(2010) 01 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

LIC OF INDIA — APPELLANT

Vs

K Venkatalakshmamma — RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Citation : 2011 1 CPJ 305

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Advocate : D.Varadarajan , Surekha Raman

Judgement

1. MR. Justice R.K. Batta, Presiding Member-The husband of the complainant/ Respondent No. 1 was covered under Group Savings Linked Insurance Policy pursuant to agreement between the employer-Respondent No. 2 and the petitioner. The premium amount was to be deducted by the employer-Respondent No. 2 from the salary of the employee. Out of premium of Rs. 60 per month, Rs. 21 were to be adjusted towards risk premium and the balance of Rs. 39 was to be treated as saving premium which was to be refunded with interest on retirement. In the event of death before retirement the insurance amount of Rs. 60,000 was payable. The husband of the complainant died on 21.7.2001 due to snakebite. The complainant who was the nominee under the policy filed claim, but the same was rejected by the petitioner on the ground that the policy was in lapsed condition from 22.12.1999 due to non-payment of premium by Respondent No. 2. Accordingly, the surrender value of Rs. 2,313.50 was actually payable by the complainant.

2. THE complainant approached District Forum. The District Forum held that the Master Policy was not in force from 20.4.1999 for non-payment of premium by Respondent No. 2 and as such, the complainant was not entitled to claim the assured amount from the petitioner. The District Forum was also of the view that the District Forum had no jurisdiction to entertain the claim and the complainant had to seek relief in proper Court. The District Forum also held that the judgment of the Apex Court in the case of Delhi Electric Supply Undertaking v. Basanti Devi, III (1999) CPJ 15 (SC)=VIII (1999) SLT 279=AIR 2000 SC 43, was not

applicable to the case under consideration.

3. THE order of the District Forum was challenged by the complainant before the State Commission. The State Commission, however, set aside the order of the District Forum and ordered the petitioner as also Respondent No. 2 to pay the assured amount to the complainant together with interest @ 9% from the date of the complaint till the date of payment. This order is subject matter of challenge in this revision.

4. WE have heard Counsel appearing on both sides. Advocate Ms. Surekha Raman was appointed as Amicus Curiae to argue the matter on behalf of the Complainant/Respondent No. 1. Respondent No. 2 did not appear even though it was served. The Respondent No. 2 has not challenged the order of the State Commission, nor has put in appearance before this Commission and the judgment of the State Commission as against Respondent No. 2 has, therefore, become final.

5. LEARNED Counsel for the petitioner stated that if it is held that the case of Basanti Devi (supra) would apply to the facts and circumstances of the case then the petitioner would have no case, but according to him the said case is not applicable to the facts of the case under consideration. He submits that in this case the contract is only between the employees and Respondent No. 2 and the policy had lapsed due to non-payment of premium by employer, Respondent No. 2. It is also pointed out that the employer had surrendered the policy and the surrendered value thereof has already been paid. It has further been pointed out that the employer has taken a stand that it did not act as an agent of the petitioner and the petitioner sent notice of the policy lapsing to the employer. It is, therefore, submitted that the petitioner is not liable to pay the assured amount to the complainant.

6. LEARNED Amicus Curiae pointed out that it is the policy under Group Savings Linked Insurance Scheme in which premium of Rupees 60 was to be deducted by the employer, Respondent No. 2 from the salary of the employee, who acted as an agent of the petitioner and as such, the judgment in Basanti Devi (supra), is applicable to the facts and circumstances of the case. It is also pointed out that the beneficiary under the agreement between the petitioner and employer was the employee, namely; husband of the complainant, but the LIC did not send notice of discontinuation of premium to the employee though notice was sent to the employer. It is, therefore, contended that in the facts and circumstances of the case the order of the State Commission does not call for any interference.

7. THE Group Savings Linked Insurance Scheme was admittedly for the benefit of the employees from whose salary the premium was to be deducted by the employer, Respondent No. 2 and the same was required to be remitted by the employer, Respondent No. 2 to the petitioner. Though, the agreement in question is between the petitioner and the employer, yet the transaction in question is in the nature of tripartite agreement under which the employee is the beneficiary. It

appears that Respondent No. 2 had not paid salaries to the employees for the past many months due to non-operation of the plant and requested to settle the surrendered value of the policy. This fact emerges from the counter filed by the petitioner before the Consumer Forum, wherein it disclosed that Respondent No. 1 before the Consumer Forum had sent a Fax message dated 9.11.2002 to that effect. The employer who was the Master Policyholder had failed to pay the premium from 20.12.1999 and in this connection, letters were sent by the petitioner to the employer. However, admittedly, no notices were sent to the employee, nor it appears that any notice sent to the employer was published in the newspaper or put on the notice board of the work place of the employee, nor the employees were asked to pay the premium to the petitioner. The employer, Respondent No. 2. had acted in the dual capacity, namely on behalf of the employee as also the petitioners since the employer had to deduct the premium from the salary of the employees and after doing so had to remit the same to the petitioner. Once the employees were covered under the Group Savings Linked Insurance Scheme, they had vested interest in continuation of the said policy and the Insurance Company was required to notify the employees regarding non-receipt of the premium so that if the employees wanted they could have sent the premium to the petitioner. In our opinion, the present case is by and large covered by the judgment in the case of Basanti Devi (Supra), as also the judgment of the Apex Court in the case of Chairman, Life Insurance Corporation and Ors. v. Rajiv Kumar Bhasker, II (2005) CLT 144 (SC)=V (2005) SLT 567=2005 CCC 356 (NS). Reliance on the aforesaid judgment was placed by a Bench of this Commission in Branch Manager, LIC of India and Anr. v. Smt. A. Yasodamma and Anr., II (2009) CPJ 254 (NC)=(1986-2009) Consumer 15359 (NS), to which one of us (Justice R.K. Batta) is a party. In this case, the salient features of the scheme in the case of Rajiv Kumar Bhasker (supra), have been considered. In our opinion, the employer had acted as an agent of the petitioner and as such, the petitioner is liable to pay the ordered amount to the complainant specially in view of the fact that Master Policy in question was cancelled on 21.12.2002 and the husband of the complainant had died more than a year prior to that on 21.7.2001 when the policy was in subsistence though it was stated in the lapsed condition. No notice was given to the employees that the policy was in lapsed condition due to non-payment of the premium nor any notice was given to them before cancellation of the policy and for surrendered value as applied for by the employer. The employees being beneficiary were required to be noticed inasmuch as the decision would affect their interest. It is now well settled that even in administrative actions from where civil consequences follow, the party is entitled to be heard in view of the principles of natural justice.

8. FOR the aforesaid reasons, we are of the opinion that the order of the State Commission directing payment of the insured amount in the case of husband of the complainant does not call for any interference whatsoever. The revision petition is accordingly dismissed with no order as to costs.

