(1992) 08 NCDRC CK 0068

In the National Consumer Disputes Redressal Commission

L.I.C. Of India — APPELLANT

Vs

SHYAM DULARI DEVI AGRAWAL — RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Citation : 1992 0 CPC 734 : 1992 2 CPJ 461 : 1992 2 CPR 407 : 1993 1 CLT 218

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate : Rajiv Nayar , Suresh Kumar

Final Decision : Dismissed

Judgement

1. THE brief facts giving rise to this appeal are that Shri Sudhanashu Kumar Agrawal had taken a double accident benefit policy on his own life for Rs. 30,000/- on 20th December, 1983. Shri Sudhanshu Kumar Agrawal was involved in an accident and died on the night intervening 16 and 17th December, 1986. THE Life Insurance Corporation of India (now appellant and for short the Corporation) who had issued the policy, paid Rs. 30,000/to the present respondent Smt. Shyam Dulari Devi Agrawal, who is mother of the above named deceased. THE accident claim benefit was not given as she failed to produce the driving licence of the deceased. It may be mentioned here that the deceased was driving a scooter when he met with the accident.

2. SMT. Shyam Dulari Agrawal, thereupon filed a suit in the Court of Civil Judge, Hardoi for a declaration that the Corporation was liable to pay the accident benefit claim under the policy in question. The main dispute in the suit was whether it was necessary for her to produce the driving licence of the deceased to make the Corporation liable to pay the accident benefit claim under the policy. The Civil Judge held that there was no such obligation on the part of the claimant. SMT. Shyam Dulari Agrawal. The Civil Judge granted a declaratory decree with costs to the effect that the Corporation was liable to pay the accident benefit claim and SMT. Shyam Dulari Devi Agrawal was entitled to recover the aforesaid amount. The Corporation paid the amount of Rs. 30,000/-, i.e. the accident benefit claim and costs to SMT. Agrawal in view of the declaratory

decree. Thereafter, Smt. Agrawal filed a complaint under the Consumer Protection Act, 1986 (for short the Act) before the District Consumer Redressal Forum, Hardoi narrating the above facts and further stated that the Corporation had retained the amount of Rs. 30,000/- illegally for three years, 8 months and 5 days and thus, has caused financial less to her. According to her, had she received the said amount earlier, she would have benefitted from the capital growth on that amount by investigating it. She, therefore, claimed capital growth on that amount from the Corporation, who was the Opposite Party in the complaint. The complaint was contested by the Corporation on various grounds. One of the grounds was that no claim for capital growth was made by Smt. Shyam Devi Agrawal in the Civil Suit and secondly the complaint was in any case, time barred because the alleged amount, according to Complainant, became due to her more than three years back. The District Forum, however, overruled the objections of the Corporation and ordered that it should to the complainant, Smt. Agrawal the capital growth, which Corporation was paying to its customers since 31.3.1987 (it is not clear how that date was chosen. Perhaps the first instalment of Rs. 30,000/- was paid to Smt. Agrawal on that date).

Feeling aggrieved by that Order, the Corporation filed an appeal before the State Consumer Disputes Redressal Forum, Uttar Pradesh, which modified the Order of the District Forum and ordered that instead of capital growth, the Corporation should pay interest @ 20% on Rs. 30,000/- from the date of declaratory decree, i.e., from 29.8.1990 to 5.12.1990. (It is not clear how the latter date was arrived at, but it appears that on that date the Corporation had paid the amount to Smt. Agrawal in compliance of the declaratory decree).

3. THE Corporation has come before this Commission by filing this Revision Petition, alleging that the impugned orders, i.e., of District Forum and the State Commission are illegal, arbitrary and without jurisdiction. After hearing the submissions made on behalf of the Revision Petitioner, we are of the opinion that it is liable to be accepted for the reasons given below.

4. IF Smt. Shyam Dulari Devi Agrawal was entitled to any amount as capital growth or interest, she should have claimed it in the Civil Suit. She had claimed only a declaratory decree claiming a right to receive Rs. 30,000/- as the accident benefit claim. Therefore, she cannot now be heard to say that she is entitled to an amount as capital growth or interest over and above the amount of Rs. 30,000/-. Of course, the principles of Order 2 Rule 2 of Civil Procedure Code are not applicable to the proceeding under the Act, but in the present case, we are discussing the right of the claimant which she obtained under the declaratory decree. Otherwise also, we cannot find any deficiency in the rendering of services by the Corporation. There was a bona fide dispute between the parties. The Corporation''s contention appears to be that the deceased was driving the scooter without a proper licence. The Civil Court finally decided that for the accident claim benefit under the Policy. It was not necessary to produce the driving licence. As soon as the decree was passed, the Corporation paid the

amount. Therefore, there is no question of deficiency in the rendering of services by the Corporation. For the reasons given above, we are of the opinion that the District Forum as well as the State Commission exceeded their jurisdiction while granting relief to Smt. Agrawal under the provisions of the Act. Accordingly, we accept the present Revision Petition and set aside the Orders passed by the State Commission as well as of the District Forum and dismiss the complaint filed by Smt. Agrawal. In the circumstances of this cause, we make no Order as to costs. Complaint dismissed.