(2015) 03 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Case No : NO 1642 of 2008

LIC OF INDIA APPELLANT

Vs

SAROJ KUMARI RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

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

Citation : 2015 2 CPJ 544

Hon'ble Judges : K.S. Chaudhari, B.C. Gupta

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 07.11.2007, passed by the Uttar Pradesh State Consumer Disputes Redressal Commission (for short ''the State Commission'') in Appeal No. 2206/2007, "Life Insurance Corporation of India (L.I.C.) versus Saroj Kumari", vide which while dismissing appeal, the order passed by the District Forum in complaint case No. 47/2005 dated 03.09.2007, was upheld.

2. I am writing this order separately since I am not in agreement with the draft order recorded by learned brother, Mr. Justice K.S. Chaudhari, Presiding Member.

3. Brief facts of the case are that Anand Kumar, husband of the complainant/ respondent Saroj Kumari obtained an insurance policy for Rs. 30,000/- from the petitioner/OP LIC for which he is stated to have paid Rs.804/- as premium to the agent of the LIC on 27.05.2003 as half-yearly premium instalment and policy No. 214087814 was issued to him. The date of commencement of the Policy was stated as 28.05.2003 and the next premium was due in November 2003. Anand Kumar died on 17.06.2003. The complainant submitted a claim to the petitioner/ OP for getting the assured sum, but the claim was repudiated on the ground that Anand Kumar died before the payment of premium in full to the LIC and hence, the Policy had become null & void. The case of the complainant is that they had paid full premium amount of Rs.804/- to the agent of the LIC. However, the

stand of the LIC is that out of the said amount of Rs.804/-, a sum of Rs.697/- was deposited with LIC by the agent on 28.05.2003; another Rs.7/- was deposited on 12.06.2003 and the third instalment of Rs.100/- was deposited on 19.06.2003, making a total payment of Rs.804/-. Since the insured died on 17.06.2003 while a part of the premium, i.e., Rs.100/- was paid to them on 19.06.2003; hence the benefit of claim could not be given to the heirs/nominee of the deceased.

4. On the other hand, the case of the complainant is that as stated by the LIC themselves on their own documents, i.e., the insurance policy in question, on the first premium receipt and on the premium intimation letter that the date of commencement of the policy was 28.05.2003. Since the LIC had themselves declared the date of commencement of policy as 28.05.2003, the risk was fully covered from that date and hence, the claim was liable to be paid because the death had taken place on 17.06.2003. On the first premium receipt issued by the LIC, the date of commencement of risk has been mentioned as 28.05.2003. A perusal of the policy in question reveals that the date of commencement of policy is 28.05.2003 and the date of its maturity is 28.05.2023. The date of payment of last premium has been stated to be 28.11.2022. However, the stamp marked on this policy says that the policy was issued on 05.07.2003. On the premium intimation letter issued to Anand Kumar, it has been clearly stated that the last due paid was in 05/2003 and the next due date was 11/2003. The complainant, therefore, says that they were entitled to be paid the claim because the documents of the LIC had stated the date of commencement of policy/risk to be 28.05.2003.

5. The District Forum after taking into account the evidence of the parties, allowed the complaint and ordered the LIC to pay Rs.30,000/- with interest @9% p.a. and further awarded Rs.1000/- as litigation expenses. An appeal filed against this order before the State Commission was also dismissed and the order of the District Forum was upheld. It is clear, therefore, that there are concurrent findings of the State Commission and District Forum in favour of the complainant.

6. During arguments before us, the learned counsel for the petitioner LIC stated that as per record available in their office, the premium of Rs.804/- was paid in 3 instalments - Rs.697/- was paid on 28.05.2003, Rs.7/- was paid on 12.06.2003 and Rs.100/- was paid on 19.06.2013. It was clear, therefore that at the time of death of Anand Kumar on 17.06.2003, the full amount of premium had not been deposited with LIC and hence, the said Insurance policy was null and void and the LIC was not liable to pay the claim. The learned counsel has drawn our attention to orders passed by this Commission in " LIC of India versus Consumer Education and Research Society & Ors. " [as reported in I (1994) CPJ 95 (NC)] and in Revision Petition No. 306/2004, " LIC of India versus Gurnam Singh " decided on 20.08.2007, in which it was held that the mere acceptance of the premium amount by the insurer cannot mean that the insurer had accepted the proposal.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

8. A simple perusal of the relevant documents as issued by the petitioner LIC themselves, placed on the record of the District Forum reveals that the LIC have categorically stated that in this case, the date of the commencement of the policy/risk is 28.05.2003. On the first premium receipt no. 0190308, stated to have been issued on 19.06.2003, the date of risk has been stated to be 28.05.2003 and the date of maturity of policy is 28.05.2023. On the policy itself, although the stamp of 05.07.2003 is there, it is stated that the date of commencement of the policy is 28.05.2003, the date of maturity is 28.05.2023 and the date of payment of last premium is 28.11.20023. On the premium intimation letter no. 9942 also, the date of commencement of policy has been stated to be 28.05.2003 and the date of last due paid is stated to be 05/2003, the next date of payment is stated as 11/2003. These three documents are the own documents of LIC, which leave no iota of doubt that as per the own version of the LIC, the Policy/risk did commence from 28.05.2003. It is, therefore, grossly unfair for the LIC to take the stand after the submission of claim before them that the date of commencement of policy/risk should not be taken as 28.05.2003 .

9. In a case decided by this Commission in "LIC versus Vimal Kumar Mittal" [Revision Petition No. 1661/2001 decided on 14.02.2002], by a four-Member Bench, presided by the then Hon''ble President, it had been observed as follows:- "We have seen above that receipt dated 31.05.90 which shows that the amount has been received on 28.05.90 and the next premium falls on 28.08.1990. We are unable to accept the argument of Mr. Basu that in any case the receipt is dated 31.05.90 and that suicide having taken place on 29.05.91 was within a year of the date of the risk. He had, however, no answer to our query as to how it could be said that next premium would fall on 28.08.90 and why not on 31.08.90. Premium date evidencing the receipt of the first premium. It is certainly paradoxical situation that clause 4(b) comes into play from the date as given in the policy which is totally in the hands of insurer. Ordinarily, in our view, policy has to be on the same date from which date risk is covered."

10. In the above case, the stand of the LIC was that the premium was deposited on 31.05.90 and the next quarterly premium fell due on 28.08.90. The National Commission observed that the LIC could not give any answer to their query as to why the due date for next premium was not 31.08.90. In the present case also, if the LIC takes the stand that the full premium was paid on 19.06.2003, they should have adjusted the date of commencement of policy/risk as well as the date of receipt of next premium accordingly, but they have not done so.

11. It is clear from the above facts, therefore, that from the own version of the petitioner LIC on their own documents, the date of commencement of Policy / risk in this case is 28.05.2003 and hence, the LIC is liable to pay the claim in question. It is held, therefore, that there is nothing illegal or irregular with the

concurrent findings of the Fora below which may merit interference at the revisional stage. Moreover, it has been held by the Hon''ble Supreme Court in " Mrs. Rubi (Chandra) Dutta Vs. M/s. United India Insurance Co. Ltd. [II (2010) CPJ 19 (SC)]" that the revisional powers derived from section 21(b) of the Consumer Protection Act, 1986 can be exercised by the National Commission only if there is some prima-facie jurisdictional error in the impugned order. In the present case looking at the concurrent findings of the State Commission and the District Forum, I do not find any jurisdictional error or perversity in the same which may merit interference at the revisional stage.

12. Based on the discussion above, there is no merit in this revision petition and the same is ordered to be dismissed and the orders passed by the State Commission and District Forum are upheld with no order as to costs..

