(1999) 04 NCDRC CK 0100

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India APPELLANT

Vs

Savithramma RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Citation : 1999 2 CLT 314 : 1999 2 CPR 604 : 1999 3 CPJ 353

Hon'ble Judges : N.D.V.Bhatt , B.H.Kamalamma , Abdul Perwads J.

Final Decision : Appeal partly allowed

Judgement

1. IN this appeal, the short point for consideration is as to whether the order passed by the District Forum can be found fault with.

2. A few facts need to be stated for the disposal of this appeal : The complainant-respondent-1 is the wife of one H.N. Narasimhaiah. Narasimhaiah was an employee in the School run by opposite party- 2. Opposite party-2 had launched a Group Savings Linked Insurance Scheme, obviously, for the benefit of its employees. Narasimhaiah was one such employee who came within the purview of the said scheme. It also appears that there was some agreement either in the form of a letter or otherwise between the Insurance Company on the one hand and the school on the other. Opposite party-1 is the Insurer (L.I.C). As per the said scheme, opposite party- 2 was required to send the premium relatable to different persons, who were roped in under the said scheme from time to time with the insurer.

When this was so Narasimhaiah, the husband of the complainant died on 10.9.1994, Unfortunately, however, the premium for the month of February, 1994, onwards does not appear to have been paid by the time he died on 10.9.1994 by opposite party-2. However, opposite party-2 hurried up after the death of Narasimhaiah by paying the amount payable towards the premium on 13.9.1994. The L.I.C. accepted the said premium.

3. AFTER the death of Narasimhaiah, his wife put in a claim with opposite party-1. Opposite party-1 however found that the policy was in a lapsed

condition for failure on the part of the school to make the payment of necessary premium for the months referred to earlier. It therefore repudiated the claim. The complainant therefore was constrained to approach the District Forum praying for the reliefs reflected in the complaint. Opposite party-1 resisted the claim more or less on the same grounds on which the claim of the complainant was repudiated. In sum, opposite party-1 took up a contention that since the policy was in a lapsed condition and the amount was sought to be paid only after the death of the husband of the complainant, the amount under the policy was not payable. It also took up the other contentions detailed in its version. Opposite party-2 also resisted the complaint on the grounds reflected in its version.

4. BEFORE the District Forum, complainant had filed the affidavit. Opposite party-1 did not file any affidavit as such. Opposite party-2 also did not file any affidavit. The District Forum, on the basis of the materials on record and for the reasons reflected in its impugned order, took the view that deficiency attributed to L.I.C. can be said to have been established, with the result, it has passed the impugned order against opposite party-1. Hence the instant appeal by opposite party-1 (L.I.C.). We have heard the arguments of Mr. M.L. Visweswaraiah, learned Counsel appearing for the appellant, Mr. M. Chandrappa, Advocate appearing for R-l and Mr. A.M. Muthanna, Advocate appearing for R-2.

5. MR. Visweswaraiah, the learned Counsel for the appellant placed before us a few facts for our consideration. The learned Counsel contended that the contract was between the insurer and opposite party-2 and it was incumbent on opposite party-2 to have paid the premium payable towards the Group Insurance irrespective of the fact as to whether the said amount was recovered by opposite party-2 from the respective employees or not. In sum, the learned Counsel contended that the primary responsibility to make the payment was cast upon opposite party-2. The learned Counsel also contended that the District Forum has wrongly relied on the decision on which it has relied on.

6. ON the other hand, Mr. Chandrappa, the learned Counsel appearing for Rl contended that the L.I.C. was duty bound to have informed the employee, if, as a matter of fact, the premium was not paid by opposite party-2 and the L.I.C. cannot afford to behave like an ordinary litigant by taking shelter behind technicality. In this connection, he relied on a decision in Kiran Sinha v. Life Insurance Corporation of India & Ors., rendered by the High Court of Judicature at Patna reported in 1983 ACJ 669. Mr. A.M. Muthanna, learned Counsel appearing for R-2, contended that L.I.C. after having received the amount on 13.9.1994 cannot turn round and say that the policy was in a lapsed condition. He, therefore, submitted that the appeal is liable to be dismissed.

We have given our anxious consideration to the submissions made on either side.

7. THE sum total of what we have stated hereinabove would make it absolutely clear that the insurance in question was for the benefit of those persons who fall

within the ambit of Group Savings Linked Insurance Scheme launched by opposite party-2 and opposite party-1 together. This is an important aspect which is required to be remembered before considering the submissions made by the learned Counsel on either side and alluded to succinctly hereinabove. It is not in dispute that the premium payable for the months of February, 1994 to August, 1994 was in fact paid only on 13.9.1994. It is also not in dispute that the husband of the complainant died three days next before the date of payment, to be more precise on 10.9.1994. The question for consideration is as to whether the opposite party-1 - L.I.C. in such a situation can be allowed to say that the policy was in a lapsed condition and that therefore it is not liable to make the payment. In our view, the fact that L.I.C. had accepted the premium on 13.9.1994 is an important factor which will have to enter into the judicial verdict. Further, it is not as if the L.I.C. did not know as to or whose benefit the policy in fact was taken by opposite party-2. In the contrary, we are indeed of the view that it was imperative on the part of L.I.C. to have brought to the notice of those for whose benefit the policy was taken that the premium was not paid. We may point out that the decision of the National Commission in General Manager, Hotel Kanishka v. Saroj Attal & Anr., reported in III (1997) CPJ 72 (NC), would mutatis mutandis apply to the facts of the instant case. No doubt, Mr. Visweswaraiah, the learned Counsel for the appellant contended that the ratio given by the National Commission in the said case was in the context of the Salary Savings Scheme Policy. Mr. Visweswaraiah is right in contending that the decision was given in that context. However, it is necessary for a State Commission to assimilate the spirit of the decision rendered by the National Commission in a proper perspective so as to apply the same to suitable cases with reasonable modification. If such an approach is adopted in this case, we are indeed of the view that the ratio of the said case should be made applicable to a situation like the one in hand also. Under, the circumstances, we are indeed of the view that the deficiency attributed to opposite party-1 can certainly be said to have been established. In that view of the matter, further submissions made by Mr. Visweswaraiah, learned Counsel for the appellant, do not survive for consideration and it is not necessary for us to go into those contentions at all.

8. MR. Visweswaraiah, however, contended that the District Forum has erred in awarding interest @ 15% p.a. when the contract does not provide for payment of interest. In our view, there is some force in the submission made by Mr. Visweswaraiah. Though the contract does not provide for payment of interest, it is permissible for a quasi-judicial authority to make an order regarding payment of interest in the context of provisions of Section 14 of the Civil Procedure Code. Looked at from any point of view therefore, it would be just and proper to award certain amount by way of current interest and future interest. In our view, it would be just and proper to award interest at the rate of 12% p.a. from the date of complaint till payment on the sum awarded by the District Forum and which is confirmed by this Commission. In the result, the appeal is partly allowed. The order passed by the District Forum is confirmed subject to the modification that

the rate of interest awarded by the District Forum @ 15% p.a. is reduced to 12% p.a. In all other respects, the order of the District Forum is kept intact. We make no order as to costs in this appeal. Appeal partly allowed.