

(2016) 07 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

Case No : 2137 of 2015

K. BALARAMA SARMA & ANR.

APPELLANT

Vs

CHIEF MANAGER, ANDHRA BANK

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21 (b) - Jurisdiction of the National Commission

Citation : 2016 3 CPR 517

Hon'ble Judges : Jain, M. Shreesha

Advocate : K. P. S. Dalal, K. C. Agarwal, BALRAJ DEWAN

Final Decision : Petition Dismissed

Judgement

1. This Revision Petition under Section 21 (b) of the Consumer Protection Act, 1986 (for short "the Act"), is directed against a common order dated 16.04.2015, passed by the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short "the State Commission") in First Appeals No.50 and 67 of 2014, filed by the Complainants and the sole Opposite Party in the Complaint viz. Andhra Bank, dismissing both the Appeals. By means of these Appeals, the parties had questioned the correctness of the order dated 06.01.2014, passed by the District Consumer Disputes Redressal Forum, II, Vijayawada (for short "the District Forum") in Complaint No.153 of 2013. By the said order, the District Forum, while partly accepting the Complaint and recording a finding that there was deficiency in service on the part of the Bank in not apprising the Complainants of another Insurance Scheme, namely, "Liability Insurance of Housing, Education and Vehicle Loans" (for short "the Scheme"), had directed the Bank to pay to the Complainants a sum of 50,000/- towards compensation along with a sum of 3,000/- as costs with the default stipulation of payment of interest @ 9% p.a. from the date of the said order till realization.

2. On 21.01.2012, the Complainants, being wife and husband, along with their son had obtained from the Bank, home loan amounting to 14,45,000/-.

Unfortunately, their son, namely, Satya Siva Kumar, died in a motor vehicle accident on 21.04.2012. The claim amount awarded to them under the Motor Vehicles Act was directly credited to their loan account. Later, they learnt that due to the death of the co-borrower, their liability towards the home loan could be discharged by M/s India First Life Insurance Company Limited (for short "IFLIC"), in case they had exercised option under the Scheme. Under the Scheme, the risk coverage was extended to the lonees on payment of premium in one lump sum, which was to be calculated on the basis of the age of the borrower, repayment period and the loan amount. The cover was extendable to the existing uncovered and new accounts. It was an optional Scheme and the intending borrowers were required to submit "Sanction-cum-Authorization & Simple Health Declaration Form" to join the Scheme. The salient features of the Scheme were communicated by the Bank to all its branches vide Circular dated 20.05.2010.

3. It was the case of the Complainants that had the said Scheme been brought to their notice, they would have availed of it by exercising the requisite option and making deposit of the premium amount, and on the death of their son, the loan obtained by them would have been discharged under the Scheme. In nut shell their case was that having failed to inform them about the said Scheme, there was deficiency in service on the part of the Bank and therefore, it was liable to compensate them for the loss suffered by them on account of non-adjustment of the claim under the Scheme against the loan amount due from them.

4. Thus, alleging deficiency, the Complainants filed a Complaint against the Bank, inter alia, seeking a direction to the Bank to refund a sum of 3,09,000/-, being the amount of compensation receivable by them under the Motor Vehicles Act, on the death of their son, which had been adjusted towards the loan amount, along with damages, quantified at 2,00,000/-. As noted above, on consideration of the material placed before it, the District Forum came to the conclusion that there was deficiency in service on the part of the Bank in not informing the Complainants/borrowers about the Scheme. Accordingly, it awarded the afore-noted compensation to the Complainants.

5. Being dissatisfied, both the parties preferred Appeals before the State Commission, which have been dismissed by the impugned order. Affirming the order passed by the District Forum and rejecting the plea of the Complainants that once it was held that there was deficiency in service on the part of the Bank, the District Forum had erred in denying the relief prayed for, the State Commission has held that having regard to the fact that option under the Scheme had not been exercised by the Complainants and premium under the Scheme had not been paid, IFLIC could not be directed to discharge their liability towards the bank. The relevant portion of the order reads as follows: "16. It is true that as per Ex.B1 circular, dated 20.05.2010 the liability would be discharged by IFLIC in the event of death of the borrower but at the same time, it is made clear that the Scheme is optional and not compulsory and the intending borrowers have to submit "Consent-cum-Authorization-Simple Health

Declaration Form" to join the scheme. It is also an obligation on their part to pay the premium in one lump sum calculated on the basis of age of the borrower, repayment period and loan amount. Admittedly, the complainants did not exercise their option nor they paid the premium. Therefore, lack of knowledge of the existence of the Scheme cannot be a ground to extend the facility without payment of premium which is the basic requirement of any insurance policy. It is not out of place to mention that since the Scheme was not made compulsory, it is left to the discretion and willingness of the borrowers. It is only a matter of speculation that every borrower who knows about the existence of the Scheme would give his option. But for the unfortunate death of the son of the complainants, it is difficult to presume that even the complainants would have given their option. It cannot be said that by virtue of the circular, Ex.B1, dated 20.05.2010, an obligation is cast on the opposite party-Bank to disclose about the Scheme to all the borrowers. Firstly, Ex.B1 letter is a circular meant for internal circulation. The direction to the banks in Ex.B1 letter dated 20.05.2010 which reads that:

"Though the Scheme is optional it offers several advantages to the bank as well as to the borrowers. Hence, branches must extend this cover to all the existing and prospective borrowers of our Housing, Education & Vehicle loan borrowers and earn fee-based income for the bank", cannot be read in isolation from the obligation placed on the part of the complainants not only to exercise the option, but also to pay the premium in one lump sum. Therefore, in the considered opinion of this Commission, in the absence of the option exercised by the complainants and payment of premium, it cannot be said that the complainants are entitled for the benefit of the Scheme. It is not possible to accept the contention of the complainants that the opposite party-Bank itself could have debited the premium amount to the loan account instead of the complainants paying the said amount in the absence of their option and consent letter. For the foregoing reasons, the order of the District Forum does not warrant interference."

6. Aggrieved, the Complainants are before us in this Revision Petition. However, the Bank seems to have accepted the said order.

7. Having heard learned Counsel for the parties and perused the relevant record, including the Surveyor's report, dated 20.05.2010, we are of the view that the Revision Petition is devoid of merit. We are in complete agreement with the Fora below that though there was deficiency in service on the part of the Bank in not bringing to the notice of its borrowers the Scheme, which undoubtedly was beneficial to them. For the said deficiency, compensation has been awarded against them, but insofar as the benefit under the Scheme was concerned, in the absence of exercise of option under the Scheme along with payment of the premium, it could not be extended to them. Admittedly, for lack of knowledge, the Complainants did not opt for the Scheme. Nevertheless, the question whether the compensation awarded by the District Forum and affirmed by the State Commission is adequate, requires consideration. Having bestowed our

anxious consideration to the facts at hand, we feel that in the light of the fact that both the Fora below have returned a concurrent finding of fact that there was deficiency in service on the part of the Bank in not informing the borrowers/ Complainants about this Scheme, resulting in substantial loss to them, the compensation awarded is on the lower side. Regard being had to the fact that if the Complainants had exercised the option under the Scheme they would have not only received the afore-noted compensation of 3,09,000/- under the Motor Vehicles Act, their entire liability towards the loan would have been taken care of under the Scheme on the death of their son, one of co-borrowers, in our opinion, award of further compensation of 1,00,000/- to the Complainants, in addition to the compensation already awarded to them by the Fora below, would meet the end of justice. Ordered accordingly.

8. The said amount, in addition to the amount already awarded, shall be paid by the Bank to the Petitioners within four weeks from the date of receipt of copy of this order, failing which the amount of additional compensation shall carry interest @ 12% p.a. from the date of this order till realization. It is clarified that if the compensation awarded by the District Forum was not paid to the Complainants within stipulated time, the default stipulation in the order of the District Forum shall be attracted.

9. The Revision Petition stands disposed of in the above terms with costs quantified at 10,000/-.