(2003) 12 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Kesari Devi APPELLANT

Vs

L.I.C. of India RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:

Citation : 2004 3 CPJ 556

Hon'ble Judges : M.A.A.Khan , Sushma Tanwar J.

Final Decision : Appeal dismissed

Judgement

1. -THIS appeal under Section 15 of the Consumer Protection Act, 1986 by the complainant is directed against the order of the District Forum I, Jaipur dated 6.6.1997 dismissing her Complaint No. 1245 of 1996.

2. RELEVANT facts are these: Late Sri. Mukti Lal Kumawat, the deceased husband of Smt. Kesar Devi, complainant-appellant, had obtained on 15.7.1992 an insurance policy for Rs. 50,000/- on his own life from the L.I.C. respondent. The premium payable towards the said policy was on half-yearly basis, the due dates falling on 15th January and 15th July every year. The insured died on 14.5.1994 in a road accident. By that time the premium payable on 15.1.1994 had not been paid. Smt. Kesar Devi respondent, the nominee under the said policy, filed her claim with the respondent Insurance Corporation alleging that the premium due on 15.1.1994 had been paid through Cheque No. 148500 dated 12.5.1994 drawn on Dena Bank, Jaipur in favour of the respondent Corporation. The respondent, Corporation, however, repudiated the claim of the appellant on the ground that the policy already stood lapsed due to non-payment of the premium payable on 15.1.1994 or within the grace period thereafter and that the tender of payment thereof through the cheque dated 12.5.1994, issued by a third party and received by the Corporation from the Box, placed in the office of the Bank for convenience of the late depositors of the dues, payable by them, was fraudulently and dishonestly made after the death of the insured and hence was not accepted by the Corporation. On a complaint having been filed by the appellant before it, the District Forum has upheld the ground of repudiation. The

learned Counsel for the appellant vehemently urged that Sri Surender Kumar Sharma, who had drawn the cheque dated 12.5.1994 on his banker, Dena Bank Jaipur, in favour of the L.I.C. respondent towards the payment of the premium fallen due on 15.1.1994 had deposed in his affidavit that he had issued the aforesaid cheque on the basis of the standing instruction of the deceased insured, who was his fast friend since childhood and was working in Bombay at the relevant time, and that the Forum erred in not accepting his sworn testimony. It was further urged by the learned Counsel that the receipt of the cheque dated 12.5.1994 was duly recorded in the Receipt Register of the respondent and, therefore, the payment of the premium was made during the life-time of the life assured. It was thus submitted that the claim of the respondent was genuine and deserves to be accepted.

The learned Counsel for the respondent Corporation not only fully supported the impugned order but also took us through the material on record and highlighted the fact that Sri Surinder Kumar Sharma aforesaid was none else but the brother of L.I.C. agent Sri. Narendra Kumar Sharma, who had secured the policy in question for the deceased insured under his agency and due to his involvement in the tender of the cheque after the death of the life assured he was placed under suspension. Referring to para 13 of L.I.C. Manual for Accounts Department relating to "third party cheques" the learned Counsel further submitted that the conditions required for acceptance of the third party cheques were not fulfilled in the present case.

3. IT was further submited by the learned Counsel that after the working hour for receipts of cheques, etc. were over, a box is placed in the Bank premises, for the convenience and facility of late arrivals, and the cheque in question had come out of such box when the same was opened on 16.5.1994, but the receipt thereof on 14.5.1994 was fictitious and fraudulently made in the Receipt Register with the connivance of Sri. Mahender Kumar Sharma, the above named suspended agent. We have given thoughtful consideration to the arguments advanced by the learned Counsel for the parties and find much force in the arguments of the learned Counsel for the respondent.

4. WHAT we gather from the material available on the record of the Forum and on our own record is that the deceased insured used to work as a mason in Bombay and while returning therefrom to his village he was fatally knocked down by a speedy vehicle at Bus Stand Shahpura, District Jaipur, on 14.5.1994 at about 1.30 p.m. He was a resident of village Ganeshwar, Tehsil Neem Ka Thana, District Sikar. Smt. Kesri Devi, his widow nominee is quite an illiterate lady and simply puts her thumb mark impressions on the documents to be executed by her. But curiously enough in para No. 6 of her complaint and para 1 of the memo of appeal she mentioned not only all the relevant particulars of the cheque in question and the Bank on whom it was drawn but also the serial number of the Remittance Receipt Register whereat the receipt of the cheque was entered on 14.5.1994. An illiterate village lady is not expected to know all such details. It is

note-worthy that, she did not claim knowledge of the detailed particulars of the cheque and the entry thereof in the Register kept in the office of the respondent from any person including Sri. Surender Kumar aforesaid. Then she claimed to have sent the cheque through post and to have obtained a receipt in respect thereof but did not file such receipt. All these facts and circumstances attending upon her version makes it quite doubtful if not fully untruthful. Coming now to the version advanced by Sri. Surender Kumar Sharma in his affidavit, it is noted that he claimed himself to be a resident of the same village Ganeshwar whereof the deceased insured was also resident. But at the time of the tragic death of the deceased insured the deponent was residing at Jaipur in connection with his employment in Education Department as a teacher and the deceased insured was residing at Bombay. He has deposed in his affidavit that since he and the deceased insured were good friends inter se, the deceased insured had instructed him to help his family in the village financially as and when such financial help was required by them, that during his visit to the village on 8.5.1994 the appellant requested him to deposit the premium through cheque dated 12.5.1996 sent to the respondent Corporation through ordinary post. But such a version has not at all been endorsed by the appellant either in her complaint, Memo of Appeal or the affidavit. His version is also not worthy of any reliance and has been rightly rejected by the District Forum. Even if the version of Sri Surender Kumar be accepted for argument sake, then it is also evident that the conditions for acceptance of his cheques were not fulfilled. The para 13 of Manual of Accounts, referred to above, reads as under: Third party Cheques 13. Third party Cheque drawn directly in favour of the Corporation can be accepted in payment of premiums, deposits, etc., provided that following conditions after satisfied- (i) The amount of such cheque is required to be adjusted towards one or more policies of one policy holder only. (ii) Such a cheque is accompanied by a declaration signed by the drawer (in addition to the usual premium/interest notice/challan) to the effect that, (a) he (the drawer) is paying the amount of Rs. ... by the cheque No. ... dated ... drawn on ... (Name and Station of Bank) which the L.I.C. of India is requested to receive in payment of ... under Policy No. ... on the life of ... (b) that the said policy holder is a Resident of India, and is known to the drawer of the cheque. (c) The Drawer''s full name and address should be included in the above declaration. (iii) The approval of the Supervisory Official of the Cash Department should be endorsed on the face of the declaration before acceptance of the Third Party Cheque. (iv) The declaration obtained as above must be serially numbered and filed date-wise in serial order in a separate file which would be kept in the custody of the supervising official of Cash Section, and the same should be preserved for a period of three years."

5. IN the instant case the declaration required to be signed by the drawer of the cheque in question and to be enclosed with the cheque has not been proved. There is no such version of Sri. Surender Kumar Sharma in his affidavit either. There is no evidence of the approval of the Supervisory Official of the Cash

Department of the L.I.C. on the face of the declaration before acceptance of his cheque which was a cheque from "Third Party". IN the Remittance Receipt Register the receipt of the cheque in question on the 14.5.1994 has been mentioned at S. No. 12 but in the remark column it is written that the A.R. was issued on 16.5.1994. It supports the version of the respondents that the cheque was found in the box, when the same was opened on 16.5.1994 as 15.5.1994 was a Sunday. Thus the version of Sri. Surender Kumar Sharma who is the brother of the suspended agent Sri. Mahender Kumar Sharma, has been rightly rejected by the District Forum.

6. IN the result we find no force in this appeal and dismiss it with cost on parties. Appeal dismissed.

