(1991) 09 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India APPELLANT

Vs

Sheela Devi RESPONDENT

Date of Decision : 09-09-1991

Acts Referred:

Citation : 1991 2 CPJ 722 : 1992 0 CPC 122 : 1993 2 CLT 103

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , Tikka Singh J.

Final Decision : Appeal rejected

Judgement

1. WHETHER Life Insurance is within the ambit of the definition of "Service" as laid down in Clause(o) of sub-Section 1 of Section 2 of the Consumer Protection Act, 1986? WHETHER the contract of Life Insurance is one of personal service and, therefore, excluded from the definition aforesaid? These are the two questions inter-alia sought to be raised in this appeal.

2. THE facts giving rise to the question aforesaid are not in serious dispute. Sh. Jaibir Singh, the deceased, husband of the respondent Sh. Sheela Devi had got himself insured or the 11th of April, 1988 for a sum of Rs. 50,000/- which policy (Annexure P- A) was to mture on the 11th of April, 1993. THE said Jaibir Singh on the material date of 10th of April, 1989 was working as a Steno typist in a Cooperative Bank when he got a severe headache for which he took some Analgin tablets, which caused an acute physical reaction. He was removed to the Civil Hospital, Hisar but despite medical attention he expired there. His body was subjected to postmortem and even the viscera was sent to Forensic Science Laboratory, Maduwan, Karnal for ascertaining the cause of death. On receipt of the same the concerned doctor opined that he had died due to reaction to some drug. THE local police had also intervened and concluded on a investigation that he had died due to such reaction. The complainant Smt. Sheela Devi filed her claim with the appellant Corporation who instead of releasing the amount in her favour rejected the same on the 22nd of August, 1990.

In their reply the appellant Corporation set up a number of preliminary jurisdictional objections. It was also its stand that since difficult question of fact and law were involved, the District Forum should stay its hands and relegate the complainant to a Civil Court. On merits it was conceded that the deceased Jaibir Singh was duly insured for the amount of Rs. 50,000/-. It was however, insinuated that he had died as a result of suicide because a local paper Nab-Chhor had carried a news item long after on the 5th of January, 1990 that Jaibir Singh had died by consuming poison. The rejection of the complainant''s case was sought to be sustained on the ground that death was due to poisoning and not because of any allergic reaction to a drug. In the replication the complainant controverted the allegations in the written statement and reiterated her stand.

3. THE District Forum, Hisar brushed aside the preliminary objections and further took the view that their matter lies in a narrow compass and dispute was of a simple nature which could easily resolved by referring to several documents produced and relied upon by both the parties. Relying upon the evidence and the supporting documents produced by the complainant and rejecting the fragmentary news item in a local newspaper nearly after nine months of death of Jaibir Singh as totally belated and unreliable, the District Forum, Hisar upheld the complaint''s claim. It accordingly directed that the widow be paid the insured amount with all other benefits connected and arising out of the Insurance Policy. At the very outset, it deserves notice that the learned counsel for the appellant Mr. P.P. Khurana did not assail the judgment on the facts & merits at all. He confined his challenge entirely on the basis of legal issues, and never even faintly adverted to the appraisal of evidence, and consequential factual findings, of the District Forum.

4. BEFORE adjudicating on the main contentions of the learned counsel for the appellant, it may be noticed that at one stage he had also attempted to argue that the order of the District Forum merited to be set aside because the case had been heard only by two members of the District Forum and had been decided and signed by the President and one member only. Reliance for this submission was sought to be placed on the ''Maruti Udyog Limited v. V.K. Jain, I (1991) C.P.J. 50 (NC). It may be recalled that after the filing of the present appeal on the 14th of April, 1991, The Consumer Protection (Amendment) Ordinance, 1991 (6 of 1991) was duly promulgated and published in the Gazette of India, Extraordinary on the 15th of June, 1991. When the attention of the learned counsel was brought to the same, he very fairly conceded that in view of the Section 5 of the said Ordinance the contention on the point of the order under appeal not being signed by all the three members of the District Forum was no longer maintainable and he accordingly withdrew the said submission. In an attempt to lay a jurisdictional challenge to the order under appeal. Mr. Khurana the learned counsel for the appellant had first contended that "Life Insurance" is not at all a service within the meaning of the Act. On that assumption, it was submitted that the District Forum had no jurisdiction to entertain the complaint. Whilst fairly conceding that the term "Insurance" has been expressly included in the ambit of the definition of service in Clause (o) of sub-Section 1 of Section 2 of the Act, it was somewhat ingeniously submitted that life insurance was not

covered thereby. The hair-splitting submission was that what is intended by the statute is the ''general insurance'' only and life insurance being a category apart and distinct there from was, therefore, excluded from the definition aforesaid.

5. WHILST the aforesaid contention might bring some credit to the ingenuity of the learned counsel, it is nevertheless fallacious. What first meets the eye herein is the fact that Clause (o) defines service in very wide ranging terms. It means service of any description which is made available to potential users. This phraseology by itself casts the net very wide indeed and could well bring insurance of every kind within its ambit. However, the legislature has gone further to expand the same by expressly including therein all provisions or facilities in connection with insurance. The very language of the statute, therefore, leaves no doubt that the term'' insurance'' has been used with the widest amplitude. The sole question herein is whether the same covers all the varied branches thereof including life insurance as well.

6. THE answer to the aforesaid question is somewhat plain. As noticed already insurance generically has been squarely placed within the definition of service. Apart from the language of the statute the matter is put beyond any pale of doubt by the recent precedent in I (1991) C.P.J. 3 (NC), Sh. Umedilal Aggarwal v. United India Assurance Co. Ltd. THErein it has been categorically concluded as under : - "Having regard to the philosophy of the Consumer Protection Act and its avowed object of providing cheap and speedy redressal to consumers affected by the failure on the part of persons providing "service" for a consideration, we do not find it possible to hold that the settlement of insurance claims will not be covered by the expression "insurance" occurring in Section 2(1)(d). Whenever there is a default of negligence in regard to such settlement of an insurance that will constitute a deficiency'' in the service on the part of the Insurance Company and it will be perfectly open to the concerned aggrieved consumer to approach the Redressal Forums under the Act seeking appropriate relief. We, accordingly, overrule the objection raised by the insurance company questioning the jurisdiction of the State Commission to adjudicate upon the complaint."

Now once generically insurance is a service, there appears no earthly reasons to exclude life insurance there from. The term "insurance" has been used in the definition in a generic sense. It is the genus whilst the various branches thereof like marine, fire, general, medical and life insurance are the species thereof. Merely because the incidents of these different branches of insurance may be somewhat distinct from each other is not the least reason for saying that they would not be covered by the term of "insurance", as such. Mr. Khurana''s argument that the word "insurance" is to be so narrowly constricted as to apply only to general insurance and no other category is thus patently specious and merits rejection on principle.

The matter can then be viewed from an other refreshing angle, as well. Within our land the subject is fairly comprehensively covered by the earlier Insurance Act, 1938. In the definition Section 2 of the said Act, reference is specifically made in sub-Section 6 (A) and 6(B) to fire insurance business and general insurance business, the latter covering fire, marine or miscellaneous insurance business whether carried on signally or in combination with one or more of then. The clinching provision is however, sub Section 11 thereof which expressly defines life insurance as under : - (11) "life insurance" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only), or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include- - - - - - - - - - -- - "

It would be manifest from the above that life insurance has been expressly included in the concept of insurance by the Insurance Act alongwith other branches thereof mentioned above. A reference in this connection may also be made instructively to Sections 47-A, 48-A.64-E and 64-F of the Insurance Act containing various provisions regarding life insurance. Viewed from any angle, it has, therefore, be held that life insurance is squarely within the ambit of the generic term of "insurance" in the definition clause and consequently it is clearly a service within the meaning of the Act. The narrowly constricted meaning sought to be given to the term "insurance" has neither the support of principle nor precedent, therefore. The answer to the first question posed at the outset has, therefore, to be rendered in the affirmative and it is held that life insurance is included in the definition of service as laid down in Clause (o) of sub-Section 1 of Section 2 of the Act.

7. REPELLED on his aforesaid principal, argument, Mr. Khurana had then fallen back on a subsidiary submission which appears to us equally tenuous. It was argued that herein the claim of the respondent-claimant arises from the policy of insurance (Annexure P-A) which was an executed contract between the insured and the insurer. Relying upon the settled rule that a contract of insurance was one of utmost good faith, it was submitted that the refusal of the insurance claim was primarily a breach of the said contract. According to the learned counsel the only remedy for the aggrieved party was, therefore, a suit in the Civil Court for a breach of contract and any other remedy under the Act stood excluded. Despite the vehemence with which the learned counsel had pressed his submission, we are inclined to the view that the same cannot stand the test of a close scrutiny. It is axiomatic that under the Act a person who hires any services for a consideration which has been paid or promised or partly paid or partly promised is a consumer as defined. Inevitably every "arrangement of hiring of service" would invariably involve the creation of a contractual relationship between the hirer and the person offering and rendering those services. It is, therefore, plain that to come within the ambit of a consumer in the second category (i.e. other than the purchaser of goods for consideration) a person must enter into a contract of hiring. Therefore, assay claim for compensation put forward by the hirer on the ground that there was deficiency in the service rendered by the opposite party would always be one arising out of the breach of the original

contract. However, the Act has in terms expressly provided for the adjudication of such claims by the consumers seeking recovery of compensation for any loss caused on account of deficiency in service by conferring on the Redressal Forums constituted under the statue, the jurisdiction to adjudicate upon such disputes. Pointed reference herein is called to Section 3 of the Act declaring that the provisions thereof shall be in addition to and not in derogation of any other law for the time being in force. Therefore, the Act provides an additional remedy to persons coming within the ambit of consumers to seek redress for a breach of a contract of hiring of the services. The remedies under the ordinary civil law and under the Act may to some extent overlap, but are no way exclusionary of each other. It is manifest that the intent of the Act is that while parties may have a right to resort the ordinary remedy by way of civil suit, nevertheless consumers aggrieved by any loss on account of any deficiency in service in respect of an arrangement in hiring of services have also an added alternative of cheap, speedy and efficacious remedy before the Forum under the Act. Therefore, in the light of the letter and the spirit of the Act (which expressly provides for adjudication of such disputes by the Forums constituted under it), the contention that the matter is one arising out of a breach of contract and the remedy must, therefore, only be by way of a civil suit, must be rejected out of hand.

8. IN fairness to Mr. Khurana, we are compelled to notice a submission made by him even though it appears to us as an argument of desperation. It was contended by him that assuming insurance is a service within the ambit of the definition, life insurance was nevertheless excluded there from because such a policy was so intimate as to be a contract of personal service. Reliance was placed on the exclusionary words at the end of the definition in Clause (o) aforementioned, We are unable to find any modicum of merit in the aforesaid submission, but since it has been raised the compliment of a rational refutation has to be extended thereto. Even when pointedly asked, the learned counsel could cite neither principle nor precedent for the far-fetched submission that a contract of life insurance was one of personal service. It is somewhat plain that the phrase contract of personal service in the definition would refer inter-alia to the relationship of a master and servant where the latter as entered, into an agreement with the former for employment. Obviously a contract of life insurance has not the least analogy or similarity with master-servant relationship or a contract of personal employment. The submission that life insurance contract would be excluded out of the ambit of service on this ground appears to us as patently not well conceived and there is no option, but to reject the same. The answer to the second question posed at the outset is, therefore, rendered in the negative. The last legal submission of Mr. Khurana was that herein the policy of life insurance and the refusal of the claim there under would raise complicated issue of fact and law which could only be gone into after an elaborate examination of witnesses and documents and consequently the District Forum, as a matter of law had no jurisdiction to adjudicate thereon. Reliance was sought to be placed on the judgment of the Rajasthan State Commission in ''Smt. Urmila

Goyal & Another v. Senior Divisional Manager, Life Insurance Corporation of India &. Another, decided on the 16th of April, 1990. The aforesaid submission of the learned counsel must fail on both the facets of facts and law. Firstly it is significant to notice that the District Forum took the view that the basic issue herein was whether the deceased Jaibir Singh has committed suicide or died due to allergic reaction to a drug. In categoric term the District Forum has observed as under : - "It is a dispute of simple nature and can easily be resolved by referring to several documents produced and relied upon by both the party, However we pointed out that the matter in dispute is of simplicitor nature as from the record it can well be established as to what was the cause of death."

9. WE are clearly inclined to agree with the aforesaid observation of the District Forum. It is not even remotely the case that the appellant Corporation had at any stage wanted to examine a host of witnesses or adduce a plethora of documents at the trial before the District Forum. It is manifest from the record whatever evidence, the appellant wanted to put on the record was admitted by way of documents and the case was argued on the basis of the evidence of the parties on record. It appears that the basis reliance of the appellant was on a solitary and fragmentary news item in an obscure local newspaper published nine months after the death of Jaibir Singh which insinuated that his death might have been due to poisoning or on suicide. The District Forum rejected the stand of the appellant on the basis of material made available. It must, therefore, be held that in the present case there is not the least semblance or hint that the matter was too intricate or complicated so as not to be fit to be adjudicated on facts and merits by the District Forum. Indeed the record of the proceeding below points entirely to the contrary.

10. SECONDLY what now deserves pointed notice is that the abstract proposition that difficult or complicated matters requiring evidence pose a legal bar to the jurisdiction of the Redressal Forum stands authoritatively repelled. There is no gainsaying that the observation in paras 27,28 and 29 of the judgment in the earlier case of ''M/s Special Machines, Karnal v. Punjab National Bank & Other, I (1991) C.P.J. 78 (NC) had lent a handle to the misapprehension that baring matters which could be tried summarily, the Redressal Forums were not to enter into the thicket of complicated issue of fact and law requiring the recording of evidence or the appraisal of a large number of documents. It was by relying on those observations that the Rajsthan State Commission in ''Smt. Urmila Goyal v. Senior Divisional Manager, Life Insurance Corporation of India (Supra)'' had stayed its hands and declined to exercise jurisdiction by referring the complainant to the remedy by way of a civil suit in the context of a insurance claim. However, the lie direct to this argument has now been rendered in the recent judgment of the National Commission in ''S.K. Abdul Sukur v. State of Orissa'' first Appeal No. 196 of 1990 decided on the 5th of April, 1991, II (1991) CPJ 202 (NC). Therein express reference was made to the earlier case of M/S Special Machines v. Punjab National Bank and Others and it was pointedly observed as follows : - "If jurisdiction is declined by the special Redressal Forums

set up under the Act in all such cases on the mere ground that examination and cross-examination of witnesses would be necessary, it would amount to unjust denial of the benefits of the Act to the aggrieved consumer by erroneous abdication of its jurisdiction by the Forums."

"It is true that in M/s Special Machines v. Punjab National Bank and ORS.; O.P. No. 32 of 1989 this commission did decline to adjudicate upon the disputes brought before it and referred the complainant to the remedy by way of suit. But that was an exceptional case- - - - - - -".The said decision is not be understood as laying down any general proposition that in all cases where the examination and cross-examination of witnesses is involved the proper Forum for adjudication of the dispute is only the Civil Court."

With the aforesaid observations the National Commission reversed the order of the State Commission of Orissa which had declined to go into the complaint merely on the ground that oral evidence and cross-examination of witnesses was necessary for adjudication of the lis. The ratio in S.K. Abdul Sukur''s case has been firmly reiterated again in the subsequent judgment of the National Commission in ''the Divisional Manager, Life Insurance Corporation of India v. Shri Bhavanam Srinivas Reddy'' first Appeal No. 79 of 1990, decided on 5th of June, 1991; II (1991) CPJ 202 (NC). It deserves highlighting that this was a case arising from a insurance claim. In view of these recent authoritative enunciations the point, the submission that because the issue involved complicated question of law and fact and the construction of an insurance policy, the District Forum had no jurisdiction to entertain the same, must be categorically rejected. All the legal contentions of the learned counsel for the appellant thus fail. It bears repetition that Mr. Khurana had fairly conceded his inability to challenge the order on the facts and merits thereof and indeed hardly referred to them. The appeal is consequently without merit and is hereby rejected without any order as to costs.

By our order dated the 13th of May, 1991 in this case we had directed the deposit of the insurance amount with the District Forum within one month. We presume that the same must have been done and the District Forum will, therefore, expeditiously pay it over to the respondent. In case that has not been done, it is directed that the insured amount and all other benefits connected or arising from the said insurance policy be paid to the respondent within, one month from today, failing which Section 27 of the Act would have to be invoked as has already been directed by the order under appeal. Appeal rejected.