(2010) 10 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

LIC OF INDIA APPELLANT

Vs

Shobha Rani Shah RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

Citation : 2011 1 CPJ 166

Hon'ble Judges : B.N.P.Singh , Suresh Chandra J.

Advocate : Nikhil Jain , Ram N.Sharma

Judgement

1. MR. Justice B.N.P. Singh, Presiding Member-Delay of six days in preferring revision petition beyond the statutory period of limitation, in view of the submissions made, is condoned.

2. SHORN of details, factual matrix are that deceased Uma Charan Shah, husband of respondent No. 1/complainant secured insurance policy with Ordinary Monthly Mode of payment of premium for sum assured of Rs. 1,00,000 through respondent No. 2, the agent. In terms of ordinary monthly mode policy, Insurance Company, on receipt of third premium on 8.12.2000 issued policy in question with commencement of risk w.e.f. 1.12.2000. Premium used to be collected from insured by opposite party No. 2 for which requisite receipts were issued. Allegedly, premium of Rs. 593 was paid to the agent for the month of August, 2001 and insured continued to make payment of monthly premium to respondent No. 2 till September 2001. As ill-luck would have it, after insured died on 22.9.2001, the claim preferred by respondent No. 1 was repudiated by Insurance Company holding that for non-payment of premium due on 1st August, 2001, even during the grace period, policy had lapsed on 1.8.2001 itself. Aggrieved with repudiation of claim, consumer complaint was instituted by widow of deceased insured. Rival contentions were raised on behalf of parties as to quantum of premium paid by insured before he died on 22.9.2001. Allegations were attributed in the complaint that respondent No. 2 had fraudulently misappropriated the premium collected from deceased insured and since respondent No. 2 was authorized agent, petitioner company was vicariously liable

for the acts and omissions committed on part of the agent. The District Forum, on erroneous assumption, considering respondent No. 2 to be the agent of petitioner, while accepting complaint, made Insurance Company liable to pay insurance amount of Rs. 1,00,000 along with compensation of Rs. 50,000 and cost of litigation to respondent No. 1, there being deficiency in service to perform the statutory requirement under the Act. Though State Commission affirmed finding of District Forum but it was on different premises holding that monthly premium was being collected by the agent which in turn was deposited with appellant company and, since all receipts were being issued by the agent of the company, Insurance Company cannot walk out comfortably from the mechanism that was evolved by the company to get the premium through the agent. The other premises on which Insurance Company was made liable was that the factum of Insurance Company having accepted premium of July, 2001 in September, 2001, evidently shows that policy was then in existence and had not lapsed. Though basic finding of District Forum about liability of Insurance Company to pay assured value was maintained by State Commission, compensation of Rs. 50,000 awarded by District Forum was, however, reduced to Rs. 20,000 which was inclusive of cost of litigation also.

3. STATEMENT of Account though filed by both parties before us, the parties are at variance about the quantum of premium paid by the insured. Receipts in respect of some premium made by insured in advance were not available with the respondent. Statement of Account placed on record by Insurance Company shows that against Rs. 5,735, premium deposited by insured during the period from 1.12.2000 to 31.8.2001, premium of Rs. 4,744 only was paid by insured and rest Rs. 991 was deposited by agent for policy No. 112928780 whereas policy No. held by the insured was 112928689. This is no longer res integra, in view of the decision of the Hon''ble Apex Court reported in III (1997) CPJ 9 (SC)=III (1997) CLT 360 (SC)=1997 (5) SCC 64, Harshad J. Shah and Anr. v. LIC of India and Ors, that agents collecting premium from insured are not agents of Insurance Company rather that of insured and that apart Section 49 of the LIC Act, 1956 expressly prohibits agents to collect premium on behalf of Life Insurance Corporation. Similar views were reiterated by National Commission also in the matter of LIC of India v. Giridharilal P. Kesarwani and Anr., I (2009) CPJ 228 (NC)=RP No. 900/2007, In view of policy having lapsed on 1.8.2001 for which there was no evidence of revival of policy by Insurance Company, Insurance Company was well within its authority to repudiate claim of respondent No. 1. Fora below having taken erroneous approach to the issue, saddled Insurance Company to pay insured value to respondent No. 1. Finding of State Commission is accordingly set aside and revision petition accordingly succeeds but with no order as to cost.

