(2014) 11 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

LIFE INSURANCE CORPORATION OF INDIA APPELLANT

Vs

RAKESH KUMAR GUPTA RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Citation : 2015 2 CPJ 253

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : ASHOK KASHYAP , UMESH NAGPAL

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 06 -02 -2008 passed by State Consumer Disputes Redressal Commission, Rajasthan (in short, ''the State Commission '') in Appeal No. 1098/2007 & 1288/2007 - Rakesh Kumar Gupta Vs. LIC of India and Ors., by which while dismissing appeal, order of District Forum allowing complaint was upheld.

2. BRIEF facts of the case are that complainant/respondent obtained Komal Jeevan Plan for benefit of his minor son Sarthak Gupta on 03.02.2003 for a sum of Rs. One lakh and date of commencement of policy was 07.02.2003 whereas risk was to commence from 15.02.2003. Premium was being regularly paid to the complainant but his minor son suddenly died on 01.10.2005. Complainant submitted claim before opposite party/petitioner, which was repudiated. Alleging deficiency on the part of the opposite party, complainant filed complaint before District Forum. Opposite party resisted complaint and submitted that by typographical mistake commencement of risk in the policy was shown as 15.02.2003 whereas risk would commence after completion of two years duration from the policy or attaining age of seven years, whichever is later and as deceased died at the age of five years claim was rightly repudiated. It was further submitted that received premium of Rs.22,068/ - had already been returned and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint. Both parties filed appeal before State Commission, which were dismissed by learned State Commission vide impugned order, against which this revision petition has been filed.

3. HEARD learned counsel for the parties and perused record. Learned counsel for the petitioner submitted that as no amount was payable under this policy until insured attains age of seven years and as insured died at the age of five years, petitioner has not committed any deficiency in repudiating claim even then learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal, hence revision petition be allowed and impugned order be set aside. On the other hand, learned counsel for the respondent submitted that order passed by learned State Commission is in accordance with law, hence revision petition be allowed.

4. IT is not disputed that complainant obtained Komal Jeevan Plan for a sum of Rs. 1 lakh for his minor son on 07.02.2003 and policy issued by opposite party mentioned 15.02.2003 as date of commencement of risk. It is also not disputed that complainant ''s son died on 01.10.2005.

5. NOW the core question to be decided is whether no claim was payable under the policy before deceased attained age of seven years?

6. LEARNED counsel for the petitioner submitted that as per proposal form, this form was to be used for the policy of which deferment period was 10 years or more which has been signed by complainant and further submitted that Komal Jeevan Plan brochure clearly indicates that risk commenced either after two years from commencement of policy or from the policy anniversary immediately following the plan of seven years of age of child, whichever is later. Admittedly policy issued by opposite party to insured clearly mentions Komal Jeevan Plan but it does not contain aforesaid conditions shown in the brochure. As this condition was not shown in the policy, opposite party cannot take benefit of condition mentioned in the brochure for Komal Jeevan policy.

7. AS far as proposal form is concerned, it has been mentioned on the top of proposal form that it is to be used where deferment period is 10 years or more. Admittedly as per brochure of Komal Jeevan plan claim is payable after attaining seven years of age and in such circumstances it cannot be inferred that this proposal form was correct but this note is not binding on the complainant. It appears that concerned agent has used wrong form but policy issued by the opposite party does not contain condition mentioned in the brochure and in such circumstances that condition cannot be made applicable to the present case.

8. LEARNED counsel for the petitioner has also drawn my attention towards last page of policy where it has been mentioned that if any mistake found therein, it may be returned immediately for correction. Learned counsel for the petitioner submitted that on finding mistake in the policy, complainant was under an obligation to return the policy for correction. Apparently I do not find any mistake in the policy in the absence of condition of brochure incorporated in insurance policy and in such circumstances complainant was not required to return policy for any correction. On the other hand, opposite party clearly mentioned in the policy that risk commenced from 15 -02 -2003 and in normal

course every prudent person will take every entry mentioned in the policy as correct and as premium was paid on 03 -02 -2003 apparently commencement of risk shown as 15 -02 -2003 would be found correct by every person.

9. LEARNED counsel for the petitioner could not place any document on record to prove that brochure was given to the complainant along with policy and in such circumstances conditions mentioned in the brochure cannot be made applicable to the complainant. I do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

10. CONSEQUENT LY , revision petition filed by the petitioner is dismissed with no order as to cost.

