(2005) 09 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

New India Assurance Co. APPELLANT

Vs

KUSUM KUMARI MANDHGHORIA RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Citation : 2006 1 CPJ 240

Hon'ble Judges : S.N.Basu , Pranab Kumar Chattopadhyay J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order passed by the learned District Forum, Howarh in Case No. 71 of 2003 on 21.10.2003. The case in brief is that one Mr. Shib Bhagwan Madhogaria obtained a mediclaim insurance policy from New India Assurance Co. Ltd. He was admitted to Apollo Hospital and Jaslok Hospital and Research Centre at Mumbai for treatment. He preferred a claim of Rs. 74,674.35 with the appellant for reimbursement of medical bills for his treatment at the above hospital. The claim was settled after several inquiries and repeated reminders on 2.5.2003.

2. THE said policy was due to expire on 31.3.2003. But in the meantime there had been a hike in the insurance premium but the same was not communicated to the policy holder. THE policy holder sent a cheque of Rs. 4,349 to the appellant -Co. in god faith on 21.3.2003 for renewal of the mediclaim policy. But the appellant returned his cheque on 24.3.2003 which was received by him on 31.3.2003 i.e., after the expiry of the said policy. Immediately thereafter the policy holder sent another fresh cheque of Rs. 4,610 towards insurance premium after he was intimated that the insurance premium had been hiked. THE said cheque was sent on 31.3.2003 to the Calcutta Divisional Office of the appellant. But the appellant again refused to accept the cheque and returned the same advising the insured to send it by post. Accordingly the insured sent it by post on 3.4.2003 but the cheque was again returned on the plea that the policy had expired on 28.3.2003 and the appellant-Co. asked for a fresh proposal. The insured thereafter filed a complaint before the Howrah District Forum for issuing

direction on the appellant-Co. to revive the mediclaim policy and for accepting cheque of Rs. 4,610 from the insurer and also for payment of compensation of Rs. 1,00,000 for the harassment and mental agony. The O.P. contested the case by filing a written version. The appellant, however, contended that the complainant had ceased to be a consumer within the meaning of Section 2(d)(1) of the C.P. Act, 1986 after expiry of the policy on 31.3.2003 and since there was no contract between the complainant and the Insurance Co. as on that date the complaint should fail. The contention of the appellant-Insurance Co. came under scrutiny of the Forum. The learned Forum observed that prima facie there was no failure on the part of the complainant to maintain continuity of the policy and for this purpose he had sent the cheque of Rs. 4,349 which was returned by the appellant Co. allegedly with a mala fide intention to deprive him of the rights and privileges of continuity. The appellant-Co. even returned his cheque of Rs. 4,610 which he had sent as per revised premium amount. Thus due to obstinate stand taken by the appellant-Insurance Company continuity of his policy was broken and he had been forced to ask for a new policy.

The learned Forum observed that there had not been any failure on the part of the appellant who had sent his renewal premium in time and he should not be blamed for not sending the premium amount as per revised rate since the revised rate was not communicated to him by the appellant-Co. The Forum observed that the complainant had been forced due to situation created by the appellant-Insurance Company to discontinue his policy for failing to pay the premium on time. The act of the appellant-Insurance Company was termed as a highhandedness by the Forum for refusing to accept the premium amount sent by cheque.

3. HOWEVER, on or about 28.3.2003 the complainant again fell sick and had to be admitted to the said Jaslok Hospital and Research Centre at Mumbai where he was under treatment from 22.4.2003 to 26.4.2003. Since the earlier policy had been terminated by the Insurance Company rather illegally by way of returning cheques repeatedly forcing him to the position of a defaulter the complainant was going to loose reimbursement from the appellant Insurance Company. Considering the facts and circumstances of the case the Forum had ordered as under: (i) The O.P. Insurance Company shall accept the premium amount of Rs. 4,610 as sent by the complainant as premium on 28.3.2003. (ii) The O.P. shall thereafter renew the policy for a further period of one year from 29.3.2003 to 28.3.2004. (iii) The legal heirs of the complainant late Shib Bhagwan Madhogaria be permitted to submit the claim for the amount spent on the treatment of the original complainant from 22.4.2003 to 26.4.2003 at Jaslok Hospital and Research Centre, Mumbai. (iv) The O.P. shall issue claim form to the substituted legal heirs of Shib Bhagwan Madhogaria for enabling them to submit mediclaim for the aforesaid period. (v) The O.P.-Company was directed to pay cost of Rs. 300 to the substituted complainants of the case.

The O.P.-Company was given 30 days time to comply with the orders of the

Forum, failing which the complainant would be at liberty to get the desired relief by putting the degree in execution.

4. AFTER contesting the case for sometime the petitioner expired on 10.7.2003. However, in their petition the appellant-Company submitted that the case record of the Forum did not confirm that necessary substitution petition was moved but it transpired subsequently that substitution petition had been moved and heard ex parte and the same was allowed and further impugned order was passed by the learned Forum. It was further ordered therein that since the policy was for mediclaim the claim amount would survive the death and the substituted complainants would be legally entitled to receive payment of the claim in respect of the deceased. The appellant-Insurance Company preferred this appeal before the Commission on the ground that the Trial Forum had failed to appreciate the facts that the policy had lapsed with the efflux of time and, therefore, the complainant was not a consumer within the meaning of Section 2(d). Therefore, the complainant not being a consumer could not be granted any relief under the C.P. Act, 1986. They had also raised an objection on the ground of limitation under Section 11 of the Act as no part of cause of action took place within the limit of Howrah District. They further contended that the Trial Forum had erred by not supplying a copy of the petition for substitution of the names of the legal heirs in place of deceased. They also contended that the Trial Forum had no jurisdiction to issue directives on the appellant to renew the lapsed policy by accepting premium. We have gone through the memo of appeal and judgment of the Forum below and the written objection of the respondent. After hearing both the parties and examining various documents and hearing argument of both sides we are of the considered view that the appellant-Insurance Company had committed a great injustice to deceased Shib Bhagwan Madhogaria, the original complainant by refusing his cheque of Rs. 4,349 which he had sent in time towards renewal of the policy and again by refusing the cheque of Rs. 4,610 which he had sent after being informed that the premium rate had been hiked. The refusal had been done so crudely that it brings slur on the Institution (Insurance Company) itself in a civilized society. The Insurance Company acted with repeated vengeance in the matter of renewal of the mediclaim policy of late Shib Bhagwan Madhogaria. This is an unusual step and against all cannons of justice. The Forum below might have technically committed an error in not ensuring to supply the copy of the substitution petition after death of Madhogaria to the appellant but that is only a technical fault.

5. WE are inclined to say that the judgment passed by the learned Forum were well reasoned and took into consideration all the relevant aspects of the case. WE, therefore, do not find any satisfactory ground which might vitiate the judgment and there is no justification to interfere with the learned Forum''s order. The orders of the learned Forum be, therefore, affirmed. The appeal is dismissed on contest without any order as to costs. Appeal dismissed.

