(2004) 01 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

SOOSAI RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Citation : 2004 1 CLT 672 : 2005 1 CPJ 698

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

Final Decision : Appeal allowed

Judgement

1. AGGRIEVED by the order of the District Forum, Kanyakumari District, the opposite party New India Assurance Company has preferred this appeal. The complainant''s case is as follows: The complainant''s son died at Tuticorin on 11.5.1996 in a communal fighting in Tuticorin in May, 1996 between Nadars and Bharathars. At that time, police had resorted to shooting to control the mob. A bullet pierced through the back into the chest of Ravikumar, the complainant''s son. The said Ravikumar was a registered member of Keela Muttom Co-operative Fisheries Sangam. As a member thereof, he was insured under a group insurance policy of the Sangam. The complainant is the nominee under the said policy. The complainant approached the opposite party to settle the claim. The opposite party demanded some documents relating to the death of Ravikumar. On 7.6.1998 the complainant sent a notice through his Counsel to the opposite party. The death of Ravikumar was an accidental one. The complainant is a poor man. There is deficiency in service. Hence the complaint.

2. THE opposite party contended as follows: It is true that one Ravikumar died on 11.5.1996 in Police shooting. It is not admitted that the complainant is the nominee under the said policy. It is also not admitted that he is the only heir. THEre are nine persons including the complainant who are the legal heirs of the deceased Ravikumar. Further, as per the policy, the nominee was the deceased''s mother Santhammal and not the complainant. THE death was intimated only on 12.5.1997 after one year from the date of the death of Ravikumar. Only subsequently, relevant documents were submitted. As per condition No. 1 of the

policy, the insured should within one calendar month after the event give written notice to the Insurance Company with full particulars. In this case, the complainant had submitted the intimation letter only after one year. THE post-mortem certificate was submitted only on 20.1.1998. THEre was no delay on the part of the opposite party. THEre was no deficiency in service. As per the report of the Tahsildar, Tuticorin, Ravikumar was shot dead while he was involved in criminal offences against law. THErefore, as per condition No. 1, the company is not liable to make any payment. Hence there is no deficiency in service. THE repudiation is, therefore, in order. THE other averments made in the complaint are denied. The lower Forum directed the opposite party to disburse the Group Insurance amount of Rs. 25,000/- to the deceased Ravikumar''s mother with interest at 12% p.a. from 14.1.1999 till realization.

As per the discussion of the lower Forum, the Insurance Company is liable to disburse the amount under the Group Insurance policy of the deceased to the mother of the deceased Ravikumar Mrs. Santhammal. The complainant has suppressed the fact that the deceased has left behind his mother. He has also put forward a claim that he is the nominee. When the complainant''s mother is not a party and when no attempt has been made by the complainant to bring all the legal heirs of the deceased Ravikumar as parties, the District Forum was not justified in issuing a direction to the opposite party to pay the amount to a person who is not a party to the proceedings. Thus, the order of the lower Forum suffers from incongruity.

3. IN the policy, we find a condition that the company shall not be liable for "payment of compensation in respect of death, injury or disablement of the insured from (a) intentional self-injury, suicide, or attempted suicide, (b) whilst under the influence of intoxicating liquor or drug, (c) whilst racing on wheels, hunting, big game shooting, mountaineering or whilst engaged in winter sport skiing and ice hockey, (d) directly or indirectly caused by insanity, (e) arising or resulting from the insured committing any breach of the law with criminal intent." IN above cases, the company shall not be liable under the policy and to make payment on the death of the insured. The deceased Ravikumar was a member of the Sangam and, as such, as a member he was covered by Group INsurance Scheme. He died of shock, haemorrhage due to multiple bullet injuries. It is the very case of the complainant that there was a communal fighting in Tuticorin on 11.5.1996 between Nadars and Bharathars and at that time police firing was resorted to, to quell the rioting and to control the mob, and in the course of such firing, the said Ravikumar sustained bullet injuries of which he died. Learned Counsel appearing for the appellant would contend that on the date of occurrence, Ravikumar was engaged in criminal activities which resulted in his death and, therefore, the INsurance Company, by reason of the proviso, is not liable under the policy to make payment. IN this connection, the learned Counsel for the appellant relies upon the report of the Tahsildar Jaya Joseph, which is marked as Ex. B5. From the report of the Tahsildar, we cannot come to any conclusion that the deceased was engaged in any criminal activities on the

date of the incident. The report only says that there was an unlawful assembly of Nadars and Bharathars and there was rioting and the members of both communities were armed with sticks, arruvals and other weapons when rioting took place at that time. It is not shown that at the time of the incident, the complainant''s son was a member of the unlawful assembly. But the opposite parties could have sent for the relevant records from the authorities concerned or could have summoned report from the Collector or the Government, so that the report of the Tahsildar alone cannot be made the sole basis to repudiate the claim that the deceased was in fact engaged in criminal activities at that time. Therefore, in the absence of any such document, it is not possible to rely solely upon the Tahsildar''s report, more so, when it does not specify the name of the activists or make any specific mention about the deceased as a person who was engaged in any specific criminal activities at that time and on that date. Therefore, the repudiation of the claim is not well made. The other contention raised by the learned Counsel for the appellant is that the insured should within one calendar month after the event have given written notice to the Insurance Company with full particulars. According to the learned Counsel for the appellant, this condition has not been complied with and, therefore, there is no liability upon the Insurance Company. Here in this case, admittedly, the insured had died. Therefore, if we strictly construe the clause, the giving of notice by the insured within one month cannot arise since he died. It is only his father who has made the claim. This condition does not say that if notice is not given within a month, the claim shall stand repudiated. On the other hand, it would only require that a notice to be given within a month after the event. It does not bar or state that failure to issue any notice within the prescribed period of one month would stop or eschew or prohibit anyone from making a claim. Even if there is such a condition, it cannot be upheld since it is unconscionable. The contract of insurance being one based upon honesty and good faith, such trivial technicalities cannot be allowed to sway the ultimate aim and goal of insurance. Therefore, we are unable to accept the contentions of the learned Counsel for the appellant and that the repudiation is justified on account of the proviso and the conditions.

4. IN the result, in view of our holding that the order of the District Forum cannot be maintained since there is a direction to make the payment in favour of a person who is not a party to the proceedings, in that view of the matter, the appeal is allowed, but in the circumstances, without costs. The order of the lower Forum insofar as it directed to be paid to the claimant alone will stand set aside. However, the opposite party shall honour its commitment if and when all the heirs or their authorized person or the nominee of the deceased make a claim for the amount expeditiously without further delaying the matter on any technical ground of flimsy reasons within a month of such claim. Both parties shall bear their respective costs throughout. Appeal allowed.

