(2003) 11 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

L.I.C.I. APPELLANT

Vs

JAMUNA CHANDA RESPONDENT

Date of Decision : 24-11-2003

Acts Referred:

Citation : 2004 3 CLT 66 : 2004 3 CPJ 181

Hon'ble Judges : S.Majumder , D.Karformas J.

Final Decision : Appeal allowed

Judgement

1. BOTH sides are present through their respective Counsels. This appeal has arisen out of the impugned order of the learned District Forum, Kolkata, Unit-1. In the judgment the Forum directed the L.I.C.I. to pay Rs. 10,052/- with interest at the rate of 12% p.a. from the date of the claim i.e., 28.1.1999 up to the actual date of payment.

2. BEING aggrieved by the order dated 23.4.2002, the Life Insurance Corporation of India has preferred this appeal. The brief facts giving rise to this appeal are as under: One Shri Khagendra Nath Chanda, the deceased husband of the appellant took out an L.I.C.I. policy for the sum assured Rs. 14,000/- with accident benefit, which meant that in case of death due to accident the nominee would get double the sum assured. After the death of the policy holder, the wife (respondent herein) as the nominee lodged claim under the policy stating that her husband died in an accident. But according to the appellant she could not prove that the death happened solely and directly due to the accident as she did not produce any police report and post-mortem report to establish her claim. The Corporation paid the sum of Rs. 17,948/- i.e., the sum assured and bonus which was duly received by the respondent in full and final settlement of claim by signing the discharge voucher. After receiving the payment the respondent filed a case before the District Forum. The appellants submit that the Forum was wrong in allowing the case without considering the policy condition No. 10, under the heading ''Accident Benefit''. In Clause No. 10(b) it is stated that the accident benefit is payable only if the life assured sustained bodily injury resulting solely

and directly from the accident caused by outward violent and visible means and such injury shall solely, directly and independently of all other causes result in death of life assured. The Corporation has drawn our attention that as this is a case for recovery of money even after full and final settlement of claim, it is not at all maintainable under the Consumer Protection Act, 1986. The appellants pray for allowing the appeal and for setting aside the impugned judgment.

The respondent contested the appeal by filing written objection. She submits in her objection that she had successfully proved that the death of her husband was solely and directly due to accident. The death certificate issued by Local Panchayat and Surathal (Inquest) Report and all necessary papers were submitted by her to the Branch Office of L.I.C.I. Although she claimed double accident benefit of Rs. 28,000/-, she was allowed the claim partly to the extent of Rs. 17,948/- only. According to her it was not full and final settlement. As she is an illiterate lady, without appreciating the effect of her signature on the receipt, she signed the discharge voucher of death claim. She also could not read the contents of the said claim form. In her opinion L.I.C.I. is bound to allow the claim of the double accident benefit and to pay the balance amount of Rs. 10,052/- with 12% interest.

3. ON perusal of the papers we notice some admitted facts. The deceased husband of the respondent was an L.I.C. Policy holder for the assured sum of Rs. 14,000/- with accident benefit. After the death of the policy holder his wife as a nominee lodged her claim under the said policy, stating that her husband died from an accident. After scrutiny of all the papers submitted by the respondent, L.I.C. did not accept the respondent''s contention of death from accident and paid the sum of Rs. 17,948/- which was accepted by the respondent in full and final settlement of her claim and she signed the discharge voucher accordingly. The appellant has contended that after receiving the payment in full and final settlement of her claim, the respondent cannot approach the Consumer Court for payment of balance amount, if any. In support of this contention the appellant has drawn our attention to several case laws some of these are (1) II (1999) CPJ 10 (SC), (2) II (2002) CPJ 3 (NC). The respondent has stated that she is an illiterate lady and without understanding the significance of her signature she signed the discharge voucher of death claim. However in our opinion this contention of the respondent at the appeal stage is not acceptable. It may be noted that before receiving the aforesaid amount the respondent made several correspondences claiming the accident benefit and in this backdrop it is difficult to believe that she accepted payment in full and final settlement of her claim, without understanding the implication of her signature. It is also noted that there is nothing on record to show that the respondent lodged any protest immediately after receiving the payment. Moreover it is found that the respondent signed the discharge voucher in the presence of a witness who is an Advocate of the Calcutta High Court and this being the case it is logical to assume that she put her signature after full understanding. What is most important in this regard is the fact the respondent has taken this point for the fist time in her written

objection against the memo of appeal. We have perused her complaint petition at the District Forum and in that petition there is no mention at all of the ground that she put her signature on the discharge voucher without understanding the contents thereof, and, therefore, this ground taken for the first time at the appeal stage cannot be accepted. In view of the foregoing discussion and also taking into account the case laws cited by the appellant we are of the opinion that the respondent has failed to prove that her signature on the discharge voucher was taken by misrepresentation or fraud or by exercising undue influence or coercion. In that view of the matter, after receiving the amount in full and final settlement of her claim she cannot approach a Consumer Court for payment of the balance amount, if any. Therefore, in our opinion the Forum did not act correctly in trying to go behind such full and final settlement and in that view of the matter the impugned order of the Forum cannot be sustained. Be it clarified that we refrain from going into the question as to whether the death of the policy holder could be attributed to an accident, as contended by the complainant.

4. HENCE, the appeal succeeds. The judgment of the Forum cannot be sustained which is hereby set aside and the appeal is allowed. The respondent may seek remedy in an appropriate Civil Court in accordance with law if she so desires and if not otherwise barred. With the above observation the appeal is disposed of. Appeal allowed.