(2014) 03 NCDRC CK 0087

In the National Consumer Disputes Redressal Commission

M/S. Aviva Life Insurance Co. India Pvt. Ltd. APPELLANT

Vs

Shelly Sharma RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 123

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : GURMEET BINDRA , SHUBHAM BHALLA , Anushka Bishnoi

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 7.2.2013 passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh (in short, ''the State Commission '') in Appeal No. 385/2012 - Shelly Sharma & Anr. Vs. M/s. Aviva Life Ins. Co. India Pvt. Ltd. by which, while allowing appeal, order of District forum dismissing complaint was set aside.

2. BRIEF facts of the case are that the complainants/Respondent No. 1 allured by the false promises and assurance of an agent of OP Nos. 2 & 3 - petitioners of getting good returns, purchased one ''''Freedom Life Plan '''' in the year 2008 and paid first premium of Rs.25,000/ -. Thereafter, she paid two more premiums, in the year 2009 & 2010 of Rs.25,000/ - each. It was stated that the OP did not send her the terms and conditions of the policy despite making requests. After expiry of 3 policy years, when the complainant contacted the OP for getting her invested amount along with profits, they paid a sum of Rs.28,590/ - only, against the total invested amount of Rs.75,000/ -. It was further stated that the matter was agitated before the OP by the complainant and she demanded the refund of entire deposited amount with assured return, but in vain. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP No. 1/ Respondent No. 2 filed reply and submitted that he advised complainant as per instructions of OP Nos. 2 & 3/petitioners. It was further submitted that many times he requested to issue terms and conditions of the policy to the complainant, but not issued and prayed for dismissal of complaint against him. OP No. 2 & 3 resisted complaint and submitted that terms & conditions of policy

were supplied to the complainant by Speed post. Complainant was a practicing Advocate cannot say that he was not supplied terms and conditions of policy. It was further submitted that no fixed returns were assured and complainant did not avail option of free look period within 15 days of receipt of policy. It was further stated that due to non -payment of premiums, complainant was paid Rs.28,590/ - as surrender value as per terms and conditions of the policy and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint. Appeal filed by the complainant was allowed by learned State Commission against the petitioners and they were directed to pay Rs.44,910/ - and further directed to pay Rs.10,000/ - as compensation and Rs.5,000/ - as cost of litigation, but dismissed complaint against OP No. 1 against which, revision petition has been filed along with application for condonation of delay. Learned Counsel for the petitioner filed application for condonation of delay of 30 days. Perusal of application reveals that Counsel for the petitioner received copy of order on 13.2.2013, but matter was entrusted to the Counsel for filing revision on 24.5.2003, almost after 3 months. As there is delay of only 30 days, we deem it appropriate to condone delay subject to cost. Consequently, application for condonation of delay is allowed and delay of 30 days stands condoned subject to cost of Rs.5,000/ - to be paid by the petitioner to respondent no. 1.

3. HEARD learned Counsel for the parties finally at admission stage and perused record.

4. LEARNED Counsel for the petitioner submitted that learned State Commission committed error in allowing complaint on the basis of Notification dated 1.7.2010 and learned District Forum rightly dismissed complaint; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent no. 1 submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed. Learned Counsel for the Respondent No. 2 also supported Respondent No. 1. Perusal of record clearly reveals that complainant purchased Freedom Life Plan in Unit Linked Plan for a period of 10 years and Rs.25,000/ - p.a. was to be paid by her. Complainant paid premium only for a period of 3 years and as per Article 5 of the Freedom Life Plan on surrender of policy, the surrendered value was returned by OP to the complainant. Learned State Commission passed impugned order in the light of Notification dated 1.7.2010, which was not applicable on the policy obtained by complainant. Under this Notification, Regulation 1 (2) reads as under: ''''(2)They shall come into force on the date of their publication in the Official Gazette and shall apply to all products of linked life insurance cleared by the Authority thereafter ''''.

which makes it clear that these Regulations were applicable only from the date of publication to all products of linked life insurance cleared by the Authority thereafter whereas in the case in hand policy was obtained by complainant on 12.5.2008. Learned Counsel for the Respondent No. 1 fairly conceded that

Regulations dated 1.7.2010 were not applicable to the policy of complainant.

5. THUS , it becomes clear that order of State Commission is liable to set aside as State Commission proceeded to decide appeal on the basis of Notification dated 1.7.2010, which was not applicable to the case of the complainant.

6. LEARNED Counsel for the Respondent No. 1 submitted that terms and conditions of policy were never supplied to him and he was assured definite returns. Learned Counsel for Respondent No. 2 also submitted that he assured definite returns to the complainant as per instructions of petitioner. On query from our side, learned Counsel for the Respondent No. 2 failed to place on record any such instructions given by the petitioner regarding assured returns of the policy. Respondent no. 1 has not placed any written assurance and in the absence of any written assurance, it cannot be held that on the basis of instructions of petitioner, Respondent No. 2 acting as Agent assured Respondent No. 1 for definite returns. Respondent No. 2 is an Advocate and he had option to cancel the policy within 15 days and he has not availed this facility, it cannot be presumed that terms and conditions of policy were not supplied to him for many years. In the light of above discussion, it becomes clear that learned District Forum rightly dismissed complaint, but learned State Commission committed error in allowing appeal against the petitioner and impugned order is liable to set aside. Respondent No. 1 is free to take appropriate action against Respondent No. 2 for assuring definite returns. 1

7. CONSEQUENTLY , revision petition filed by the petitioner is allowed and impugned order dated 7.2.2013 passed by learned State Commission in Appeal No. 385/2012 - Shelly Sharma & Anr. Vs. M/s. Aviva Life Ins. Co. India Pvt. Ltd. is set aside and order of District Forum dated 31.10.2012 is affirmed. There shall be no order as to costs.