(2002) 07 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

JANARDHAN PRASAD LODHI APPELLANT

Vs

Bombay Port Trust RESPONDENT

Date of Decision : 01-07-2002

Acts Referred:

Citation : 2002 3 CPJ 43

Hon'ble Judges : S.K.Dubey , B.L.Khare J.

Final Decision : Allowed

Judgement

1. THIS appeal is directed against the order dated 1.12.1998 passed in Case No. 140/Forum/98 by the District Consumer Disputes Redressal Forum, Satna (for short the ''District Forum'') whereby the complaint for deficiency in service in not making the claim of Rs. 1,00,000/- of the Life Insurance Policy No. 907289008 under Salary Savings Scheme was dismissed holding that the deceased life assured was employed in Bombay Port Trust who fell ill and was on sick leave not earned the salary w.e.f. 27.6.1996 till the date of his death, hence, premium could not be deducted as he was hospitalized in Port Trust Hospital, Mumbai from 27.6.1996.

2. AFTER hearing Mr. Mohan Chouksey, learned Counsel for appellant and Mr. Deepesh Joshi, learned Counsel for respondent Nos. 2 and 3 and Mr. Radheshyam Vishwakarma, clerk of respondent No. 1 we are of the opinion that the employer i.e. respondent No. 1 as well as LIC were deficient in service. When the deceased did not earn the salary in that case it was the duty of the employer to intimate the life assured to make the payment of premium. This Commission in Life Insurance Corporation of India v. Smt. Mulema Singh & Ors., III (2001) CPJ 555, a case where the salary was not sufficient for payment of the premium due to illness of the life assured after consi-dering the undertaking given to the life assured and the decision of Supreme Court in Delhi Electric Supply Undertaking v. Basanti Devi & Anr., III (1999) CPJ 15 (SC), observed in paras 5, 6 and 7 : "5. The contention of LIC is based on undertaking given by the life assured to SECL relevant of which we extract : ''Dear Sir.... I agree that your

liability will be confirmed to making arrangement for deduction of premium from my salary wherever this can be made and remitting the amount to the Corporation in time. I shall be entirely responsible for any consequences on account of non-payment of premium on my policy for reasons beyond your control such as in the event of my proceeding on leave without pay, or my drawing advance salary without deduction of premium, or my cancelling this authorization for deduction of premium on my leaving your employment in any such case, or in case of withdrawal of the Salary Saving Scheme with you by the Life Insurance Corporation of India for any reason whatsoever, it will be my responsibility to make arrangements for remittance of the premium directly to the Corporation at the increased rate specified in the policy to prevent my policy from going into a lapsed condition.

Yours faithfully Sd/-'' 6. The Supreme Court in case of Delhi Electric Supply Undertaking v. Basanti Devi & Anr. (supra), has considered the effect of Salary Savings Scheme endorsement and the effect of non-payment of premium by the employer in paras 5 and 6 which we quote : ''5. We have also been shown a Circular titled "Salary Savings Scheme Endorsement", which is as under : "This policy having been issued under the Corporation''s Salary Savings Scheme, it is hereby declared that the instalments premium shall be payable at the rate shown in the Schedule of the policy so long only as the life assured continues to be an employee of his present employer, whose name is stated in proposal and premiums are collected by the said employer out of the salary of the employee and remitted to the Corporation without any charge. In the event of the life assured leaving the employment of the said employer or the premium ceasing to be so called and/or remitted to the Corporation, the life assured must intimate the fact to the Corporation and in the event of the Salary Savings Scheme being withdrawn from the said employer, the Corporation shall intimate the fact to the life assured and all premiums falling due on and after the date of his leaving employment of the said employer, or cessation of collection of the premiums and remittance thereof in the manner aforesaid, or withdrawal of the Salary Savings Scheme as the case may be, shall stand increased by the imposition of the additional charges for the monthly payment that has been waived under the Salary Savings Scheme at 5% of the premium exclusive of any premium charged for Double Accident Benefits or extended Permanent Disability Benefits and any other extra premiums charged. During the period in which premium is remitted to the Corporation through the employer, the instalment premium will be deemed to fall due on the 20th day of each month instead of the due date within mentioned." 6. The endorsement shows that the premium deducted by DESU from the salaries of the employees and remitted to LIC is without charge. When the employee leaves the employment of the said employer or his premium is ceased to be collected and/or remitted to the LIC this fact is to be intimated by the employee to the LIC. When the Scheme (Salary Savings Scheme) is withdrawn it is the LIC which intimates that fact to the employee whose life has been insured. Then premium is payable with an extra charge. This endorsement is in conflict with the terms of the Scheme as spelled out in the Brochure. Considering the conditions as to how premium is to be deducted from the salaries of the employees and remitted to the LIC by the DESU by one cheque for all the employees with the reconciliation statement it is not possible for any employee to know if the amount of the premium deducted from his salary has been remitted or not. An employee is not being given any separate premium notice nor is he given any receipt for the premium received. If a condition is now placed on the employee that it is he who is to intimate the LIC if there is no remittance of the premium deducted by DESU it will be too onerous a condition to be of any validity. Considering the Scheme such a condition cannot be imposed on an employee. It is impracticable. A purposive interpretation has to be given to the endorsement and it has to be held that since payment of premium after deducting from the salary of the employees is between DESU and LIC. It will not be for the employee to intimate the LIC about non-remittance of the premium.''

7. In the case in hand, even if the salary earned was not sufficient because of the amount of premium monthly was not remitted to LIC, it was the duty of the SECL to intimate the life assured the reason for non-remittance of the premium and to pay the same directly to LIC failing which the policy will lapse, which was not intimated by SECL, as a result of which for non-payment of the premium the policy lapsed. In the circumstances, in our opinion SECL has failed in discharge of its duty. LIC cannot take advantage of the undertaking which contains a too onerous condition, which cannot be imposed on an employee as it is impracticable to employee to know whether premium has been deducted or not. It was for the SECL to remit the premium to the LIC which was neither remitted to the LIC nor the life assured was intimated for making the payment of the premium. In the circumstances SECL who was acting as an agent of the LIC failed to perform his part or duty in the matter of deduction or collection of premiums. Therefore, the District Forum in our opinion was right in holding that because of inaction of SECL, amounting to deficiency in service policy lapsed."

The decision of this Commission in LIC v. Smt. Mulema Singh & Anr. (supra), has been affirmed by the National Commission in Revision Nos. 2053-2054 of 2001, vide order dated 19.4.2002.

The case in hand is squarely covered by the decision in LIC v. Smt. Mulema Singh & Anr. (supra), hence we direct the LIC to pay the amount of Rs. 1,00,000/- with its interest at the rate of 9% p.a. from the date of repudiation i.e. 9.12.1997. The respondent No. 1 shall bear the cost throughout quantified at Rs. 5,000/-. The order shall be complied with within a period of two months from the date of receipt of certified copy of this order failing which the interest shall be payable at the rate of 12% p.a. on the amount of Rs. 1,00,000/- and on the amount of Rs. 5,000/- from the date of this order.

3. IN the result, the appeal is allowed. The order of the District Forum is set aside. A copy of this order be conveyed to the parties and a copy be sent to the

District Forum along with record of the case. Appeal allowed.