(2017) 02 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Case No : 710 of 2009

LIC OF INDIA — APPELLANT

Vs

SAMAR BAHADUR SINGH & ANR. — RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Citation : 2017 1 CPR 361

Hon'ble Judges : K.S. Chaudhari

Advocate : RAJAT BHALLA

Final Decision : Petition Allowed

Judgement

1. This revision petition has been filed by the petitioner against the order dated 24.11.2008 passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow (in short, ''the State Commission'') in Appeal No. 115 of 2007 - LIC Vs. Samar Bahadur Singh by which, appeal was partly allowed.

2. Brief facts of the case are that Complainant/Respondent-1 took a policy of Rs.1,00,000/- (Rupees one lac only) from OP/Petitioner on 7.6.2002 after completion of the formalities, who was injured in accident on 13.6.2002 near Shikarpur police chauki Palhamau under police station Saraikhwaza and treatment was done of complainant in District Hospital, Jaunpur and Heritage Hospital, Varanasi and now today also treatment is in progress in Sir Sunder Lal Hospital, Varanasi, complainant approached again and again to the OP for policy money but no answer was given to him. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that complainant submitted proposal for insurance of Rs. 1,00,000/- and deposited premium on 8.6.2002, which was accepted by the insurance company on 19.6.2002. It was duty of the complainant to inform the OP, about the accident. According to the Contract Act, 1872, if any accident was occurred, before the completion of contract the parties are not liable and contract was completed between complainant and opposite party on 19.06.2002. There was no insurance of the complainant on 7.6.2002. Denying any deficiency on their

part, prayed for dismissal of complaint. Learned District Forum after hearing parties, allowed complaint and directed OP to pay Rs. 2,50,000/-. Appeal filed by OP was partly allowed by learned State Commission vide impugned order and compensation was reduced to Rs. 1,00,000/- with 9% p.a. interest against which, this revision petition has been filed along with application for condonation of delay.

3. None appeared for respondents even after service of notice; hence they were proceeded ex-parte.

4. Heard learned Counsel for the petitioner and perused record.

5. Delay of 7 days in filing revision petition has already been condoned by order dated 9.3.2009.

6. Learned Counsel for the petitioner submitted that inspite of no concluded contract between the parties at the time of accident, learned District Forum committed error in allowing complaint and learned State Commission further committed error in allowing appeal only partly; hence, revision petition be allowed and impugned order be modified and complaint be dismissed.

7. It is not disputed that complainant deposited Rs.3772/- with OP on 7.6.2002 for obtaining insurance coverage and submitted proposal form on 8.6.2002 and policy for Rs. 1,00,000/- was issued on 19.6.2002 and complainant sustained injury on 13.6.2002.

8. The core question to be decided is whether merely by submitting proposal form and depositing premium amount any concluded contract between the parties is created or not?

9. Hon''ble Apex Court in (1984) 2 SCC 719 - LIC of India Vs. Raja Vasireddy Komalavalli Kamba & Ors. observed as under:

"Mere receipt and retention of premium until after the death of the appellant or mere preparation of the policy document is not acceptance and therefore, do not give rise to a contract. The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Whether the final acceptance is that of the assured or insurers, however, depends on the way in which negotiations for insurance have progressed. Mere delay in giving an answer cannot be construed as an acceptance. Though in certain human relationships silence to a proposal might convey acceptance but in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance."

Same view has been taken by me in R.P. No. 1966 of 2008 - Life Insurance Co. of India & Anr. Vs. Smt. Munesh, which was affirmed by 3 rd Member and revision petition was allowed and LIC was directed to refund premium amount with interest. As proposal form was submitted on 8.6.2002 along with premium deposit receipt dated 7.6.2002, learned State Commission has committed error in observing that receipt of premium amounts to acceptance and contract comes into force which is contrary to law laid down by this Commission as well by Hon''ble Apex Court. OP has issued policy commencing from 19.6.2002, meaning thereby, just after 10 days of proposal form policy commenced, but as complainant sustained injury on 13.6.2002,i.e., prior to acceptance of proposal, complainant was not entitled to insurance coverage and learned District Forum committed error in allowing complaint and learned State Commission further committed error in allowing appeal only partly whereas, appeal should have been allowed in toto with direction to refund the premium. In such circumstances, revision petition is to be allowed and impugned order is liable to set aside.

10. Consequently, revision petition filed by the petitioner is partly allowed and impugned order dated 24.11.2008 passed by learned State Commission in Appeal No. 115 of 2007 - LIC Vs. Samar Bahadur Singh is modified and order of District Forum dated 6.12.2006 passed in Complaint No. 78 of 2003 - Samar Bahadur Singh Vs. LIC is set aside and complaint stands dismissed only with direction to the petitioner to refund premium amount with 12% p.a. interest to the complainant from the date of receipt till refund. Parties to bear their costs.