(2005) 11 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

G.PORSELVI RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Citation : 2006 1 CPC 423 : 2006 1 CPJ 55 : 2006 1 CPR 426 : 2006 1 CPR 64 : 2007 1 UC 246

Hon'ble Judges : A.Raman , R.Vanaroja , PonGunasekaran J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant''s father and mother met with a road accident on 23.1.1994. While the father of the complainant died on the spot, the mother died subsequently on 4.2.1994. THEy were both covered by "Cancomfort" personal accident insurance scheme. On their death, their heirs namely son and daughters made a claim. THE opposite party has been seeking needless clarification. THErefore, alleging deficiency and loss of interest, the complaints were filed.

2. FROM the version, we find that the opposite party admit that the deceased Gunalan and Mohana had the necessary insurance cover and that the legal representative of the deceased are entitled to the amount. But what they say is that there was no response to the letter of the opposite party dated 23.5.1996 and that the complainants failed to produce succession certificate and, therefore, it was that the claim could not be processed and payment made. The death of the father took place on 23.1.1994 and the mother on 4.2.1994. The claim was made on 28.1.1994 and the opposite party by their letter dated 31.1.1994 have requested the complainant to furnish F.I.R., Death Certificate, Police Inquest Report/Panchnama, Post Mortem Report, Legal Heir/Succession Certificate, Medical Certificate - Proof of Disability and any other relevant documents. Admittedly, they produced the F.I.R., Death Certificate, Police Inquest Report and Post Mortem Report. They did not produce the Succession Certificate, of course they could have produced the legal heirship certificate. They did not do. But, since the opposite party was insisting, they approached the Srivilliputhur Court

and sought for succession certificate which was also granted.

The learned Counsel appearing for the appellant would contend that the appellant is not in any manner responsible for the delay. On the other hand, the fact remains that even in 1994 immediately after the death, the claim was made but the opposite party chose to send reply in 1996 stating that they are making inquiries. It is also not explained by them nor have they adduced any proof to show the nature of inquiries made by them or the grounds for making inquiries. There is admittedly a delay in compliance even after the Court passed on an order granting the certificate. The appellant/opposite party did not choose to abide by the same and raised some objection as a result of which the complainant had to once again approach the Court and seek clarification. It is to be pointed out that the opposite party deposited the amount only in the year 1998 though the order was passed in O.P. No. 1/97 much earlier by the Court. The act of the opposite party in demanding production of succession certificate cannot be accepted as a prudent one. The claim here arose on the death of the person who has insured with the opposite party. Therefore, it is a claim arising on and after the death of person. The person who died was not possessed of the amount nor had any control over the same. The amount was payable only on the contingency of the person meeting his end in an accident. Therefore, the question of obtaining succession certificate would arise only where a person dies possessed of immovable or movable properties, securities or outstandings. The amount payable on the death of the person by the Insurance Company cannot be termed as an asset left behind by the deceased as to require a succession certificate. Further, in this case, the panel lawyer representing the opposite party has clearly written to the opposite party informing that the complainants have been put to considerable hardship and suffering because of the non-disbursement of the amount early and has requested the Corporation to disburse the amount. It is also to be pointed out that the complainant also enclosed a disclaimer from the mother of the deceased insured. Therefore, in spite of it, it was rather unbecoming on the part of the opposite party of further drag on the proceeding. Here, they ought to have settled the claim at the earliest but they have taken more than three and half years to settle the claim.

3. THERE is one other aspect to be noted here. The complainants are residing in Virudhunagar. The deposit of Rs. 7,00,000 each in Canara Bank was made by the opposite party by way of fixed deposit in Canara Bank in Bangalore whereas the order was passed by the Sub-Court at Srivilliputhur. It is really strange that a deposit should be made in Bangalore when the party is residing elsewhere and the order was passed by a competent Court which has been functioning at Srivilliputhur. The fact that such a deposit was made in a bank out of the State would again indicate that the opposite party were bent upon somehow delaying the payment. Otherwise one cannot appreciate their act in depositing the amount in a Bank which is situated far away and in a different State. The failure of the opposite party to act promptly in spite of the hardship suffered by the complainant having been brought to their notice definitely amounts to deficiency

in service. The Lower Forum has rightly ordered the opposite party to pay interest for a period of 59 months as compensation which in the circumstances cannot be faulted with. Had the amount been disbursed in time, the complainant would have had control over the amount and would have realized interest on the amount by investing it in any bank or financial corporation and would have definitely been benefited. Therefore, to that extent a loss has been caused to the complainant by reason of the unreasonable attitude of the opposite party. Hence, the direction issued to the appellant/opposite party to pay interest is definitely justifiable one and the interest granted at 12% and it has been granted for a period from 28.1.1994 when the claim was made till 15.12.1998 when the deposits were made. Therefore, in such circumstances, we do not see any reason to interfere with the order of the Lower Forum.

4. CONSEQUENTLY, the appeal is dismissed with cost of Rs. 250 confirming the order passed by the Lower Forum. Appeal dismissed.