(1997) 04 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

Moti Lal Sharma APPELLANT

Vs

L.I.C. of India RESPONDENT

Date of Decision : 17-04-1997

Acts Referred:

Citation : 1997 2 CPJ 271

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Complaint disposed of

Judgement

1. MOTI Lal Sharma, hereinafter referred to as the complainant, obtained Jeevan Dhara Policy from LIC in his own name in the year 1989. One of the special features of the said policy was that the amount paid was exempted from income tax under Section 80, CCA. In the Finance Bill for the year 1992-93, the Government of India decided not to treat the surrender value under the Jeevan Dhara Policy as income receipt during the year 1992-93, in case the policy was surrendered to the respondent Corporation and payment was made by the respondent upto 30th September, 1992 only. The complainant surrendered the said policy on 14.8.92 along with the prescribed form and completed the necessary formalities. The complainant paid several visits to the office of opposite party, but to no purpose. He also wrote to the opposite party who got a reply filed on 13.10.92. The reply was to the effect that surrender value of the policy amounting to Rs. 1,36,548/had been sent by LIC Branch Unit No. 311, Rajendra Place, New Delhi to the complainant by their Cheque No. 989887 dated 8.9.92 drawn on United Commercial Bank, New Delhi under registered cover No. 3594 dated 25.9.92. As the complainant failed to receive any such registered envelope, he made enquiries from the Post Office and apprised LIC regarding the non-receipt of the cheque. As per the advice of the LIC, the complainant submitted an application on 15.10.92 alongwith indemnity bond for issuing a duplicate cheque. After waiting for another one month, the complainant wrote to the opposite parties. Having failed to receive the amount, the complainant filed this complaint for payment of the said surrender value alongwith @ 18% interest and Rs. 50,000/as damages for mental pain and sufferings.

2. THE plea of LIC in the written statement was that it had despatched its application by sending a crossed cheque in favour of the complainant by the well recognised mode of registered post through Post Office Sat Nagar. It was further pleaded that the enquiries were made from the Postal Authorities as also the drawee Bank. THE Postal Authorities were enquiring into the matter and the drawee Bank informed that the amount of the cheque had been collected through Oriental Bank of Commerce, Ashok Vihar Wazir Pur, Delhi, by some person by fraudulently opening an account in the name of Moti Lal Sharma and the Oriental Bank of Commerce had lodged First Information Report with the police and further action according to law was being taken in the matter. According to the facts, which came to the light, it appears that some one opened an account in Oriental Bank of Commerce, Wazir Pur on 19.9.92 by depositing Rs. 300/-. THE cheque drawn in favour of Moti Lal Sharma was deposited in that account. THE cheque was collected on 3.10.92 and the amount withdrawn from that account on 7.10.92 leaving a balance of only Rs. 848/-. On the request of the complainant, the Oriental Bank of Commerce was also impleaded and written version has been filed on its behalf. It has been stated that account was opened in the name of Moti Lal Sharma after he had been introduced by one Ashok Kumar Gupta who was already the customer of the Bank in accordance with the relevant rules. The amount of the cheque was collected bona fide and the amount withdrawn by him from the account in normal course. It was, therefore, pleaded that the Bank was not liable for any alleged deficiency. It was also pleaded that there was no privity of contract between the complainant and the Oriental Bank of Commerce and the present complaint was not maintainable against the Bank. The parties have placed on record copies of various documents including the correspondence, copy of the F.I.R. and Affidavits. We have heard the parties and have perused the records.

After careful consideration, we are of the view that by merely sending the cheque through the Postal Authorities, LIC had not discharged its liability. Sending cheque by the recognised mode of registered envelope may raise an initial presumption of receipt thereof by the addressee, but where the admitted case is that the addressee did not receive the contents of the registered letter and instead someone else received the same, the initial presumption stand rebutted. Till LIC can show that the insured received the amount, its liability would continue.

3. IT may be added that Postal Authorities worked as agent of LIC in aggreeing to deliver the postal article to the addressee. In Pyari Mohan Das v. Daya Shankar Das, AIR 1958 CONSUMER 125 it was laid down that in order to constitute valid tender the promisor must go to the creditor, the law being that debtor must find out the creditor and offer the whole amount to him in such a way that the creditor might take the whole amount due to him even without the necessity for giving change as was the rule in olden days. We are, therefore, clearly of the view that LIC has not discharged its liability and is liable to make the payment to the complainant. IT is a different matter that it will be open to

LIC to have its remedy against the Postal Authorities or the Bank concerned as well as the person who collected the payment by practising fraud. The statement of accounts shows that account was opened on 19.9.92 with a paltry sum of Rs. 300/and immediately thereafter the cheque in question was deposited for the collection and amount was collected by the Bank on 3.10.92. The amount was sizeable being Rs. 1,36,548/-. Practically the whole amount leaving a balance of Rs. 848/-was withdrawn on 7.10.92 and 8.10.92 i.e., on successive days. It was clearly duty of the Oriental Bank of Commerce to open the account after proper enquiry which they failed to perform. Negligence in the opening of the account for which the proceeds of the cheques are credited is relevant if the opening of the account and the deposit of the cheque have a sufficient connection and forms part of one claim as where the account itself is opened with the cheque or where it is put into the account shortly after the opening of the account as to lead to the inference that it is a part of it. We, therefore, held that the Oriental Bank of Commerce is equally deficient in service.

4. IT cannot be disputed that complaint was beneficiary of the cheque; that being so, he is consumer vis-a-vis the Oriental Bank of Commerce who had dealt with the cheque by charging commission. The cheque for Rs. 1,36,548/-had been despatched by LIC on 25.9.92 and the same would have been delivered to the addressee in normal course, say in the next three days. We, therefore, precede on the footing that the addressee would have received the cheque towards the end of September, 1992. He could earn interest on that amount and there is no reason why the complainant should suffer any loss on that account. It follows that apart from the amount of the cheque, the complainant (sic.) entitled to interest for the period from 1.10.92 till date of payment. The normal rate of interest allowed by the National Commission as well as various State Commissions is @ 18% per annum. The complainant has claimed Rs. 50,000/-on account of compensation. By this order, the complainant is being allowed interest @ 18% for the entire period keeping in view the totality of facts and circumstances, we consider it just fair and reasonable that the complainant should be paid further Rs. 5,000/-on account of compensation.

5. FOR the foregoing reasons, the complaint is allowed and LIC as well as Oriental Bank of Commerce are directed to pay : (1) A sum of Rs. 1,36,548/-. (2) Interest on the said amount @ 18% per annum w.e.f. 1.10.92 till date of payment. (3) Rs. 5,000/-as compensation.

The liability of the said opposite parties shall be joint and several. It will be open to the opposite parties to have their remedy for recovery of the amount from the person concerned according to law. The complaint is disposed of in these terms. A copy of the order be communicated to the parties. Complaint disposed of.

