(2004) 05 NCDRC CK 0110

In the National Consumer Disputes Redressal Commission

L.I.C. Of India APPELLANT

Vs

KARUR CONSUMER AND ENVIRONMENTAL PROTECTION COMMITTEE RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Citation : 2005 1 CPJ 113

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal allowed

Judgement

1. THE appeal is directed against the order passed by the District Consumer Disputes Redressal Forum, Tiruchirappalli in O.P. No. 178/99 on 3.12.1999.

2. THE second complainant''s husband had taken an insurance policy in the year 1994 for a sum of Rs. 50,000/- but it lapsed. But on 28.1.1997, it was renewed. While so, he died on 5.2.1998. THE second complainant, therefore, made a claim to the opposite parties. THE opposite parties repudiated the claim. THE grounds upon which they repudiated are not tenable. Hence, the complaint. The opposite parties contended that it is true that the second complainant''s husband had taken a policy of insurance on 14.7.1994 for a sum of Rs. 50,000/- and that it lapsed for non-payment of premium and that it was renewed on 28.1.1997. But the opposite parties have sufficient material to show that the signature in the renewal proposal form is not that of the second complainant''s husband. Further, the opposite parties are made to understand that the second complainant''s husband was suffering from cancer which fact was suppressed when he sent the proposal for renewal and, therefore, in such circumstances, the opposite parties were justified in repudiating the claim.

The lower Forum rejected the contention of the opposite parties and directed the opposite parties to pay the second complainant a sum of Rs. 50,000/- with interest at 12% along with a sum of Rs. 10,000/- and cost of Rs. 500/-.

3. THE facts of this case are not complicated one. THErefore, no elaboration is

necessary. THE second complainant''s husband had insured his life for a sum of Rs. 50,000/- by taking a policy on 28.6.1994. THE policy lapsed because of non-payment of premium and while so, an application was filed for renewal of the policy and on 28.1.1997 along with a declaration by the insured about his good health and the policy was renewed. THE insured died on 5.2.1998. The two grounds upon which the claim is repudiated are (1) that the declaration form submitted on 28.1.1997 for revival has not been signed by the insured but his signature has been forged. Therefore, there is no valid revival and (2) that the deceased was suffering from cancer which fact was suppressed while he submitted the declaration form for revival. Ex. B2 is the proposal signed by the second complainant''s husband on 27.2.1994 when he sought insurance coverage for Rs. 50,000/-. Ex. B3 is the declaration of good health dated 28.1.1997 when he sought insurance coverage for Rs. 50,000/-. Ex. B3 is declaration of good health dated 28.1.1997 which bears the signature of one M. Thangavel. There is definitely lot of difference in these two signatures. A look at the same would show that the person who signed in Ex. B2 may not be the person who signed in Ex. B3. In this connection, the opposite parties would rely upon a Report of Retired Assistant Director of Forensic Sciences Department to show that the signature are not by the same person and thus it is a forgery. The signature in declaration has been attested by one Mohan. He is not examined, nor any proof affidavit from him has been filed. Therefore, a question arises about the genuineness of signature. The genuineness of signature can be decided only by Civil Court where alone elaborate evidence can be adduced for and against the same. The complainant has to be also given an opportunity to examine Mr. Mohan who has attested Ex. B3 and persons who are familiar with the signature of the deceased to speak the genuine nature of the signature while the opposite parties have to be given an opportunity to examine the expert and to produce any other correspondence they have signed by Thangavel to show that the signatures are not made by the same person. Therefore, an elaborate inquiry has to be made on this aspect. It cannot be done in this Forum.

4. THE second ground of attack is that the deceased was suffering from cancer. Ex. B4 is the certificate issued by the doctor, a Nephrologist of Coimbatore Kidney Centre on 22.10.1998 to the effect that M. Thangavel saw them in June, 1997 and he was suffering from cancer lower end of oesophagus. THErefore, this aspect of the matter has to be also established because the said doctor has not been examined. THE certificate is given by a Nephrologist. THE opposite parties have to be given an opportunity to examine the said doctor or some other doctors in the said Centre, who treated him to say that in the year 1997 or at about the time the deceased applied for revival, he was suffering from cancer and thus suppressed material facts and signed the declaration stating that he continued to have insurable health. Therefore, in such circumstances, on these two aspects, it is necessary to have more evidence both from the complainant''s side as well as from the side of the opposite parties. Thus complicated questions of law as well as the facts arise in this case, therefore, a necessity to enter upon

a roving inquiry into those aspects. They fall beyond the ambit of this Act. Therefore, in such circumstances, we are of the opinion that it is just and necessary to refer the parties to a Civil Court. As it is the order passed by the lower Forum cannot be accepted when such questions involving materials aspects arise for consideration. There is no proper application of mind on the part of the lower Forum. The complainant has to be directed to seek his redressal before a Civil Forum. In that view of the matter, the appeal is allowed, but in the circumstances without costs. The order passed by the lower Forum is set aside. The complainant is dismissed. However, subject to question of limitation, the second complainant is at liberty to move the proper Civil Forum for necessary relief. Appeal allowed.