(2011) 05 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

Kanti Devi APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : 2011 0 NCDRC 284 : 2011 2 CPR 42 : 2011 3 CPJ 8

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

Final Decision : Revision petition dismissed

Judgement

1. A consumer complaint in this case was filed by the petitioner herein before the District Forum. According to the petitioner, she is sister of insured person late Rajesh Singh and also nominee in the policy in question. The insured had taken a personal accident policy for Rs. 2,50,000/- and in the event of death, the insured was allowed to a benefit of another Rs.2,50,000/- thus the benefit totalling to Rs.5,00,000/- to be paid. The policy was taken on 07.09.2001 for a period of one year, i.e, upto 06.09.2002. Earlier also, the insured had taken a policy from 1.8.99 to 31.7.2000 and later the same policy from 7.9.2001 to 6.9.2002. The policy in question, therefore, was the third policy taken by the insured during his life time. During the currency of the third policy, the insured Rajesh Singh died due to an accident on 16.3.2002. A FIR was lodged and postmortem was also carried out. After investigation, the police submitted final form as the occurrence true but the accused could not be traced out. Local Chief Judicial Magistrate accepted the final form. The complainant being the nominee under the policy submitted a claim to the OP Insurance Co. but on failure to get any reply, she sent a legal notice thorough her lawyer. The OP Co. appointed a surveyor who sent same questionnaire to the complainant asking for information on certain questions including (i) why she has claimed the amount when the wife of insured Rajesh Singh, namely, Sangita Devi is alive and who has also made a separate claim for the amount under the policy; (ii) why she has not made Sangita Devi a party to the matter when she is a necessary party. The complainant replied to these queries stating hat she was nearest relation and nominee of the deceased and that the insured Rajesh Singh was not married and that Sangita Devi is not

his wife. The surveyor in his report raised doubts on the cause of death of the insured Rajesh Singh and it was also stated in the report that the policy appears to be highly doubtful which has been taken by playing fraud and committing forgery and hence it was recommended by the surveyor that the complainant should not be paid the amount under the policy. The surveyor further recommended that wife of insured Rajesh Singh is legal heir and rightful person to receive the amount of the policy and not the complainant. On the basis of the report of the surveyor, the OP Co. repudiated the claim and hence a consumer complaint was filed by the complainant alleging deficiency on the part of the OP Insurance Co. On appraisal of the issues and the evidence adduced, the District Forum held that the case suffers from defect of party and a serious question of law regarding the claim of Sangita Devi is also involved in this case which is only triable by a civil court of competent jurisdiction. The District Forum, therefore, dismissed the complaint as not maintainable before it. Aggrieved by the order of the District Forum, the complainant filed appeal before the Bihar State Consumer Disputes Redressal Commission, Patna (State Commission for short) challenging this order. The appeal of the complainant, however, did not find any favour with the State Commission and by its impugned order dated 03.11.2006 which is under challenge through the present revision petition, has dismissed the appeal of the complainant and upheld the order of the District Forum.

2. WE have gone through the orders of the fora below and perused the record. WE have also heard the counsel for the parties in the matter. The State Commission while dismissing the appeal of the complainant has made the following observations:- 9. From the above facts and evidences on record the complainant has admittedly nominee of the deceased insured but other evidences on record prima-facie show that deceased Rajesh Singh was married to Sangita Devi who is alive and she has married to his younger brother after his death. In view of the denial by the complainant that Sangita Devi is not wife of deceased insured, a detail evidence is required to prove this fact which is not available on record nor it is possible in a summary proceeding. In such cases long list of witnesses are to be examined and cross-examined. Therefore, we are of the view that the District Forum has rightly held that the issue in dispute is not possible to be decided in the complaint case under the C.P. Act but it can only be decided before the proper forum, i.e. Civil Court. The Apex Court in a case CCI Chamber Vs. Development Credit Bank reported in 2003 (4) PLJR SC page 194 held that Consumer Fora have been constituted with the avowed object of providing summary and speedy remedy in conformity in the principle of natural justice. The Apex Court held that the question whether a consumer to approach the Civil Court or it may be decided by the Fora is to be determined is whether the question, though complicated they may be, are capable of being determined by summary enquiry. As stated above the dispute in view of the two different pleadings by the complainant and O.P. we are of the view that the Forum is not capable in deciding the question whether Sangita Devi is legal wedded wife of deceased insured Rajesh Singh. This fact can only be decided on the basis of

both oral and documentary evidences in a long and complicated proceeding. The O.P. has also alleged that the death of Rajesh Singh has become doubtful and the entire claim of the complainant appears to be forged and fabricated. Therefore, these questions are also to be decided in this proceeding which is not possible before the Fora in a summary proceeding. As such, the finding arrived at by the District Forum that these matters can only be decided by a proper Forum, i.e., Civil Court is correct and it does not require our interference.

10. It is established law that mere nominee made under section 39 does not have the effect of conferring on the nominee any beneficiary interest in the amount payable under the insurance policy on the death of the insured. The nomination only indicates the hand which the insurer gets a valid discharge of its liability under the policy. The amount however can be claimed by the heirs of the assured in accordance with the law of succession governing them. AIR 1984 (Supreme Court page-346) relied upon. In this case the claim is being made both by the nominee and by the alleged heir on the basis of law succession. Therefore, these facts are complicated facts not possible to be decided before the Forum.

11. WE find substance in the contention of the O.P. that nominee is entitle to receive the amount but withholding of claim for not impleading legal heirs. In this case (Sangita Devi) is not permissible under the law. It is settled law that if the nominee is the hand which is authorized to receive the amount it cannot be said that for impleading a legal heir such a hand can not extent itself to claim the amount payable. The interest of the other legal heirs must be safeguarded and on final decision of the point the decretal amount and interest payable thereupon is to be paid to the legal heirs of the assured in accordance with the law of succession governing them. The complainant has purposely withheld the names of heirs and has not come with clean hand.

We agree with the above view taken by the State Commission and do not find any infirmity with the impugned order. The revision petition, therefore, stands dismissed with no order as to costs.