein the head injury as the cause of death has been shown. The deceased was 60 years at the time of death and Prof. Stefan Marandi, the member of Vidhan Sabha, then, with the concurrence of villagers signed an advice, wherein, the necessity of post mortem was not felt and as such the deceased was cremated at Barari Ganga Ghat, Bhagalpur. Since the complainant has filed the certificate issued by the competent Government doctor, therefore, it would be understood that the certificate is correct and genuine. From the side of the opposite parties, after 2 years, from the same doctor, one certificate has been obtained that he was not aware of the purpose for which the certificate was being obtained from him and on the instance of the opposite party, the certificate issued by the doctor was cancelled after long time, cannot be believed. Therefore, this Forum is of the view, the cause of death as shown by the complainant is satisfactory and proved. Therefore, complainant is entitled to the insured sum."

4. THE State Commission while accepting the appeal and dismissing the complaint set aside the order of the District Forum and made the following observations in support of its view: "3. Main stated grounds of appeal are that the claim is false and the insured has violated the conditions of the policy. The insured has obtained the policy by falsely representing his age, he did not die by accident but due to old age. The appellant further stated that the signature of the insured was forged and in the proposal form the grandson was shown as son. 4. The respondent challenged the appeal on ground of limitation. He stated that his claim is genuine. He produced the certificate of the Doctor who attended the deceased that shows his death was due to injury in head caused by falling from the roof and that his age at that time was 60 years. In the original proposal form he was shown as grandson but in the carbon copy the word ''grand'' was displaced. The Surveyor of the appellant has reported his case true. The respondent asserted that the proposal form was examined by the appellant and having been satisfied about the facts stated therein allowed the policy. Now he cannot falsify the accepted facts. Due to mala fide intention the appellant again

deputed inquiry and got report according to his desire to defeat the purpose of the respondent. 5. In support of his contention the appellant filed several documents. The second time doctor report shows that the deceased was about 90 years old and the cause of death could not be ascertained as no X-ray was done. The doctor stated that without knowing the purpose he gave certificate wrongly earlier. The second Surveyor report states that he died due to old age but not be accident. Even the family members of the deceased stated that he was far ahead of 60 in age. The voter list and other papers also shows advanced age of the deceased. 6. Among the other conditions FIR and post mortem report are essential for the settlement of the insurance claim. But there is no FIR, no post mortem report in the instate case. The respondent argued that at the advice of the well-wishers, no post mortem was done. 7. In order to challenge the necessity of appointing second Surveyor the respondent filed the photocopy of the judgment dated 2.11.2004 of the State Consumer Commission, Patna passed in appeal No. 568/1995. The circumstances in this case are not analogous to the case. There are valid reasons in this case to doubt that necessitated the second thorough inquiry. 8. From perusal of the impugned order we find that the appellant had filed several documents before the learned Forum but the Forum erred in not considering or appreciating them as it transpires from the impugned order itself. 9. After hearing the parties at length, examining the papers filed by them and perusing the impugned order we find valid reason to condone the delay in filing this appeal hence the same is condoned. We also find and hold that the impugned order is not maintainable and hence the same is set aside and the appeal is allowed but without cost."

5. LEARNED Counsel for the complainant has submitted that the first Surveyor was appointed by the Insurance Company, but when his report was found to be inconvenient to the Insurance Company and favourable to the complainant, the Insurance Company on its own appointed a second Surveyor who submitted an adverse report. He argued that when a qualified Surveyor has already looked into the matter and submitted a detailed report, appointment of the second Surveyor was wrong and unjustified. He submitted that the District Forum rightly rejected the report of the second Surveyor and accepted the complaint by relying on the first Surveyor''s report. Relying on the order of the National Commission in the case of National Insurance Company Ltd. v. New Patiala Trading Company, I (2003) CPJ 33 (NC), the Counsel submitted that reasons for non-acceptance of report of first Surveyor must be specified and it must be proved that the report of the first Surveyor is faulty. Since both the things were not done in the present case, neither the Insurance Company was free to appoint the second Surveyor nor to use the second report to counter or contradict the report of the first Surveyor. In view of this, the finding of the State Commission in the impugned order while setting aside the order of the District Forum cannot be sustained in the eye of law. The Counsel for the petitioner also has relied on the judgment of the Supreme Court in the case of New India Assurance Co. Ltd. v. Protection Manufacturers Pvt. Ltd., III (2010) CPJ 40 (SC)=VI (2010) SLT 152=AIR 2010 SC

3035. In particular, the Counsel referred to the following observations of Their Lordships of the Apex Court in this case in paragraph 35 of their order: "35. The submissions of Mr. Piyush Gupta in regard to Section 64-UM of the Insurance Act, 1938, are also of substance, as the Appellant Insurance Company should have applied to the Regulatory Authority under the Act for a second opinion instead of appointing M/s. J. Basheer and Associates for the said purpose unilaterally. The reports submitted by M/s. J. Basheer and Associates are liable to be discarded on such ground as well."

6. HE further submitted that report of the second Surveyor unsuiting the claim of the complainant was mainly based on the changed version of the same doctor who had earlier certified that the age of the insured was 60 years and for that he had died as a result of accident. In view of these aspects, Counsel for the petitioner pleaded that the reversal order of the State Commission unsuiting the claim of the complainant was not based on correct appreciation of the factual position and hence uncalled for. The same is, therefore, liable to be set aside. Per contra, the Counsel for the OP/Insurance Company representing the respondents submitted that reasons for repudiation of the claim made by the complainant were duly conveyed to the complainant vide letter dated 10.9.1999 of the Insurance Company. He pointed out that the competent authority of the Insurance Company was constrained to appoint second Surveyor to investigate into the matter since serious doubts had arisen regarding the genuineness of the report of the first surveyor. He drew our attention to both the reports, which are placed on record, to support his contention as to how the inaccuracies and contradictions of the first report have been dealt with in detail in the second report. He submitted that the circumstances in which the doctor had given factually incorrect certificate in the matter have been explained by the same doctor in his letter dated 16.7.1999 addressed to the second Surveyor. This letter is also placed on record. He pointed out that in spite of the fact that an FIR and post mortem report are essential for settlement of the insurance claim as per the conditions of the policy, neither the post mortem was carried out nor any FIR was lodged. In such a situation, the whole claim of the claimant was mainly based on the certificate issued by the local Medical Officer who on being questioned about the accuracy of the certificate earlier issued by him, admitted that the earlier certificate issued by him was incorrect and issued under wrong impression. Learned Counsel submitted that besides conveying the reasons for repudiation, the OP/Insurance Company has also given all these reasons and facts in its written statement submitted on oath before the District Forum in reply to the consumer complaint. It was open to the complainant to rebut this piece of evidence by producing concrete evidence against the submissions made by the OP/Insurance Company. Not only this, no replica even was filed by the complainant before the District Forum with reference to the contents of the written statement. In fact, no plea against the appointment of the second Surveyor was taken by the complainant either in his complaint or during further submissions before the District Forum in spite of same being referred to in the

repudiation letter as well as the written statement of the OP/Insurance Company. Winding up his arguments, learned Counsel for the Insurance Company submitted that in the present case the competent authority had appointed Surveyors who were actually investigators to make inquiry and report the facts about the incidence pertaining to the claim rather than Survey or assess the loss as is the case with the claims in respect of non-life insurance policy pertaining to fire, accident, floods, etc. Even then, the report of the second Surveyor and the written statement amply establish that the competent authority had good reasons to doubt the report of the First Surveyor in respect of the investigations carried out by him and hence appointed the second investigator/Surveyor and after receiving the second report, discarded the first report as unreliable and hence rejected the claim. In view of these facts and circumstances of the present case, the Counsel submitted that the ratio laid down by the Apex Court and the National Commission in the cases relied upon by the learned Counsel for the petitioner would not be applicable to the present case.

7. DURING the course of reply to the arguments by the Counsel for the respondent, Counsel for the petitioner admitted that the plea regarding the appointment of the second Surveyor was not taken by the complainant either in the original complaint or later submissions made before the District Forum. He also admitted that no reply was filed to the written statement of the OP/ Insurance Company before the District Forum.

8. HAVING considered the aforesaid submissions of the Counsel for the parties and after going through the record, we are convinced that there is no substance in the revision petition and the view taken by the State Commission in the impugned order is fully justified. The revision petition, therefore, stands dismissed, but with no order as to cost. Revision Petition dismissed.

