(2007) 08 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India APPELLANT

Vs

Mukesh Devi RESPONDENT

Date of Decision : 09-08-2007

Acts Referred:

Citation : 2008 1 CPJ 155

Hon'ble Judges : R.C.Kathuria , Banarsi Das J.

Final Decision : Appeal allowed

Judgement

1. CHALLENGE in this appeal is to the order dated 14. 7. 2004 passed by the District Consumer Disputes Redressal Forum, Jhajjar whereby while accepting the complaint of the respondent-complainants directions have been given to the appellant-opposite parties to pay the amount of the policy of Rs. 1,00,000 along with all benefits as per terms and conditions of the policy. In addition, Rs. 500 has been awarded as compensation on account of mental agony and harassment and Rs. 500 as litigation expenses.

2. PUT shortly, the facts of the case are that Ram Phal, husband of the complainant No. 1 and father of complainants No. 2 and 3, had taken Life Insurance Policy for Rs. 1,00,000 on 31. 3. 1994 from the opposite party No. 1. He died on 11. 5. 1996 as per version of the complainant. The complainant put up the claim with the opposite parties which was repudiated by them on the ground that the assured had actually died on 1. 5. 1996 due to consumption of poisonous tablets and the policy in question stood lapsed but was revived on 6. 5. 1996 after the death of the insured and the premium paid after the death did not render the policy as valid. Aggrieved by the stand of the opposite parties, the complainants filed the present complaint. The opposite parties contested the complaint. In the written statement filed it was pleaded that the policy had commenced on 28. 3. 1994 and it stood lapsed on account of non-payment of the premium due on 28. 3. 1996. Thereafter, the complainant got the policy revived by making the payment of the premium on 6. 5. 1996, which was due on 28. 3. 1998, which fact was disclosed during the investigation conducted because

the life assured had died on 1. 5. 1996 in ''kohinoor Hospital'' at Jhajjar. Accordingly, it was prayed that they had rightly repudiated the claim. The other pleas of the complaint being not maintainable and the claim barred by limitation were also raised, as the complainant had withdrawn the civil suit filed in the civil Court at Jhajjar in 1998 without any legal justification. Accordingly, it was prayed that the complaint merited dismissal. On the basis of above pleadings of the parties and evidence adduced on record, the District Forum did not accept the version of the opposite parties and while accepting the complaint as per order dated 14. 7. 2004 issued the directions noticed above. It is against the said order the present appeal has been filed. Learned Counsel representing the parties have been heard at length.

The District Forum has accepted the complaint primarily taking into consideration the death certificate Ex. P-4 of Ram Phal issued by the Chief Medical Officer, Jhajjar, wherein it has been mentioned that the insured had died on 11. 5. 1998. In the face of the said certificate, the plea of the opposite parties that he had died on 1. 5. 1996 was not accepted. The above finding of the District Forum has been assailed by the learned Counsel representing the appellants on the basis of document Exs. R-6, R-7 as well as the affidavit of Dr. R. L. Narang, Ex. R-5 coupled with his statement that he had issued the certificate of hospital treatment dated 22. 11. 1996. In addition Shri Om Bir was also examined as RW-1. In this regard affidavit of Shri Purshotam Arora, was also placed on record from the side of the appellants. Ex. R-7 is the certificate of the hospital issued from ''kohinoor Hospital'', Jhajjar dated 21. 11. 1996. It is clearly mentioned in this certificate that the deceased was brought in the said hospital on 1. 5. 1996. Dr. R. L. Narang, who has appeared as RW-1, has proved Exs. R5, R6 and R7. His statement was not challenged during the course of his cross-examination. In his affidavit he has categorically stated that he had issued the certificate of treatment on form No. 3816 dated 22. 11. 1996. He also maintained that the life assured Ram Phal son of Dalip Singh, resident of V. P. O. Silana, Jhajjar was brought dead in the ''kohinoor Hospital'' on 1. 5. 1996 as per hospital record under the O. P. D. No. 2921. His statement is further corroborated by the affidavit of Shri Purshotam Arora. Investigation report further shows that insured had died on 1. 5. 1996. Therefore, the finding of the District Forum that he died of heart attack is without any foundation. It appears that much weight has been given by the District Forum on the death report Ex. P-4 of Ram Phal issued by the Chief Medical Officer, Jhajjar, ignoring that this report is based on the report lodged on the basis of entry made in the register of Chowkidar of the village. Sadhu Ram, Chowkidar in his report dated 21. 11. 1996 has categorically stated that Ram Phal died on 1. 5. 1996 as he had committed suicide and thereafter the father of the deceased had made cutting in the register wherein he mentioned the date of his death as 11. 5. 1996 and he changed the cause of death as due to sudden pain in his abdomen. The District Forum has totally ignored the above stated evidence which has come on record, without any justification or valid reasons. Furthermore, even the affidavit of Mukesh Devi does not clearly specify as to the factually her husband died on 11. 5. 1996 or on 1. 5. 1996. In fact, in para No. 4 of the affidavit she only stated that the opposite parties had wrongly cancelled the policy by taking a lame excuse having Ram Phal died on 1. 5. 1996. Under the circumstances of the case it is fully established on record that Ram Phal had died on 1. 5. 1996 and not on 11. 5. 1996.

3. IT is further established on record that the policy in question had lapsed because the life assured had failed to pay the premium due on 28. 3. 1996. It was got revived on 6. 5. 1996 after the death of life assured by misrepresenting the facts to the opposite parties. The stand of the opposite parties is clearly substantiated on record as the complainant wanted to take benefit of the insurance policy by not disclosing the factum of death of assured on 1. 5. 1996. Therefore, on the date when premium was accepted, the life assured had already died and thus no valid subsistence contract could come into existence on that day. The opposite parties were fully justified in repudiating the claim under the circumstances of the case. The District Forum has not given due consideration to these aspects while accepting the complaint. During the course of arguments, the other submission made from the side of the appellants was that the claim was repudiated by the opposite parties as per letter dated 11. 12. 1996 Ex. P5 placed on record. The present complaint came to be filed on 17. 11. 2003 and as such it was barred by limitation. It has also come on record that the complainant had filed a Civil Suit No. 244 of 1997 which was withdrawn by her on 14. 11. 2003. The copy of the order Ex. R-5 placed on record shows that the civil suit was withdrawn without giving any justification. The complainant had also filed an application dated 17. 11. 1996 seeking condonation of delay. It has not been explained as to why the civil suit was withdrawn on 14. 11. 2003. Learned Counsel representing the appellant-opposite parties submitted that the withdrawal of the suit, as such, would not extend the period of limitation under the circumstances of the case. In support of the stand taken reliance was placed on case Provincial Automobiles Co. Ltd. v. Ranjan, S/o Ramprakash Pathak and Anr. , I (1996) CPJ 182 (NC)=1996 (1) CPC 17, wherein the facts were that the jeep was purchased by the complainant in the month of November 1986 which was found to be defective and for that reason it was left with the appellant in April 1987 and remained with them. The complaint was filed against the appellant in August 1992. A civil suit filed prior to the filing of the complaint was withdrawn. The State Commission had directed the replacement of the vehicle which order was not sustained as State Commission held to be under wrong impression that withdrawal of the suit was with permission to file a complaint under this Act. Additionally, it was held that time spent before the Civil Court cannot be excluded and the complaint was dismissed being barred by limitation. This finding was recorded despite the fact that the provisions of Limitation Act did not apply to the complaint before a Forum constituted under the Consumer Protection Act, 1986 at that point of time. But thereafter, the Section 24a had come into existence w. e. f. 18. 6. 1993. Therefore, the complainant was duty-bound to file complaint within a period of two years. Under the circumstances of

the case the complaint was clearly barred by time. All these aspects have not been totally ignored by the District Forum while accepting the complaint and for that reason the order of the District Forum cannot be sustained.

4. FOR the aforesaid reasons, while accepting the appeal the impugned order is set aside and the complaint is dismissed. Appeal allowed.

