(2016) 03 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Case No : 996 of 2009

LIC OF INDIA APPELLANT

Vs

RENUKA DEVI @ RAMKU DEVI RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2016 2 CPR 317

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : Mohinder Singh

Judgement

1. Petitioner/Opposite Party has filed present revision petition under Section 21(b) of the Consumer Protection Act, 1986(for short, ''Act'') against impugned order dated 17.12.2008 passed by State Consumer Disputes Redresdsal Commission, Circuit Bench, Jaipur, Rajasthan (for short, ''State Commission'') in (First Appeal No.1228 of 2003).

2. Brief facts are, that Kishan Lal S/o Tara Chand-husband of Respondent/ Complainant had taken the Insurance Policy No.100005937 for Rs.3,00,000/- commencing from 20.12.1994, in which respondent is the nominee of the insured. It is alleged, that insured died on 06.02.1998 in Village Siwana, District Barmer, Rajasthan, due to heart attack. Thereafter, respondent filed claim along with necessary particulars with the petitioner, which repudiated respondent''s claim, vide its letter dated 28.09.1999 on the following grounds; " Death & Identity of the Deceased not established "Proposal Date 17.12.94 was booked in fictitious name ."

3. It is stated, that petitioner had been taking annual installments. Therefore, rejection of claim is against rules. Petitioner has manipulated the above story, in order to escape its liability. Therefore, alleging deficiency in service on the part of petitioner, respondent filed a Consumer Complaint No.112 of 2001, before District Consumer Protection Forum, Barmer (for short, ''District Forum'')seeking

following reliefs;

" (1) Rs.3,00,000/- (Rs. Three Lacs only) be awarded to the insurer;

(2) Apart from insurance amount, bonus and occurred diffident be awarded;

(3) 18% interest p.a. on the aforesaid amount be awarded to the applicant from the date of claim i.e.; 28.9.99 till its realization;

(4) Rs.50,000/- (Rupees Fifty Thousand only) be awarded as compensation for mental harassment.

(5) Cost of the litigation be awarded from the Non-applicant ."

4. Petitioner in its written statement has stated, that respondent is not residing in Siwana, at the given address. The owner of said house does not know Kishan Lal. The person who is living at the said address, his daughter is married to Mohanlal B. Jain and he has taken the said policy from the petitioner. It is further stated, that installments of policy could have been deposited by some other person and as per the report of petitioner, Mohanlal B. Jain is using his mastermind about the clam fraudulently. When there is no whereabouts of the respondent and owners of the nearby houses have stated, that no person in the name of Kishan Lal was residing there, but his relative, the wife of Mohan Lal is residing there who in relation to Kishan Lal is the daughter. Therefore, Mohanlal by manipulation, paid one installment, took false death certificate and cheated Petitioner''s Corporation.

5. It is further alleged, that Doctor of Bhagwan Mahaveer Hospital, Sivana had filled in the form of Mohanlal B. Jain at the asking of Mohanlal B. Jain and when Kishan Lal expired, the doctor did not know. When the said doctor asked about the address, then Mohanlal B. Jain replied, that wife of deceased has taken the claim back. Thus, this conspiracy is manipulated by Mohanlal B. Jain. A person of such name was not residing in Sivana. By Consiprary, Mohanlal B. Jain, in order to defraud petitioner had again filled up form wrongly, but had not given the address in the said form. The correct address of the respondent and identity of deceased-insured has not been disclosed by the respondent. Under these circumstances, complaint is liable to be dismissed and a criminal case may be filed against Mohanlal B. Jain to defraud the petitioner by producing false documents.

6. District Forum vide order dated 12.05.2003 allowed the complaint and ordered, that respondent would be entitled to get a sum of Rs.3 lacs and dividend so accrued on it under Policy No. 100005937 from Petitioner. In addition, respondent would also be entitled to get interest @ 9% p.a. from 28.9.1999 till realization and also to get a sum of Rs.500/- as litigation expenses.

7. Being aggrieved, petitioner filed appeal before State Commission, Rajasthan, which vide impugned order dismissed the appeal.

8. Hence, present revision.

9. Vide order dated 12.05.2009, notice was issued to the respondent, subject to petitioner''s directly remitting a sum of Rs.3,000/- by means of demand draft to the respondent to enable her to defray the travel and other allied expenses, subject to deposit of Rs.2,75/- lacs.

10. On 11.11.2009, it was observed that bank draft of Rs.3,000/- was received back on refusal by the respondent and one Mohan Lal Jain, claiming himself to be attorney holder of respondent sought delivery of cheque in his name. Therefore, draft was ordered to be handed over to the learned counsel for petitioner for its conversion in the name of Mohan Lal Jain on receipt of power of attorney in his name from Renuka Devi.

11. On 09.02.2010, it was observed that though notices were issued to the respondent in past but she has not responded, therefore fresh notice was issued. The sum of Rs.3,000/-, which was to be paid to Mohan Lal Jain, was kept in abeyance till the appearance of respondent. Then on 03.09.2010, following order was passed; " Heard Mr. Ankur Goel, learned counsel on behalf of the petitioner. It is seen that Mr. Jain, who earlier claimed to be the Holder of Power of Attorney on behalf of the respondent/complainant Renuka Devi @ Ramku Devi, has not been able to file his Power of Attorney despite the Commission''s Registry specifically writing to him in this behalf. Mr. Goel states that it is this Mr. Jain who has been engineering a false claim and there is no person by the name of Smt. Renuka Devi @ Ramku Devi at the address mentioned in the complaint. Be that as it may. Admit. List for final hearing in due course under fresh notice to the parties and their counsel . "

12. Thereafter, on 26.08.2013 Mohan Lal Jain General Power of Attorney holder of respondent appeared and it was ordered, that respondent should appear in person to whom earlier a sum of Rs.3,000/- was remitted being travelling and allied expenses. The Attorney holder was directed to file original Power of Attorney within four weeks. It was also ordered, that in case respondent failed to appear in person on the next date, adverse inference shall be drawn against him. Since, respondent did not appear despite specific directions, the respondent was proceeded exparte on 30.09.2014

13. We have heard learned counsel for petitioner and gone through the record.

14. It is submitted by learned counsel, that name of respondent claiming to be the wife of alleged life assured, are different in the proposal form and actual name of the respondent. The claim as well as complaint has been filed stating both the names without any proof. Neither identity of the alleged life assured nor his death was ever proved as the persons alleged to have been attended his cremation and the doctor alleged to have treated the life assured never knew him. The signatures on the proposal form and on the subsequent letter alleged to have been sent by the life assured, were in different languages and there was no reason for life assured to have transferred his policy from the place of issue to Hubli inspite of the fact, that he never had any residential or business proof at

that place. There was another change of policy from Hubli to Sivana care of M. Shanti Lal, 53, K.M. Market, Kalupur, Ahmedabad, which was also not a place where the life assured ever had any interest.

15. It is further stated that said address of Ahmedabad was the parental address of wife of Sh.Mohan Lal B. Jain, who it seems the only person interested in the money of the policy. Even no person by the name of life assured ever resided at the address given on the proposal form and the policy but the same belong to the father of wife of Sh. Mohan Lal B. Jain.

16. Further, two half yearly premiums for month of June, 1997 and December, 1997, were paid from the account of one NRI Sh. Maniyar Abdul Hafiz Abdul Azeez, who was neither related to the life assured nor had not insurable interest. Even the claim forms are being filled up and filed by Sh. Mohan Lal B. Jain. Lastly, both Fora below without holding an enquiry to ascertain the existence of the alleged life assured Sh. Kishan Lal, presumed on the basis of the death certificate issued by Gram Panchaya that there existed life assured and who died on 06.02.1988. It is Sh. Mohan Lal B. Jain, who is behind entire fraud to claim money in the name of a fictitious person. In support, learned counsel has relied upon a decision of this Commission, U.P. Awas Evan Vikas Parishad Vs. Brij Kishore Pandey & Anr. IV (2009) CPJ 217 (NC) .

17. District Forum while allowing the complaint held; " Respondent itself accept the issuance of policy in the name of Kishan Lal and the filing of premium is also clear from the reply given by respondent. The dispute is merely whether any other person has filed the premium in the name of Kishan Lal and procured forged policy and in this concern, it was the duty of Respondent to enquire about the fact that there is any person of such name or not. It is clear from the Death Certificate issued by Birth-Death Registrar, village Panchayat Sivana that Kishanlal S/o Tarachand was living in village Sivana and he expired on 6.2.1988 and whose registration no. is 5 and date of registration is 14.2.1998 which proves the death of the policy holder. As per the statement of Ghever Chand, S/o Jethmal, Caste Oswal, R/o Balotara, Kishanlal S/o Tara Chand, R/o Ahmedabad expired on 6.2.1998 due to heart attach which is so proved and in this regard, an Affidavit is given by Ghevar Chand. The said fact is duly verified by the affidavits so filed by Madanlal, S/o Pukhraj, Kanungo, R/o Oswal, Sivana and Tagraj, S/o Nemichand Bavna R/o Sivana and Sugermal, S/o Rikhbachand Bagrecha that the person by the name of Kishanlal was resident of Sivana and he expired in Sivana. Ramko Devi, W/o Kishan Lal, of Naya Pura Sivana has a saving bank account no.6770 in Punjab National Bank Branch Balotra and a photo of the same is filed. Kishanlal is enlisted in the voter''s list of Sivana and his voter no. is 134 in the voter''s list and also the name of Ramko Devi, W/o Sh. Kishan Lal No. 1233 is so registered and from the above, the proof of living of Ramko Devi in Sivana is proved. The death of deceased is also verified from the Medical Attendant Certificate issued by Life Insurance Corporation of India, Dharvad Division and also the certificate issued by Life Insurance Corporation of India, Hubli as an

identity and from cremation identity, also it is verified of the name of person Kishan Lal and about the death of Kishan Lal. The Power of Attorney given by Renuka Devi in favour of Mohan Lal which was duly verified by Notary, Pavleek in which Renuka Devi was recognized by Parasmal, Lalchand and Ramesh Kumar. In this situation, in our opinion, there was a person in the name of Kishan Lal who had procured the said policy and respondent had made lame excuse to evade payment of policy amount. Ld. Counsel on behalf of Appellant has filed a law citation '' 1992 RLT Part III Page 71'' in which Hon''ble National Commission has ascertained that by cancelling the agreement one sided, Complainant has a right to get help from the Consumer Forum whether cancellation of the agreement was right or wrong. In this situation, Insurance Company has issued a policy in the name of deceased at the time of procuring policy and his alive or dead is proved later on Thus, Non-applicant

Insurance Company cannot be escaped from its responsibility and Complainant is entitled to get the insurance amount. Thus, complaint of the Complainant deserves to be accepted ."

18. The State Commission while dismissing the appeal in its impugned order observed; " After hearing arguments of both the parties, perused the file. Policy was issued in the name of Kishan Lal and in this regard, there is no dispute. Also there is no dispute that premium was being deposited in the name of Kishan Lal. That on 17.12.1994, by filing the proposal, a life insurance policy for a sum of Rs.3,00,000/- was taken by Kishan Lal from Respondent and thereafter on 6.2.1988, Kishan Lal expired. Policy existed for a period of three years and under the said policy, premium was acquired. The claim of Complainant is repudiated because the death and identity of policy holder was not proved. On 17.12.94, the policy was procured in the name of some artificial name and thus, a fraud was committed with the Insurance Company. The issue of question is whether the policy issued in the name of Kishan Lal was not related to him and some other person had procured policy in the name of Kishan Lal. On the documents, as per evidence, Hon''ble Forum has not accepted the statement of Respondent, therefore, decision was passed in favour of Complainant. Affidavits of Ghevar Chand, S/o Jethmal, Madan Lal S/o Pukhraj, Rajraj S/o Tenichand, Sumermal S/o Rikhabchand have come on record and from perusal of the same, it reveals that they know Kishan Lal, S/o Tara Chand, Caste Oswal, R/o Ahmedabad who expired on 6.2.1998 in village Sivana due to heart attack. Complainant Ramku Devi, W/o Kishan Lal has a saving account in Punjab National Bank of Nayapura Sivana bearing Account No. 6770 from which it reveals that Complainant is the wife of Kishan Lal who had got opened his new account stating his address in Nayapura Sivana, branch Office Balotara. Procured Death Certificate from Registrar of village Panchayat Sivana and in which had stated about the death of Kishan Lal being in Sivana and also the permanent address was marked as Bas Sivana, Dist. Balotara. In this concern, it was necessary to prove by Respondent that the person by the name of Kishanlal was not living in Sivana and he did not expire. On the record, no evidence of such type came on the basis of which it

could be stated that any person on the basis of forged name of Kishanlal had procured the policy. The decision of Hon''ble Forum is based on decided facts Thus, appeal is baseless and is dismissed accordingly ."

19. As per copy of proposal form dated 17.12.1994 placed at (Page No.78 of the paper-book) name and address of insured has been mentioned as '' Kishan Lal S/o Tarachand c/o Bherumal Bandmalji, Bhatio Ka Was, Sivana, Dt. Barmer (Raj.)'' and Smt. Renuka Devi wife of insured, has been mentioned as "Nominee". Admittedly, petitioner after accepting the aforesaid proposal form, issued Insurance Policy No.100005937 for Rs.3,00,000/-,commencing from 20.12.1994 in which respondent has been shown as nominee of the insured and copy of this insurance policy has been placed on record by both parties.

20. The case of Petitioner''s Corporation as per its written statement is, that Kishan Lal S/o Tara Chand-Policy Holder is a fictitious person. Since, petitioner is alleging that insured is fictitious person, therefore onus to establish this fact lies upon the petitioner. The best person to prove this fact that insured in the present case is a fictitious person, was agent of Petitioner''s Corporation, who has got the proposal form filled up from the respondent. However, petitioner has not examined the best evidence in this case, that is, its agent, so as to establish that proposal form was filled by a fictitious person. There is no explanation as to why petitioner did not examine its agent. Therefore, inference has to be drawn against the petitioner.

21. Secondly, petitioner it its written statement has prayed that a criminal case be filed against Mohanlal B. Jain for making conspiracy with an intent to defraud the Petitioner''s Corporation by producing false documents and criminal case may also be filed against the person who have associated with him.

22. When the case of Petitioner''s Corporation is, that one Mohanlal B. Jain in conspiracy has tried to defraud the Petitioner''s Corporation by producing false documents, then what stopped the petitioner from initiating criminal proceedings against Mohanlal B. Jain and the alleged conspirators who were associated with him. Therefore, it is clear from the record, that petitioner has failed to discharge its onus with regard to the alleged fictitious person and who defrauded it.

23. On the other hand, respondent has placed on record all the documents before the District Forum such as, cremation papers, death certificate of the insured as well as copy of insurance policy, issued by the petitioner in the name of insured.

24. It is well settled that under Section 21(b) of the Act, scope of revisional jurisdiction is very limited. This Commission can interfere with the order of the State Commission only where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

25. The Hon''ble Supreme Court in Mrs.Rubi (Chandra) Dutta Vs. M/s United

India Insurance Co. Ltd. 2011 (3) Scale 654 has observed; " Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National

Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora " .

26. Both the Fora below have given conclusive finding of facts, that present respondent being wife of insured is entitled to the claim amount. We find no reason to disagree with the above finding of facts, given by both the Fora below.

27. In view of the concurrent finding of the facts given by both the Fora below, we hold that there is no infirmity or illegality in the impugned order and present revision petition thus having no legal merit is liable to be dismissed.

28. Before parting with, we must observe that while issuing of notice of this petition to the respondent, a sum of Rs.3,000/- was ordered to be remitted to the respondent being travelling and allied expenses. However, that amount was received back by this Commission on refusal made by the respondent. Thereafter, one Mohan Lal Jain claiming himself to be the attorney holder of the respondent, sought delivery of that cheque in his name. Therefore, it was ordered that the aforesaid amount shall be paid to Mohan Lal Jain.

29. Later on, vide order dated 09.02.2010 it was observed that sum of Rs.3,000/- which was required to be paid to Mohan Lal Jain shall be kept in abeyance till appearance of respondent. Accordingly, notices were issued to respondent for appearance before this Commission. Despite service, respondent has not appeared before this Commission till date.

30. In view of the aforesaid circumstances, we direct the Registry not to release the awarded amount lying deposited with this Commission to the respondent, unless respondent-Smt. Renuka Devi @ Ramku Devi, wife of Kishan Lal, Caste Oswal, appears in person, before the Registrar of this Commission. Thereafter, Registrar after satisfying the identity of respondent through recent documents, such as latest Adhaar Card, Voter Identity Card and latest photograph shall release the amount to the respondent.

31. With these observations, present revision petition stand disposed of.

32. No order as to cost.