(2004) 07 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

JHAMAN DAS BAJAJ APPELLANT

Vs

L.I.C. of India RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:

Citation : 2004 3 CPJ 563 : 2004 3 CPR 226 : 2005 1 CLT 43

Hon'ble Judges : Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal has been preferred under Section 15 of the Consumer Protection Act, 1986, against the order dated 1.4.2002, passed in Complaint No. 367/2001 by the District Consumer Forum, Raipur (hereinafter referred to as the ''District Forum'' for short) whereby the complaint was dismissed by the District Forum.

2. THE facts not presently in dispute are that the brother of the complainant later Sajan Das Bajaj had obtained a life insurance policy bearing No. 381530965 on 28.7.1995 from the respondent/opposite party No. 2, covering risk upto 28.7.2005 and the premium was Rs. 784/- payable quarterly. THE aforesaid Sajan Das Bajaj had appointed his brother i.e., the appellant/complainant as his nominee for purposes of the aforesaid policy. It is also not in dispute that the said Sajan Das Bajaj died on 8.10.1999 and further that the claim filed by the nominee of the deceased i.e., the appellant/complainant was repudiated by the insurer on 23.6.2000 on the ground that the policy was in a lapsed condition on the date of death of the life assured. In consequence of repudiation of claim, the nominee had filed complaint before the District Forum and contended that the deceased Sajan Das had obtained the aforesaid policy for the assured sum of Rs. 3,00,000/-. During his life-time the life assured paid due premiums, though belatedly, and the same were received and acknowledged by the insurer. It was contended that though a few receipts have been lost and are not available, the policy did not lapse. It was also contended that the practice adopted regarding receipt of premium is that in case of delayed premiums, the company first adjust the past due unpaid premiums and then adjusts the amount towards the latest

premium and the policy, even if lapsed, stands revived. The last receipt of premium is dated 24.7.1999. It was further contended that the life assured used to pay cash to the agent for the due premiums, who in turn deposited the same with the insurer. The life assured had paid a sum of Rs. 6,306.70 to the agent for being paid towards the due premiums under the aforesaid policy but only one instalment was paid out of the said sum. After the death of the life assured on 8.10.1999 the claim was laid before the insurer for payment of the assured sum of Rs. 3,00,000/- but the claim was repudiated by the insurer. It was also averred in the complaint that the complainant had filed a petition before the Ombudsman at Bhopal and the said petition was partly allowed and the Ombudsman had directed the insurer to refund the amount received towards instalments of premium, together with interest due thereon, instead of direction to make payment of the assured sum of Rs. 3,00,000/-. As the complainant was not satisfied with the award of the Ombudsman, he filed complaint before the District Forum seeking direction for payment of the assured sum of Rs. 3,00,000/- together with interest from the date of filing of complaint calculated @ 18% per annum and costs of proceedings. The complainant also filed affidavit in support of complaint.

The opposite party Nos. 1 and 2 had averred in the affidavit-cum-reply that the deceased Sajan Das used to make late payment of instalments of premium and he had paid only 15 quarterly instalments. Last premium was paid on 24.7.1999 for the instalment due from 28.1.1999. At the time of death of the insured on 8.10.1999 the policy was lying lapsed as the premiums payable on 28.1.1999 and 28.7.1999 were not paid. It was admitted that there had been some mistake due to fault in the accounting machine. It was further contended that as directed by the Ombudsman, the opposite party Nos. 1 and 2 were prepared to refund the amount of premium received from Late Sajan Das together with interest @ 12% but the complainant declined to accept the same. It was also averred that the opposite party Nos. 1 and 2 neither authorised opposite party No. 3 nor opposite party No. 4 to receive the amount of premium. As the policy had lapsed prior to death of the life assured the complainant is not entitled to any relief claimed by him.

3. THE opposite party Nos. 3 and 4 also, in separate written version filed by them, denied their liability towards the complainant. The learned District Forum accepted the version of the opposite party Nos. 1 and 2 came to the conclusion that life assured did not pay premium falling due in April, 99 and July, 99 and thereby the policy had lapsed, hence the claim was repudiated bona fide and the insurer has not committed any deficiency in service in repudiating the claim of the complainant. The learned District Forum had further held that the agent was not authorised to collect the premium or to bind the Corporation. However, the complaint was partly allowed and the opposite party Nos. 1 and 2 were directed to refund the premium amount paid by the life assured between 25.7.1995 to 20.7.1999 together with interest @ 12% per annum and cost of Rs. 1,000/-.

4. BEING aggrieved by the aforesaid order the complainant has preferred this appeal. Learned Counsel for the appellant assailed the impugned order and urged that the learned Distt. Forum has failed to appreciate the material on record in its proper perspective. It was contended that the policy of the deceased was very much valid on the date of death of the life assured as a consolidated sum of Rs. 6,306.70 was paid by the deceased towards payment of instalments from January, 1999 onwards. Learned Counsel for the appellant drew our attention to the receipt dated 24.7.1999 whereby a consolidated sum of Rs. 6,306.70 was paid in cash but only a sum of Rs. 1,819.30 only (inclusive of late fee) has been adjusted towards payment of one instalment. However, no details have been provided as to what happened to the remaining amount paid by the deceased. It was further contended that the respondent Nos. 1 and 2 have admitted in their reply that prior to accepting premium for a latter date, the previous dues are recovered by the company. In view of the aforesaid clear admission, it is clear that all the instalments prior to January, 1999 had already been paid by the deceased and vide receipt dated 24.7.1999, the insurer had also received a consolidated sum of Rs. 6,306.70. Under the circumstances, the policy cannot be said to have lapsed. It was a fault on the part of the insurer if they have adjusted money only towards one instalment and have failed to clarify as to what happened to the remaining amount. The nominee is entitled to receive full amount of the assured sum i.e., Rs. 3.00 lacs and by repudiating the claim, the insurer has committed deficiency in service. The learned Counsel for the appellant prayed that the appeal may be allowed and the order of the Distt. Forum may be set aside. As against this, the learned Counsel for respondent Nos. 1 and 2 supported the impugned order and submitted that it is a reasoned order and is just and proper. Agent is not authorised to receive amount of premium. The learned Counsel further contended that in case there are policies, in the name of several family members, consolidated amount towards premium of the several policies is accepted by the Corporation for the sake of convenience. It was further contended that as the instalments of premium falling due in the months of April, 99 and July, 99 were not paid, the policy was lying in a lapsed condition at the time of death of the life assured. There was no deficiency in service in repudiating the claim. The learned Counsel for respondent Nos. 1 and 2 further reiterated that there is no need for any interference with the order passed by the Distt. Forum. The only question to be decided is : whether the Insurance Company had received a sum of Rs. 6,306.70 vide receipt dated 24.7.1999 and the implications thereof.

5. AFTER hearing learned Counsel for both the parties and perusing the record, we are of the opinion that the question to be decided revolves round the receipt dated 24.7.1999. It appears from the said receipt that it is a Renewal Premium Receipt issued in the name of Shri Sajan Das Bajaj. The insurer had received a consolidated sum of Rs. 6,306.70. Policy number is mentioned as 381530965 in very clear terms. It also appears that the premium was due from January, 99. Thereafter, it is mentioned that one instalment was paid. It is abundantly clear

from the receipt that the amount was paid by the agent. However, it is further mentioned that Next Premium Due 4/1999. Under the circumstances, the plea taken by the insurer that they have not authorised the agents to receive amount of premium will be of no avail. It is apparent that after receiving money from the insured, the agent had deposited the same with the L.I.C. and thereupon the L.I.C. had issued the receipt so, it cannot be believed that the insurer had not received the amount mentioned therein. Once the insurer had received the amount, it is immaterial whether the same has been received through an agent or from the insured personally. It is not the case of misappropriation of amount by the agent, hence, it was for the insurer to explain as to what happened to the remaining amount paid by the deceased.

6. THE learned Counsel for the respondents/insurer tried to demonstrate that the aforesaid concolidated sum of Rs. 6,306.70 was received towards various policies in the name of other family members. However, the respondent insurer has failed to provide details of the policies or even the name of the family members towards whose policies remaining amount was adjusted. So, the aforesaid plea of the respondents/Insurance Company cannot be accepted. We have also observed that in the reply submitted before the Distt. Forum, the respondent insurer had admitted that there has been some mistake due to fault in accounting machine. However, the respondent/insurer has failed to demonstrate before us to what was the said mistake and how did it result. Under the circumstances, the balance is naturally titled in favour of the complainant. It is apparent from the receipt dated 24.7.1999 that the amount paid was Rs. 6,306.70 and we have no reason to believe that it was not paid towards payment of instalment regarding the Policy No. 381530965 in the name of the deceased Sajan Das Bajaj. Since the premium was due from January, 99 and amount of one instalment of premium was Rs. 784/- only, it cannot be believed that the policy had lapsed prior to the death of the life assured on 8.10.1999. We are of the considered opinion that by repudiating the claim of the complainant appellant, the respondent insurer Life Insurance Corporation has committed deficiency in service. In our opinion, the finding of the learned Distt. Forum is erroneous and cannot be sustained, hence, the same is set aside. This appeal is allowed. The opposite parties/respondent Nos. 1 and 2 are directed to pay to the complainant appellant the insured sum of Rs. 3.00 lacs together with interest @ 6% per annum from the date of complaint till the date of making final payment, within a period of one month from the date of this order. Appeal allowed.

