(2003) 12 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

LTD. APPELLANT

Vs

K. VENKATAPPA RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Citation : 2004 1 CPJ 352 : 2004 1 CPR 200 : 2004 2 CLT 201

Hon'ble Judges : T.Jayarama Chouta , Rama Ananth J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been preferred by the respondent, United India Insurance Company Ltd., against the order of the District Forum, Shimoga, dated 19.4.2001, passed in Complaint Case No. 50/1999 directing to pay a sum of Rs. 4,95,000/- being the compensation, together with interest at 10% p.a. from the date of the order, failing which, to pay the enhanced rate of interest at 11% p.a. with cost of Rs. 2,000/-.

2. THE case of the complainant before the District Forum was that he is the son of late Smt. Subbamma and during her life-time said Subbamma obtained from O.P. the Janatha Personal Accident Insurance Policy for a sum of Rs. 5,00,000/- which was in force from 24.12.1998 to 23.12.1999. THE said policy holder died on 11.4.1999 at 12 noon on account of accident in the house at Chowdikatte in Bhyrapura village of N.R. Pura Taluk. About her accidental death a mahajar was conducted in the presence of panchayath member and villagers. Since the complainant was not in the village, after getting the information of the accident he took a doctor by name B. Pandu Hegde to the spot and the said doctor after examining the insured gave his opinion that she died on account of accident. THE complainant also attempted to lodge a complaint before the police authorities of N.R. Pura on the same day but the police did not accept the said complaint on the ground it was not an unnatural death. After completion of obsequies the complainant sent intimation in writing on 5.5.1999 bringing to the notice of the Insurance Company the death of his mother, Smt. Subbamma, on account of accident. After receiving the claim form from the O.P. he filled up the same and

submitted with all the necessary documents for the settlement of the claim. Instead of settling the claim the O.P. repudiated the said claim on the ground that the complainant has not produced sufficient material to show that the death of insured occurred on account of accident. Hence, after issuing legal notice he has filed the present complaint claiming the compensation of Rs. 4,95,000/- so as to attract the jurisdiction of the District Forum. O.P. appeared through the Counsel and filed its written version admitting the fact that the said insured had obtained a policy which was in force from 24.12.1998 to 23.12.1999 for a sum of Rs. 5,00,000/-. According to the O.P. the complainant approached on 5.5.1999 and furnished the information in writing that his mother, insured, has expired on 11.4.1999. As per the condition of the policy the death of the insured should have been informed to the Insurance Company as expeditiously as possible. The intimation given on 5.5.1999 by the complainant about the death of his mother does not contain reasonable cause for the delay. The Insurance Company also admitted the fact that the complainant subsequently submitted claim petition along with death certificate, doctor''s certificate, original policy, obsequy ceremony invitation card and mahajar dated 11.4.1999 drawn in the presence of local people regarding the death of the insured. However, it is contended that while issuing the policy the Insurance Company has put a special condition as "death claim is subject to PM report and police report". The said condition has not been complied with by the complainant. The medical report of the doctor after the death of the insured, death certificate and mahajar will not help the Insurance Company to settle the claim unless the complainant fulfills all the conditions mentioned in the policy. According to the Insurance Company, the said medical report has been concocted at the instance of the complainant to make wrongful gain to show that was an accidental death. The Insurance Company further submitted that after going through all the records it has rightly repudiated the claim of the complainant by its letter dated 10.6.1995 on the ground of non-production of police report and post mortem report which was mandatory to admit the claim under Janatha Personal Accidental Policy. Hence, the O.P. requested the District Forum to dismiss the complaint since there was no deficiency in service in repudiating the claim of the complainant. On behalf of the complainant he got himself examined as P.W. 2 and in addition he examined Dr. B. Pandu Hegde as P.W. 1 and one K.T. Rukmegowda (his relative) as P.W. 3. He also produced Exs. P1 to P13, on behalf of the O.P., Branch Manager of the Insurance Company by name one Ramesh was examined as D.W. 1 and through him Exs. D1 to D46 were got marked. The District Forum, after hearing the arguments on behalf of both the parties and going through the written submissions and perusing the records came to the conclusion that the complainant has proved that there was deficiency in service on the part of O.P., such a complaint was maintainable and the complainant was entitled for the reliefs sought for and accordingly passed the impugned order.

In this appeal we heard the learned Counsel, Mr. A.N. Krishnaswamay on behalf of the appellant and Mr. R. Gopal on behalf of the respondent. We have been taken through the order of the District Forum and the relevant pleadings and documents. The learned Counsel, Mr. A.N. Krishnaswamy submitted before us that the District Forum was not justified in overlooking the first condition in insurance policy to the effect that on happening of any event which may give rise to a claim under the policy, this insured shall forthwith give notice thereof to the Company, unless reasonable cause is shown, the insured or nominee should, within one calender month after the event, an adverse inference should be drawn against insured. In the present case, according to him, though the accident took place on 11.4.1999 the said fact was brought to the notice of the Insurance Company only on 5.5.1999 and there was no reason and explanation offered by the complainant. He also further submitted that the District Forum should have noticed that in the event of death of the insured it shall be the bounden duty of the nominee to subject the body for post-mortem (PM) to ascertain the reason for the death of the insured. In the present case, he contended that no PM examination was conducted and the complainant has not produced PM report and the Insurance Company was justified in repudiating the claim since the insured has violated the terms and conditions of the policy. He also contended that the District Forum was not justified in placing reliance on the documents such as death certificate, doctor certificate and mahajar produced by the complainant to come to the conclusion that the death took place on account of accident. Hence, according to the learned Counsel, the entire approach of the case by the District Forum in entertaining the complaint and granting the relief was erroneous. He requested this Commission to set aside the order of the District Forum and to dismiss the complaint.

3. ON the other hand, the learned Counsel, Mr. R. Gopal, submitted that in the policy issued to the insured the so-called special conditions were not mentioned but the Insurance Company in the policy produced before the District Forum as per Ex. D1 has incorporated these conditions. He has also further submitted that the documents produced by the complainant on which reliance has been placed by the District Forum are sufficient to hold that the insured Subbamma died on account of accident. He brought to the notice of this Commission that on the same day the fact of death was brought to the notice of the police but the police did not entertain the complaint on the ground that it was not an unnatural death. His further explanation in not informing the fact to the Insurance Company was that the complainant was not present at the time of the accident and when he got the information about the accident, immediately he brought a doctor along with him and the said doctor after examining the insured found out that the death took place on account of accident, and after all the ceremonies were over he has intimated to the Insurance Company, and the intimation was given within one month. He has also further submitted that the evidence of P.Ws. 1 to 3 and the documents produced by them are sufficient to hold that the death of the insured was on account of the accident and the District Forum was justified in observing that the Insurance Company has committed deficiency in service in repudiating the claim of the complainant on the ground that the complainant has

not produced the PM report as well as FIR. He pointed out that the order of the District Forum does not suffer from any legal infirmity. Hence, requested this Commission to dismiss the appeal as devoid of merits. Let us consider the rival submissions in the light of the judgment and the documents as well as the evidence available on record. On behalf of the complainant, 3 witnesses were examined as P.Ws. 1 to 3. P.W. 1 who is the doctor who had accompanied the complainant to the place of the accident and examined the insured and noticed that she had sustained injuries to her forehead, chest and legs and blood was present on such injuries. According to him, the death was due to head injury due to fall on the footsteps. He has issued certificate Ex. P1 on 21.4.1999 which has been produced along with the claim petition. Though this witness has been cross-examined by the O.P., nothing has been brought on record to disbelieve his evidence. P.W. 2 is the complainant himself. He has also stated that his mother died on account of fall. P.W. 3 is a relation of the complainant in whose house the said insured died. The evidence of these witnesses has not been shakened by the O.P. in the cross-examination. The District Forum has placed reliance on the evidence of these witnesses. In addition to the oral evidence, the complainant has also produced the death certificate and doctor certificate showing that the death was accidental, obsequy ceremony invitation card and the mahajar drawn on the same day in the presence of village panchayat member and the villagers. In the said mahajar it is mentioned that the deceased Subbamma had sustained injuries on her head, chest and legs and the blood was present. The stand taken by the complainant before the District Forum was that in the policy, Ex. P3, produced by the complainant, the special condition that the death claim is subject to the PM report and police report are not mentioned. However, in Ex. D1 produced by the O.P. the said conditions are found. According to the LC for the complainant the said special condition has been inserted by the Insurance Company subsequently only after the complainant sent to the Insurance Company the original policy with the claim petition for settling the claim. The said contention of the complainant has been accepted by the District Forum. The District Forum, in its order at Para 9 has observed as follows : "9. We examined with the bare naked eyes the reverse page of the xerox copy of Ex. P3. The said xerox copy, Ex. P3 does not contain the special condition in the particular column as has been typewritten in the original policy Ex. D1 ''death claim subject to PM report and police report''. Here, the Branch Manager of O.P., namely, Ramesh D.W. 1, tried to contend in his evidence that the complainant or any person on his behalf probably with deliberation might have omitted to get xeroxed (imprinted) the said special condition, ''death claim subject to PM report and police report'' in the particular column on the reverse page of xerox copy Ex. P 3, by placing some substance or white paper of the size to the extent of the space required for the said wordings of the special condition, while so xeroxing."

The District Forum has not accepted the version given by Ramesh D.W.1, in not finding the special condition in Ex. P3. The Distt. Forum also further observed that condition No. 2 creates obligation on the part of O.P./Insurance Co. to get comply the same by getting conducted the PM examination on the dead body by its own medical men under the peculiar circumstances therein. In view of the above, the question of complying condition No. 1 by the complainant does not arise. After discussing the entire materials placed by the parties the Distt. Forum has come to the conclusion in paragraph 33 as follows : "33. From the above material discussion it is clear that the oral and documentary evidence corroborates each other and established the case of the complainant. It is clear that the insured Smt. Subbamma on 11.4.99 fell from the stair-cases in the bathroom in the house of Rukmegowda (P.W. 3) at Chowdikatte in Byrapura village at 12 noon and sustained the bleeding injuries at her forehead, nose, chest and leg and accidentally died due to the injuries. Further it is clear that the condition Nos. 1 and 2 in the policy are complied and that the special condition in Ex. D1 is concocted by the O.P. authorities. So, the repudiation by the O.P. of the claim of the complainant is not proper. Thus there are deficiencies in service on the part of O.P. The answer to point No. 1 is in the affirmative."

The LC for the appellant however contended that strict compliance of the terms and conditions of the policy is to be adhered to by the party in order to claim mandatory benefits and the terms and conditions of the policy of insurance cannot be re-written or substituted. In this connection he has invited our attention to a decision of the SC reported in II (1999) CPJ 13 (SC)=VI (1999) SLT 565=AIR 1999 SC 3252, Oriental Insurance Co. Ltd. v. Sony Cheriyam. In the said decision, the SC in paragraph 15 at page 3254 has observed as follows : "15. The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein."

The principle laid down in the said decision of the Supreme Court cannot be applied to the facts of the present case in view of the fact that the said condition does not find a place in the policy issued to the complainant as per the conclusion arrived at by the District Forum, which conclusion we also accept. He has also further invited our attention to a decision of the Union Territory Commission, Chandigarh, reported in (2003) 2 CLD 479, Ms. Munni Srivastava v. Oriental Insurance Company, wherein the Union Territory Commission has observed, if there has been a breach of policy condition the Insurance Company will be within its right in repudiating the claim of the insured. Since in the present case the Insurance Company is not successful in showing that the complainant has violated any terms of the policy the said decision cannot be applied to the present case. The LC, appearing on behalf of the respondent has also filed a written argument along with number of decisions. In one of the decisions it is observed that if the party is successful in proving the cause of death other than the production of PM report, the Insurance Company will not be justified in repudiating the claim on the ground that the party has not produced the PM report. Since on facts we come to the conclusion that the special conditions are not mentioned in the policy issued to the insured and those conditions had been inserted subsequently by the Insurance Company, we deem it not necessary to refer to the various judgments cited by the LC for the respondent.

4. AFTER reassessing the entire materials on the basis of the submissions made by the LCs appearing on behalf of both the sides, we are of the opinion that the District Forum was justified in passing the impugned order. We see no error committed by the District Forum in granting the relief prayed for by the complainant. Hence, this appeal, which has no merit shall stand dismissed. No costs. Appeal dismissed.

