(2001) 03 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

KHALEEL AHMED ANSARI APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 24-03-2001

Acts Referred:

Citation : 2001 3 CPJ 139

Hon'ble Judges : S.K.Dubey , Neelima Dubey , B.L.Khare J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal filed by Khaleel Ahmed Ansari r/o Rewa against the order dated 12.1.2000 passed in Case No. 54/1999 by the District Consumer Disputes Redressal Forum, Rewa (for short the ''District Forum'').

2. BRIEF facts of the case are that daughter of appellant namely Ku. Swalheen Bano was studying in Class IX in Sudershan Kumari Girls Higher Secondary School, Rewa. She was admitted in the School on 18.7.1998, her scholar No. being 10833, she deposited tuition fee together with student security insurance premium on 31.7.1998. Unfortunately, this student Ku. Swalheen Bano met with an accident on 3.8.1998 and died at the spot. The Principal of Sudershan Kumari Girls Higher Secondary School, Rewa the respondent No. 2 presented the claim of Rs. 10,000/- with the United India Insurance Company Limited, Branch Rewa the respondent No. 1. The Insurance Company repudiated the claim on the ground that the premium was received in the office of the Insurance Company on 23.9.1998 while the death of the student occurred on 3.8.1998 prior to receipt of this premium, therefore, the deceased Ku. Swalheen Bano was not entitled for the insurance amount of Rs. 10,000/-. The father of the deceased the appellant approached the District Forum, Rewa. The District Forum rejected the complaint and endorsed the view of the Insurance Company that because the premium was received in the office of the Insurance Company on 23.9.1998, therefore, the Insurance Company was not responsible for making payment of the insured amount. The complainant/appellant while presenting the complaint made clear that his daughter was admitted in the Sudershan Kumari Girls Higher Secondary

School, Rewa on 18.7.1998 and the Principal of the said school who is respondent No. 2 had approached the United India Insurance Company Ltd., the respondent No. 1 with the recommendation that the deceased student Ku. Swalheen Bano had deposited the premium amount which is only Rs. 0.60 on 31.7.1998. Unfortunately, she had died in a road accident on 3.8.1998. As per school record, the premium was received by the school on 31.7.1998 and of which a receipt was issued to the student which has been filed by the complainant with complaint (Ex. P-1). After completion of the admission in the school a consolidated list of the students the the premium was sent to the Insurance Company - the respondent No. 1 on 22.9.1998. The respondent No. 2 also put up a claim before the respondent No. 1 on 19.4.1999. The respondent No. 1 Insurance Company repudiated the claim vide letter dated 23.4.1999 stating that the student is not covered under the policy. The complainant''s case is that his daughter was insured with the Insurance Company as soon as she deposited the premium with the Principal of the school, the respondent No. 2. Therefore, the plea that the premium was remitted by the Principal of the School on 22.9.1998 is irrelevant and as per scheme an amount of Rs. 10,000/- should be paid by the Insurance Company.

The respondent No. 1 Insurance Company submitted that the premium was remitted by the Principal on 22.9.1998, therefore, the policy so issued was effective from 23.9.1998 to 22.9.1999 (Ex. D-3), the death occurred prior to the issuance of the policy i.e. on 3.8.1998. They have drawn our attention to the provisions of Section 64 VB of the Insurance Act, 1938 which lays down that "No risk is to be assured unless the premium is received in advance". Therefore, the Insurance Company submitted that the deceased Ku. Swalheen Bano shall not be deemed to be insured with them, because the premium was not deposited with them at the time of death of the student. Therefore, they have rightly repudiated the claim. In this case, following points are to be decided : (1) Whether the premium deposited with the Principal of the School, the respondent No. 2 can be deemed to be deposited with the Insurance Company ? (2) Whether in the present case, the deceased student can be deemed to be covered under the Students Safety Insurance Policy of the United India Insurance Company Ltd., the respondent No. 1 ?

We have heard learned Counsel for the parties and gone through the record and order of the District Forum. To arrive at a conclusion we have to examine the point as to how this insurance scheme was introduced in the Government Schools. In the record, there is a circular issued by the Government of M.P. School Education Department No. F-44-39/94/B-2/Fees dated 5.10.1994 (Ex-Principal-2). A perusal of this circular reveals that the respondent No. 1, the United India Insurance Company Ltd. presented Students Safety Insurance Policy before the Government of M.P. The Government of M.P. have accepted the offer and issued instructions to the Commissioner of Education, M.P. making it compulsory that the Students Safety Insurance Policy shall be implemented in all the schools of the State. The conditions, which were provided by this circular are enumerated below : (1) Every student shall pay Rs. 0.60 annually as premium and this amount shall be collected by the Principal/Head Master of the concerned school. (2) The insurance premium then shall be collected by the Deputy Director/ Joint Director, Education of the concerned District and then the regional office of the Insurance Company shall receive this amount from the Deputy Director/Joint Director. (3) This policy shall be applicable in all schools run by the State Government. (4) The policy shall be for duration of one year. It was clarified that the policy shall be effective for 24 hours and not be restricted to school hours. (5) The insurance cover shall be available throughout India, therefore, the students of M.P. if they visit any place or any educational tour to any part of India, the insurance cover shall be available to them. (6) On death of the insured students his parents shall get the insured amount of Rs. 10,000/-. (7) In case of any accident or death of the student, the claim shall be put up with the Insurance Company giving the circumstances of death, post-mortem report and FIR and other related certificates together with certificate of Principal of the School to the effect that the deceased was student and was actually studying in the school.

3. FROM a minute scrutiny of the above circular it is evident that it was the Insurance Company who had approached the Government for Students Safety Insurance Policy and the Government accepted the offer. In the circular, the premium is to be collected by the Principal and not by the Insurance Company. Therefore, if premium was deposited with the Principal of the School then the student shall be deemed to be covered by the Student Safety Insurance Policy. The District Forum has rejected the complaint on ground that the premium was deposited with the Insurance Company after the death of the insured, and the provisions of the Section 64 VB of the Insurance Act, 1938 have not been complied with. We do not agree with this finding. Section 64 VB makes clear "No risk to be assumed unless premium is received in advance". In the instant case, premium was received by the Principal as per agreement between Insurance Company and Government. The premium was received in advance, at the time of admission of the student. Deposition of the premium cannot be disputed because a valid receipt was issued on 31.7.1998 at the time of deposition of fees in the school. Therefore, insurance started from 31.7.1998. It is an internal arrangement between the Insurance Company and the Principal of the School as to when and where this collected premium shall be deposited. The insured is not aware of this arrangement and his liability is over as soon as the premium is deposited with the school. In the present case, the premium was validly deposited on 31.7.1998 and this gave a insurance cover to the student. Unfortunately, death of the student occurred on 3.8.1998, this shows that the premium was deposited in advance and, therefore, the provisions of Section 64 VB of the Insurance Act does not bar assuming of the risk by the Insurance Company.

4. WE do not agree with the view expressed by the District Forum in its order dated 12.1.2000 that the principle laid down by the Supreme Court in case of

Delhi Electricity Supply Undertaking v. Basanti Devi, III (1999) CPJ 15 (SC)=VIII (1999) SLT 279=1999 (3) CPR 91 (SC), is not applicable in this case. In Basanti Devi''s case, her husband was a member of Salary Saving Scheme Policy of the LIC and the employer (DESU) respondent has to collect the amount of premium and then deposit with the LIC. In the instant case, the Principal of the educational institution has been made responsible to collect the premium and remit the same to the Insurance Company. The facts and circumstances of this case are similar to that of Basanti Devi''s case (supra), wherein the Supreme Court in para 14 observed that : .... As far as employee is concerned, he is told that premium will be deducted from his salary every month and remitted by DESU to LIC under an agreement between LIC and DESU. For employee of DESU, therefore, DESU had implied authority as an agent of LIC to collect premium on its behalf and then pay to LIC. There is nothing on the record to show that Bhim Singh was ever made aware of the fact that DESU was not acting as agent of LIC. In the present case, also the Principal was authorised to collect the premium from the student at the time of admission and, therefore, premium shall be deemed to have been deposited in advance with the Agent (Principal of the School) of the Insurance Company. Therefore, the principle laid down by the Supreme Court in case of Basanti Devi (supra), is fully applicable in this case. In the instant case, as per agreement between Government of M.P. and the Insurance Company, the premium was to be collected by the respondent No. 2, therefore, we find that as soon as premium was deposited by the student she was fully covered by the policy hence provisions of Section 64 VB of the Insurance Act do not bar the insurance cover as the premium due had already been deposited in advance. So far as the question whether the deceased was covered under Student Safety Insurance Policy or not, from the above discussion it is clear that Principal has complied with the orders issued by the Government that all students are compulsorily to be insured and premium of Rs. 0.60 is to be collected from them. The Principal, Sudershan Kumari Girls Higher Secondary School, Rewa, the respondent No. 2 collected the premium from the deceased student on 31.7.1998 at the time of deposition of the school fees. Therefore, the deceased Ku. Swalheen Bano shall be deemed to be insured with the Insurance Company.

5. TO conclude, the order of the District Forum is not on logical grounds and, therefore, we set-aside the order of the District Forum, and direct the Insurance Company to pay the insured amount of Rs. 10,000/- with interest thereon at the rate of 9% p.a. from the date of filing of the complaint i.e. 22.2.1999 and costs of the proceedings which throughout quantified at Rs. 500/- to the appellant within a period of two months from the receipt of certified copy of this order.

6. IN the result, the appeal is allowed. A copy of this order be communicated to the parties and a copy be sent to the District Forum alongwith record of the case. Appeal allowed.