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(2012) 07 NCDRC CK 0141

In the National Consumer Disputes Redressal Commission

Lic Of India Branch Office Garshankar APPELLANT

Vs

Krishna Devi W/O Late Sh Somnath, Punjab State Electricity Board Distribution Division RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 337 : 2012 3 CPJ 422 : 2012 3 CPR 357

Hon'ble Judges : J.M.Malik , Suresh Chandra J.

Advocate : N.M.Popli , Sidhi Arora , Mohinder Singh

Judgement

1. THIS revision petition is directed against the order dated 21.12.2006 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (''State Commission'' for short) by which the State Commission allowed the appeal of the complainant Smt. Krishna Devi who is Respondent No.1 herein and reversed the order dated 4.8.2003 of the District Forum, Nawanshahar by which the complaint was dismissed without prejudice to the rights of the complainant to take recourse to appropriate civil proceedings by way of filing a regular suit for establishing her claims under the disputed insurance policy.

2. THE facts of this case are like this. Sh. Som Nath deceased husband of Respondent No.1/complainant had obtained an endowment insurance policy bearing No. 130100532 dated 28.3.2001 for Rs.1 lac along with other consequential benefits from the LIC of India through their Branch Office Garhshankar. At the time of taking the policy in question, her husband was working in the office of OP-3, i.e., the Executive Engineer, Punjab State Electricity Board, Distribution Division, Garhshankar. As a matter of arrangement between the petitioner Corporation who were OPs -1 and 2 before the District Forum and OP-3, the office of OP-3 used to deduct the necessary premium for the policy from the salary of husband of the complainant and then remit the same to the concerned office of the petitioners. Thus the office of Respondent Nos. 2 and 3 herein used to act as a collecting agent for and on behalf of the petitioners. After the death of insured in December, 2001, the complainant being the widow and

nominee of her deceased husband lodged necessary claim with the petitioners for payment of the sum assured along with other consequential benefits but the petitioners repudiated the claim on the ground that the above-mentioned insurance policy was lying in a state of lapse and the complainant was not entitled to any claim under the policy. Alleging this repudiation to be illegal, the complainant/Respondent No.1 filed a complaint before the District Forum seeking relief. The Insurance Co. in its reply admitted the policy but pleaded that no premium was received in respect of this policy after May, 2001 from the employers of Som Nath, i.e., OP-3 and hence the policy stood lapsed for non-payment of premium from June, 2001 onwards. According to the petitioners, this fact was in the knowledge of insured in his lifetime as also known to the employer of the deceased insured. It was stated that at the time of obtaining the policy, the deceased was posted at Garhshankar in the office of OP-3 but was subsequently transferred to the office of the Executive Engineer, PSEB, Distribution Division, Nawanshahar, Respondent No.3 herein and as per clause No.11 containing the terms and conditions of the policy, it was the responsibility of the employee to inform the LIC regarding his transfer as well as when premium was not deducted from this salary but the deceased insured never informed the LIC about his transfer. It appears that the employers of the deceased in their letter dated 7.5.2002 admitted their lapse in the matter in not deducting the premium from the salary of the deceased and depositing the same with the LIC but requested for reconsideration of the matter by the petitioners on compassionate grounds. The stand of the petitioners was that the policy already stood lapsed and hence the claim was rightly repudiated by them. OP-3 in their reply before the District Forum admitted deducting the premium from the salary till May 2001 but thereafter chose to remain absent from the proceedings in the case. OP-4, i.e., the Executive Engineer, Nawanshahar did not appear in the case despite notice and hence was proceeded against ex parte.

3. AS stated above, the District Forum dismissed the complaint which led the complainant to file an appeal before the State Commission which accepted the same in favour of the complainant vide its impugned order. Even while holding that the action on the part of PSEB authorities in not deducting the premium from the salary of the deceased employee amounted to deficiency in service on the part of the PSEB authorities, the State Commission directed the petitioners, i.e., LIC of India to pay the insured amount to the complainant along with interest @ 9% w.e.f. two months after the submission of the claim form. In the circumstances, the LIC of India has now come before the National Commission against the impugned order through the present revision petition.

4. WE have heard Mr. Mohinder Singh, Advocate, learned counsel for the petitioners, Mr. N.M. Popli, Advocate for Respondent No.1 and Ms. Madhu Tewatia, Advocate for Respondent Nos. 2 and 3. It was contended by learned counsel for the petitioners that admittedly no premium was remitted by the PSEB to the petitioners in respect of the policy in question since May, 2001 and hence the policy stood lapsed since June, 2001. It is also not in dispute that the

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deceased employee had been transferred from Garhshankar to Nawanshahar but the petitioners were not informed about it which was in contravention of clause 11 of the terms and conditions under which the deceased employee was under obligation to inform the LIC regarding his transfer as well as non-deduction of the premium from his salary. In the circumstances, the petitioners were right in repudiating the claim on the ground that the policy already stood lapsed w.e.f. June, 2001. He pointed out that even if, for the sake of argument, the condition clause No.11 is kept aside, it was admittedly a mistake and deficiency on the part of the PSEB authorities and hence instead of petitioners, the State Commission should have directed the Respondent Nos.2 and 3 to pay the claim to the complainant under the policy. Another contention raised by learned counsel for the petitioner was that the ratio of the case of Delhi Electric Supply Undertaking Vs. Basanti Devi and Anr. [(1999) 8 SCC 229] would not be applicable to the present case since there was no deduction of the premium amount from the salary of the deceased employee by the employers, i.e., PSEB Board during the period of default whereas in the case of Basanti Devi, the employers, i.e., DESU had deducted the premium from the salary of the employee but failed to remit it to the Insurance Co. Learned counsel further submitted that in case this Commission is inclined to hold the petitioners liable for the claim, as an alternative plea, he would plead for distribution of the liability between the petitioners and PSEB on equal basis since admittedly the PSEB committed the mistake of not deducting the premium and not remitting it to the petitioners and hence they are equally liable in the matter and cannot be allowed to escape their responsibility. On the other hand, learned counsel for Respondent Nos. 2 and 3, i.e., the PSEB submitted that the ratio of Basanti Devi''s case which has been confirmed by the Apex Court and in a later case of Chairman, LIC and Ors. Vs. Rajiv Kumar Bhasker [(2005) 6 SCC 188] is fully applicable to the present case and hence the petitioners alone would be liable to pay the claim as rightly held by the State Commission in the impugned order.

5. HAVING considered the submissions made by learned counsel for the petitioners and Respondent Nos. 2 and 3 and on perusing the record, we are of the considered view that the ratio laid down by the Apex Court in the case of Basanti Devi is squarely applicable to the present case. In this context, it would be relevant to reproduce the following observations made by their Lordships of the Apex Court in Basanti Devi''s case:- "Formation of the contract of insurance is between LIC and the employee of DESU. Scheme has been introduced by LIC purely on business considerations and not for any particular benefit of insurance conferred on the employee working in an organisation. Though in the pro forma letter written by DESU to LIC it is mentioned that DESU would be an agent of its employee and not that of LIC but this understanding between LIC and DESU was not communicated or made known to the employee. As far as the employee is concerned he is told that premium will be deducted from his salary every month and remitted by DESU to LIC under an agreement between LIC and DESU. For the employee of DESU, therefore, DESU had implied authority as an agent of LIC

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to collect premium on its behalf and then pay to LIC. There is nothing on the record to show that Bhim Singh was ever made aware of the fact that DESU was not acting as an agent of LIC. Rather in the nature of the Scheme, the employee was made to believe that it is the duty of the employer though gratuitously cast on him by LIC to collect premium by deducting from the salary of each employee covered under the Scheme every month and to remit the same to LIC by means of one consolidated cheque. Now it could be said that DESU would not be liable as an agent of its principal, i.e., LIC and also it was rendering service of collecting the premium and remitting the same to LIC free of any cost to the employee. As to what is the arrangement between LIC and DESU the employee is not concerned. In these circumstances DESU cannot perhaps be held liable under the Act"

6. IN view of the aforesaid observations, the provisions of clause No.11 lose their significance and at best their reference by learned counsel for the petitioners can be considered as a feeble attempt on his part to escape the liability of the petitioners in the matter. Keeping in view the overall legal position as stated by the Apex Court in the Basanti Devi''s case, it does not make any difference that the premium in the present case was actually not deducted from the salary of the deceased employee because the authority of the PSEB as an agent of the petitioners was both to collect the premium on its behalf (through deduction from the salary) and then to remit to the LIC. In this view of the matter, we do not accept the contention of the counsel for the petitioners and hold that the LIC would be liable to pay out on the policy in question even if the premium had not been paid due to default of employers, i.e., PSEB. Applying the ratio of Basanti Devi''s case as confirmed by the Apex Court in Rajiv Kumar Bhasker''s case, we confirm the impugned order and dismiss the revision petition but with no order as to costs.

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