**(2011) 03 NCDRC CK 0007**

**In the National Consumer Disputes Redressal Commission**

Life Insurance Corporation of India APPELLANT

Vs

H Kudoubuthine RESPONDENT

**Date of Decision :** 31-03-2011

**Acts Referred:**

**Citation :** 2011 2 CPJ 98

**Hon'ble Judges :** Ashok Bhan , Vineeta Rai J.

**Final Decision :** Revision Petition dismissed.

# Judgement

1. THE present revision petition has been filed by the Life Insurance Corporation of India and Others. (hereinafter referred to as the "Petitioners") being aggrieved by the order of the State Consumer Disputes Redressal Commission, Pudduchery (hereinafter referred to as the "State Commission") which upheld the order of the District Forum in favour of H. Kudoubuthine (hereinafter referred to as the "Respondent").

2. THE facts of the case are that one Ismail brother of the Respondent who was the original complainant before the District Forum had taken a Jeevan Bima Kiran Policy from the Petitioner/Insurance Company on 19.6.1997 for sum of Rs. 50,000 and had nominated the Respondent as his nominee. The insuree regularly paid the premium amounts for 61/2 years on the stipulated dates except for one quarter when he defaulted in paying the premium amount by the stipulated dated and, therefore, received a reminder from the Petitioner/Insurance Company informing him that he should have paid the premium amount in the month of December, 2003 but a grace period was granted to him to pay this amount upto 19.2.2004. Unfortunately, the insuree expired in a road accident on 8.2.2004 before he could pay the premium. However, since as per the terms and conditions of the policy, the policy continued to be valid during the grace period, the Respondent as the insuree''s nominee filed an insurance claim which was repudiated by the Petitioner/Insurance Company on the grounds that the policy had lapsed since the grace period was only for one month. Aggrieved by this, Respondent filed a complaint before the District Forum on the ground of unfair

trade practice and requested that the Petitioner/Insurance Company be directed to pay insurance claim of Rs. 50,000 as well as Rs. 50,000 as damages for the mental agony caused to him as well as any other relief as the Forum may deem fit and appropriate.

3. THE Petitioner/Insurance Company denied the above contentions and stated that it is clearly written in Condition No. 2 of the policy conditions that if the premium is not paid before the expiry of the grace period i.e. one month from the due date, the policy gets lapsed. In the instant case the policy premium was to be paid in quarterly amounts due in March, June, September and December every year. Since the insuree had not paid the premium pertaining to the quarter December, 2003, the grace period expired in January, 2004. Despite this, the Divisional Office of the Corporation gave relaxation to the Respondent as per administrative instructions and decided to refund the premium so far paid by the deceased to his nominee. Any subsequent letter inadvertently giving an extended grace period is, therefore, not sustainable since it cannot override the terms and conditions in the policy document. The Petitioner/Insurance Company therefore, contended that the claim was rightly repudiated.

4. THE District Forum after hearing both the parties accepted the complaint. The operative portion of the order of the District Forum is reproduced below: "In the present case, in Ex. C-1 under the ''Conditions and Privileges'' in para 2, under ''Payment of premium'' it is stated that ''A grace period of one month but not less than 30 days will be allowed for payment of yearly, half yearly or quarterly premiums and 15 days, for monthly premiums. If death occurs within this period and before the payment of the premium then due, the Policy will still be valid and the Death Benefit paid after deduction of the said premium as also unpaid premiums falling due before the next anniversary of the Policy. If the premium is not paid before the expiry of the days of grace, the policy lapses.'' But in the present case, the assured died on 8.2.2004 i.e. within the date of payment of premium i.e. 19.3.2004, though in the intimation letter Ex. C-2 by the opposite party grace time was granted up to 19.4.2004. Therefore, we are of the opinion that the policy is not lapsed, it is alive and the insured paid part of Annual premium by quarterly payment. With regard to the contention of the opposite party, that the grace period has been wrongly mentioned in Ex. C-2 though they have contended so, they have not taken any steps to establish the same either by oral or by documentary evidence. Once such plea is taken, the onus of proof is on their hand to establish the same. But in the present, the opposite party has neither examined any witness nor marked any document to prove the same. Therefore, we are of the opinion that the plea taken by the opposite party is not justifiable one. The main purpose of taking Life Insurance by the assured is to give financial protection and security to the nominee/dependent. Denial of the same for no fault, amounts to unfair trade practice and which is also condemned one. Therefore, we are of the opinion that the act of the opposite party amounts to unfair trade practice."

 

5. THE District Forum directed the Petitioner/Insurance Company to pay Rs. 50,000 to the Respondent along with Rs. 10,000 towards mental agony and loss suffered due to the Petitioner''s unfair trade practice and Rs. 2,000 as costs.

6. AGGRIEVED by this order the Petitioner/Insurance Company filed an appeal before the State Commission which was rejected on the grounds that since the Petitioner/Insurance Company itself had granted him grace period for paying the premium upto 19.2.2004, it was not open to it to rely upon Condition No. 2 of Conditions and Privileges i.e. one month''s grace period to defeat the claim of the complainant. The State Commission, however, modified the order of the District Forum regarding the awarding of compensation by setting aside the part of the order awarding compensation of Rs. 10,000 on the grounds that no reason was assigned by the District Forum for awarding this compensation. Hence the present revision petition. Counsel for the Petitioner/Insurance Company was present. None was present on behalf of the Respondent.

7. COUNSEL for Petitioner/Insurance Company reiterated the submissions made before the Fora below and further stated that the Petitioner/Insurance Company was not aware that the insuree had passed away in February, 2004 and had in routine sent a premium notice on 5.3.2004 in which it was clearly stated that the premium falling for the month of December, 2003 was in arrears and it is only in respect of the premium falling due in March, 2004 that a grace period upto 19.4.2004 was mentioned in that notice. This letter, however, could not used by the Respondent to his benefit because on 8.2.2004 the insuree had already died without having paid the premium falling due in the month of December, 2003 and the policy in fact had lapsed after the grace period of 30 days i.e. on 9.1.2004. Counsel for petitioner further contended that the learned Fora did not appreciate the fact that since the terms and conditions of the policy which clearly stated that the grace period for payment of premium is only one month from the due date any subsequent letter written thereafter where another date may have been inadvertently mentioned cannot override the clear terms and conditions of the policy, more so, when the Insurance Company was not aware that the insuree had died. We have considered the averments made by the learned Counsel and have gone through the evidence on record.

8. IT is not in dispute that the Petitioner/Insurance Company had sent a communication to the insuree in which it was clearly stated that the premium due in December, 2003 was outstanding and that the insuree had been given a grace period upto April, 2004 to pay this amount. It is not mentioned anywhere in this document that the grace period pertains to the premium due for payment in March, 2004. Since the Petitioner/Insurance Company has in writing granted grace time to the insuree for paying the premium upto 9.2.2004, we agree with the Fora below that they cannot later take the plea and rely on Condition No. 2 of the Conditions and Privileges appended with the policy to reject the claim on the grounds that the insurance policy has lapsed. In view of these facts, we agree with the reasoning and orders of the learned Fora below that the insurance policy

 

was valid at the time of the death of the deceased and the Respondent as his nominee was entitled to claim the amount due to his deceased brother. We, therefore, uphold the order of the State Commission in toto and dismiss the revision petition with no order as to costs. Revision Petition dismissed.

 