

(2017) 09 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Case No : 2605 of 2010

LIC OF INDIA

APPELLANT

Vs

SHIVMANGAL RAM BAGHEL & ANR

RESPONDENT

Date of Decision : 08-09-2017

Acts Referred:

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

Citation : 2017 4 CPR 96

Hon'ble Judges : Dr. B.C. Gupta

Advocate : Amitabh Marwah, Mohd. Anis Ur Rehman

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the order dated 13.04.2010, passed by the Chhattisgarh State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in First Appeal No. 619/2009, "Life Insurance Corporation of India versus Shivmangal Ram Baghel & Anr.", vide which, while dismissing the said appeal, the order dated 22.09.2009, passed by the District Forum Sarguja, Ambikapur allowing the consumer complaint No. 124/2007, filed by the present respondent/complainant, was upheld.

2. Briefly stated, the facts of the case are that the complainants/respondents are the parents of their deceased son Dinesh Kumar Bhagel, who is stated to have died in a road accident on 04.02.2006. The deceased Dinesh Kumar Bhagel had obtained an insurance policy on 25.03.2005, called Limited Payment Endowment Policy with Profits from the Opposite Party (OP) Life Insurance Corporation of India (LIC) for a sum of 1 lakh. The case of the complainant is that under the Policy, the respondent LIC had agreed to pay, apart from the sum insured, an accidental benefit of 1 lakh under the terms and conditions of the policy. The complainants submitted claim with the LIC after the death of the said Dinesh Kumar Bhagel, but the same was repudiated by the LIC on the ground that the deceased policy holder was driving motor cycle under the influence of liquor and that he had no driving licence. Alleging deficiency in service on the part of the

LIC, the complainants filed the consumer complaint in question, seeking directions to them to pay a sum of 2 lakh and a compensation of 25,000/- alongwith interest @12% p.a. on the aforesaid sums from the date of filing the complaint till realisation.

3. The complaint was resisted by the OP LIC by filing a written statement before the District Forum, in which they stated that the deceased was in the habit of consuming liquor in excess, but he concealed this fact from the Insurance Company, while filling the proposal form. Moreover, the policy holder died in an accident within 10 months of taking the policy by driving his motor cycle in a rash and negligent manner under the influence of liquor. Hence, the LIC had got investigation into the matter conducted, treating it as an early death claim. Based on the said investigation, the claim had been repudiated.

4. The District Forum after considering the averments of the parties, directed the OP LIC to pay a sum of 2 lakhs alongwith interest @9% p.a. from the date of repudiation of the claim till realisation and also 2,000/- as compensation for mental agony and 1,000/- as litigation cost. Being aggrieved against the said order of the District Forum, the LIC challenged the same by way of an appeal before the State Commission and the said appeal having been dismissed, the LIC is before this Commission by way of the present revision petition. While dismissing the appeal, the State Commission observed that clause 10.1 to 10.6 and 11 had been made applicable for the Insurance Policy.

5. The LIC have taken the stand that at the time of issuance of the policy, the life assured was a minor being only 17 years of age, having been born on 26.01.1988. The proposal form filed by him did not contain a clause for accident benefit and was specifically excluded from the policy in question. The life assured could have been covered under the accidental benefit, upon his becoming a major, subject to the condition that he opted for the said benefit and paid the premium for the same. At the time of his death, he was just a few days over 18 years of age. The learned counsel for the LIC has drawn attention to a copy of the Insurance Policy on record and stated that the conditions 10.1 to 10.6 and 11 were not applicable to the policy issued to the deceased and hence, the State Commission had wrongly observed that such conditions were applicable. Further, at the time of death, the deceased was driving motorcycle under the influence of liquor in a rash and negligent manner and hence, he was not entitled for the insurance claim. The FIR recorded by the Police after the accident also states that he was driving the motor cycle at high speed in a drunken condition and the said motor cycle hit the tree resulting in injuries and death to the insured. The learned counsel has drawn attention to an order passed by this Commission in " Mohanlal Tiwari vs LIC of India [I (2009) CPJ 209 (NC)] ", saying that the production of driving licence was held to be a condition precedent for the grant of accidental benefit. Further, in " RP No. 3232/2006 decided on 2.12.2010, Rajendra Kumar Rastogi vs. LIC of India, " this Commission held that accidental benefit could not be extended to a minor. On attaining majority, a minor could

opt for accidental benefit on payment of requisite amount of premium after exercising the necessary option. The Learned Counsel has also invited attention to an order made by the Hon'ble Supreme Court in " Suraj Mal Ram Niwas Oil Mills (P.) Ltd. versus United India Insurance Company & Anr. [IV (2010) CPJ 38 (SC)] " saying that the terms and conditions of the policy have to be strictly followed in determining the extent of liability of an insurer. The learned counsel stated that the orders passed by the Consumer Fora below were not based on a correct appreciation of the facts and circumstances on record and the same should be set aside.

6. Per contra, the learned counsel for the complainant stated that in the written statement filed before the District Forum and in the repudiation letter, the LIC had not mentioned anywhere that the accidental benefit was not available to the deceased under the policy. They have only stated that the policy-holder was a habitual drunkard. Moreover, the issue of driving licence had also not been mentioned in the written statement or repudiation letter etc. The learned counsel further

argued that in the post-mortem report, there was no mention that the deceased was under the influence of liquor at the time of accident. The learned counsel has further stated that there was no condition regarding having driving licence in the terms and conditions of the policy. Moreover, at the time of the accident on 04.02.2006, the deceased had attained the age of majority. The orders passed by the consumer fora below were, therefore, valid in the eyes of law.

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

8. The main issue that arises for our consideration is as to whether the grant of accidental benefit was covered under the terms and conditions of the insurance policy. The OP LIC stated that clauses 10.1 to 10.6 and 11 were not made applicable to the insurance policy, as the insured was a minor at the time of taking the policy. It has also been stated that after the insured had attained the age of majority, he could have opted to get covered under the accident benefit clause by exercising the requisite option on payment of the requisite premium. It is evident, therefore, that the accident benefit could not be paid to the complainants, as the same was not contemplated under the terms and conditions of the policy issued. The order passed by the consumer fora below, therefore, suffer from a material defect, because the accidental benefit has also been ordered to be paid to the complainants, even when there was no provision for the same. It is true that it was the duty of the LIC to have taken up this issue at the time of filing their written statement before the District Forum and also in the repudiation letter. However, the LIC cannot be made to provide the accidental benefit, when there was no provision for the same in the insurance policy.

9. In so far as the driving of the vehicle under the influence of liquor is concerned, although it is mentioned in the FIR that the vehicle was being driving

in drunken condition, there was no mention in the post-mortem report that the deceased had consumed liquor at the time of accident. Moreover, it is a settled legal proposition that a person must have consumed alcohol beyond a particular limit, if he is to be classified as being under the influence of liquor. In the present case, there is no evidence on record to say that at the time of accident, the deceased was in an intoxicated condition or under the influence of liquor. It is held, therefore, that complainants are entitled to be given the basic sum assured under the policy, i.e., a sum of 1 lakh. The said sum shall be payable alongwith interest @9% p.a. from the date of filing the complaint till realisation. In addition, a sum of 25,000/- is also awarded as cost of litigation to the complainants. This revision petition is, therefore, allowed and the orders passed by the consumer fora below are modified as stated above.