(2008) 04 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

CHANDANA MITRA — RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Citation : 2008 4 CPJ 134

Hon'ble Judges : S.N.Basu , S.Majumder J.

Advocate : B.K.Mondal , S.K.Das

Judgement

1. -THIS appeal has arisen against the judgment passed by the learned District Forum, Howrah, on 16. 12. 2005 in its case No. HDF 102/2005, wherein the learned Forum below has allowed the complaint in part on contest against the OP Nos. 1 and 2 and dismissed on contest against the OP No. 3 and directed the OPs 1 and 2 to pay a sum of Rs. 2,00,000 to the complainant along with the interest @ 10% p. a. from the date of filing the complaint till the full payment within one month from the date of passing the judgment. The Forum has awarded cost of Rs. 500 in favour of the complainant and directed the OP Nos. 1 and 2 to pay the cost amount within one month from the date of passing the judgment.

2. THE brief facts of the case of the complainant before the Forum below were that the deceased husband of the complainant obtained an insurance policy namely Janata Personal Accident Policy for the period from 23. 7. 1999 to 22. 7 2014. The said husband of the complainant died on 1. 10. 2001 by a road accident at Brace Bridge on the Hide Road. The deceased was an employee under GTFS as a field worker. The GTFS is an agent of the OP Nos. 1 and 2 Insurance Company insofar as the collection of premiums of the Insurance Policy is concerned. The deceased had deposited the premium to the office of the OP No. 1 and obtained the Janata Personal Accident Insurance Policy. According to the policy the prime liability of payment of insured sum in the event of death, etc. was on the OP Nos. 1 and 2 and the GTFS being merely a service provider who has no authority to settle the claim. The total insured amount was of Rs. 2,00,000. After the death of the insured, an F. I. R. was lodged at Taratala Police

Station. The complainant being the legal heir, submitted the claim form along with all necessary documents to the OP through the OP No. 3 on 11. 4. 2002. Thereafter as per the letter of the OPs the complainant again filed the copy of the FIR and other documents on 8. 5. 2003. The OP No. 3 asked the OP Nos. 1 and 2 to expedite the settlement of the claim of the complainant. Though the claim was registered, there was no response for a long period from the end of the OP Nos. 1 and 2. Thereafter the complainant made several representations regarding payment of her legitimate claim, but to no effect. Till the date of filing the complaint before the learned Forum below no positive action was taken by the OP Nos. 1 and 2 for settling the claim. The allegation of the complainant is that such inaction on behalf of the OP Nos. 1 and 2 is arbitrary and harassing and there was deliberate negligence in performing duty on the part of the OPs. Thereafter, finding no other alternative the complainant filed the complaint before the District Forum praying for direction upon the OP Nos. 1 and 2 to pay her the full policy money of Rs. 2,00,000 together with interest, litigation cost and compensation. Being dissatisfied with the above mentioned judgment passed by the learned Forum the Insurance Company has preferred the present appeal before this Commission contending that it is an admitted fact that the present respondent No. 1 took the Janata Personal Accident Insurance Policy, but the said policy was in the name of Golden Trust Financial Service being the insured, its field workers, agents, their family members and friends were the Group to be covered under such policy. The learned Counsel for the appellant has submitted that the deceased husband of the respondent No. 1 was an employee as a field worker and member of the GTFS Group and extended such coverage at the instance of Golden Trust, the said coverage was for fifteen years and it was a personal accident coverage for a sum of Rs. 2,00,000. It has further been stated by the appellant that after the issuance of such group policy, the same was reviewed by the GIC and at the instance of the GIC, the understanding between the Insurance Company and the GTFS was cancelled. Such cancellation was challenged before the Hon''ble High Court by the GTFS and by an order dated 6. 7. 1999 the Hon''ble High Court has stayed the cancellation of MOU and directed the GTFS not to collect premium from the "friend" category. According to the appellant the present respondent No. 1 having not entered into any contract of insurance directly with the Insurance Company, cannot be treated as the insured and it is the GTFS with which the Insurance Company entered into its agreement of insurance was the real insured and the respondent No. 1 is not entitled legally to maintain/lodge any such case before a Consumer Court under the Consumer Protection Act, as he was not the consumer under the apellant-Insurance Company and from that point of view the complaint is not maintainable and should be dismissed on that score.

The respondent No. 2 submitted before this Commission that a MOU was executed by and between the GTFS and the Insurance Company and through which the Insurance Company agreed to allow the GTFS to extend Janata Personal Accident Policy to its field workers and their family members, its

investors and their family members and their friends also under Group Insurance Scheme. However, subsequently, by an order dated 6. 7. 1999, the Hon''ble High Court, Calcutta has directed the GTFS not to collect premium from the "friend" category, but allowed to extend such Insurance Coverage to the categories of Field Workers and Investors under the Group Insurance Scheme. Under the said MOU, the appellant is only obliged to collect premium from the insured person/s concerned and remit the same to the Insurance Company by a consolidate cheque with a list of insured person/s and apart from this, there has been no other liability to be borne by the respondent No. 2 in this context. It has been further argued by the learned Counsel for respondent that liability of settlement of the insurance claim under the policy condition is upon the shoulder of the Insurance Company. Therefore it goes without saying that acceptance of a proposal form for such policy, issuance of Insurance Certificate and settlement of any claim arising thereof are under exclusive domain of the Insurance Company and it is the absolute authority to take any decision in that regard. However, the learned Forum below has obtained a correct view in its judgment where it has hold that, the Insurance Company is solely responsible to settle the claim amount of the complainant. According to the respondent No. 2 there is no infirmity in the judgment passed by the District Forum, which is liable to be affirmed.

3. ON careful consideration of this contention, we are constrained to hold that the argument as taken by the present appellant is not acceptable. Under the provisions of the C. P. Act, a person is a consumer who pays consideration in exchange of getting some services from the person whom he/she pays such consideration. In the present case, GTFS though may be technically registered as the insured vis-a-vis the Insurance Company the consideration did not flow from its pocket and the deceased husband of the respondent No. 1 was the person who paid the consideration money which ultimately was receivable by the Insurance Company through its agent, GTFS and it was the respondent No. 1 alone who was to reap the benefit of the policy of insurance. So from the point of view of payment of consideration money as well as from the point of view of being actual beneficiary of the service in question, it is the respondent No. 1 who alone can be regarded as consumer under the definition of the term as given in the Section 2 (d) of the C. P. Act. Therefore, there is no law posing any bar against her getting such benefits of the insurance from the Insurance Company concerned. Whether the Insurance Company got the said premium from its agent, GTFS fully, partly, or not at all is not a question to be determined in this case which has been filed by the Respondent No. 1, because that is a matter in between the OPs inter-section. The respondent No. 1 thus being the real beneficiary of the insurance policy is a consumer and there has not any reason or justification to be deprived of her legitimate right or to be affected by any such quarrel in between the Insurance Company and its agent. During hearing, the learned Counsel for the appellant has submitted that as the case between the appellant and the respondent No. 2 is pending before the Hon''ble High Court,

the Consumer Forum/commission cannot adjudicate this case. In this respect, we are to say that the case which is pending before the Hon''ble High Court the present respondent No. 1 is not a party and there is no stay order in that proceedings. The deceased husband of the Respondent No. 1 paid the premium in time to the GTFS taking it as an agent of the Insurance Company in good faith and his nominee is not supposed to suffer in the matter of getting maturity value of the Insurance Policy due to any such conflict between GTFS and the Insurance Company. In this connection the respondent No. 2 GTFS has filed an affidavit stating the fact that it had already paid the entire premium as paid by the respondent No. 1 to the Insurance Company and the deceased took the policy being a field worker under the Respondent No. 2, not under the ''friends'' category. This affidavit remains unchallenged. The former is an agent of the later. Whether the agent violated any instruction of the principal or what might be the effect of such disobedience is exclusively a matter in between the two. As per the principle of vicarious liability, the principal will be responsible for all acts and omissions of the agents to a third party. At any rate, the outsider like the complainant-respondent No. 1, the real insured cannot be compelled to suffer due to such alleged failure of the agent to make payment of the money to the principal. Dissatified with the delay in settlement of the claim the claimant moved the District Forum and the Forum below has allowed the claim of the complainant-respondent No. 1. We do not find any fault with this finding of the Forum below as regards the merit of the case also. The documents show that the claim of the complainant was genuine and correct and as per the terms of the said policy there cannot be any reason why the Insurance Company should not make payment of such amounts to the complainant. The Insurance Company has not been able to make any effective challenge against the original documents supplied by the respondent No. 1 which go to support her allegations. Therefore, the Golden Trust Financial Services is not liable to settle the claim of the complainant and the Insurance Company is liable to settle the claim of the complainant. Going by the foregoing discussion, we deem it appropriate to pass the following order-In view of our findings aforementioned and keeping in view the fact that the District Forum cannot be said to have acted without jurisdiction, we are of the opinion that no case has been made out for interference with the impugned judgment. The appeal be accordingly dismissed on contest against the respondent No. 2 and ex parte against the respondent No. 1. However, considering the facts and circumstances of the case, there shall be no order as to cost. The appeal be disposed of accordingly. The judgment passed by the District Forum is hereby affirmed. Appeal dismissed.

