(2018) 03 NCDRC CK 0110

In the National Consumer Disputes Redressal Commission

Case No : First Appeal No. 1255 Of 2016

Jigna Satyam Ghelia APPELLANT

Vs

ICICI Prudential Life Insurance Co. Ltd RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Citation : (2018) 03 NCDRC CK 0110

Hon'ble Judges : Prem Narain, J

Bench : Single Bench

Advocate : Dilip A. Taur, Praveen Mahajan, Ruchi Mahajan

Final Decision : Disposed Off

Judgement

1. This appeal has been filed by the appellant Mrs. Jigna Satyam Ghelia against the order dated 03.08.2016 of the State Consumer Disputes Redressal

Commission, Maharashtra (in short â??the State Commissionâ??) passed in consumer complaint No.CC/12/314.

2. Brief facts of the case are that husband of the complainant had taken a housing loan amounting to Rs.29,00,156/- from Diwan Housing Finance

Corporation Ltd. on 28.12.2011. On the insistence of said finance company to have full insurance for the said housing loan, the husband of the

complainant had paid a premium of Rs.90,804 + service Tax + Education Cess amounting to Rs.1,00,156/-. On receipt of the premium amount, the

insurance policy was issued by the opponent bearing Home Assure Policy No.16268168.

The husband of the complainant unfortunately expired on account of heart attack on 20.01.2012. The complainant made a representation requesting

the opponent to settle the claim. It is contended by the complainant that she completed the entire procedure and submitted the insurance claim to the

opponent. However, quoting terms and conditions of the policy, the opponent repudiated the claim on 31.03.2012 and refunded the premium amount to

Diwan Housing Finance Corporation Ltd. as per the policy terms and conditions.

3. Aggrieved by the repudiation of the claim, the appellant/complainant preferred a complaint bearing No.CC/12/314 before the State Commission

claiming for total insurance amount. The complaint was resisted by the opposite party/respondent on the ground that the Deceased Life assured

(DLA) had not died due to any accident and no death claim other than arising out of an accident was payable within 45 days from the commencement

of the policy as per the terms and conditions of the policy. It was also pointed out that the complainant had also filed a complaint before the Insurance

Ombudsman, but the same was not considered as the amount was more than Rs.20,00,000/-.

It was also stated that as a good will gesture, the Insurance Company sent an offer for paying Rs.5,00,000/- ex-gratia for settling the claim. However,

that offer was not accepted by the complainant. The State Commission dismissed the complaint vide its order dated 03.08.2016, however, the State

Commission suggested to the Insurance Company to offer the cheque of Rs.5,00,000/- to the complainant as earlier agreed.

4. Hence, the present appeal.

5. Heard the learned counsel for both the parties and perused the record.

6. Learned counsel for the complainant/appellant stated that when the case was finally heard by the State Commission, the counsel for the

appellant/complainant was not present due to non functioning of the case board and the matter was heard in his absence, therefore, the

appellant/complainant has not got any opportunity to put forward the merits of her case before the State Commission. It was further argued by the

learned counsel that the terms and conditions of the policy were not supplied and therefore, the complainant is unaware about these conditions. Hence,

these terms and conditions are not binding upon the complainant.

It was further stated that an offer of Rs.5,00,000/- was made for settlement of the claim by the Insurance Company as a gesture of good will out of

humanitarian considerations, but the same was not accepted by the complainant because the complainant is entitled to full insurance amount. That the offer of Rs.5,00,000/- was made for settlement of the claim, it itself speaks that the Insurance Company knows of its deficiency in the matter. The

State Commission while dismissing the appeal has suggested the Insurance Company to pay Rs.5,00,000/- as was agreed by the Insurance Company

as ex-gratia payment. The case of the complainant on merit is very strong, therefore, the complainant must be been given opportunity of being heard.

7. On the other hand learned counsel for the respondent/Insurance Company has stated that the State Commission has decided the complaint case on

merits and learned counsel for the complainant chose not to appear at the time of argument. It was not the case of the complainant that the counsel

was not aware of the date or he was not allowed to advance the arguments. Moreover, the State Commission has decided the case on the basis of the

facts, which are admitted by the complainant. The Home Assure Policy was issued on 07.01.2012 with the commencement of the life cover from

30.12.2011.

There was a free look period of 15 days in the policy, but the DLA did not refer any matter in this regard to the Insurance Company. The insured

expired on 20.01.2012. Thus, the death was within a period of 45 days from the commencement of the policy. Hence, as per the terms and conditions

of the policy, the death claim is not payable if death occurs within a period of 45 days from the date of commencement of the policy except if the

death has been caused due to an accident. In the present case, the complainant has herself admitted in the complaint that the death was caused by the

heart attack, therefore, it cannot be covered under the accident and hence the claim is not payable.

8. I have considered the arguments advanced by both the sides and have examined the material on record. The State Commission has clearly

recorded in its order that learned counsel for the Insurance Company was present, but the complainant as well as her Advocate remained absent

though aware. It has been claimed by the learned counsel for the appellant that the board of the concerned bench of the State Commission did not

show the name of the appellant, therefore, her counsel could not be present. As per the observations of the State Commission, her counsel was aware

of the date fixed. There may be some problem in the board of the State Commission and therefore, the complainant and her counsel may not have been genuinely able to attend the case on that day at the time of hearing.

As the Consumer Protection Act, is a beneficial legislation and aims at giving better protection to the consumers, without expressing any views on the

merit of the case, I deem it appropriate to provide an opportunity to the complainant to be heard before the trail forum. Accordingly, to provide this

opportunity to the appellant the order dated 03.08.2016 is set aside at a cost of Rs.5,000/- (rupees five thousand only) to be deposited with the legal aid

account of the State Commission and the State Commission shall proceed with the hearing only after the amount of Rs.5,000/- has been deposited

with the legal aid account of the State Commission. The matter is thus remanded to the State Commission for deciding the complaint after giving

opportunity of being heard to both the parties. Parties to appear before the State Commission on 02.05.2018. First Appeal No.1255 of 2016 is

accordingly disposed of.