(2010) 01 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

Gouru Padma — RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : 2010 1 CPJ 254

Hon'ble Judges : Ashok Bhan , B.K.Taimni J.

Final Decision : Appeal allowed

Judgement

1. THIS revision petition arises out of the Order dated 21.4.2005 passed by the A.P. State consumer disputes Redressal Commission, Hyderabad (hereinafter referred to as the State Commission'' for short) whereby the State Commission partly allowed the complaint of the respondent/ complainant by the impugned Order.

2. BRIEFLY stated, the facts leading to the filing of the First Appeal are as under: One Shri G. Ramamurthy, husband of the complainant/respondent obtained an Insurance Policy No. 4761010617273 for a sum of Rs. 5,00,000 from the appellant-Insurance Company on 15.5.1998 after paying a premium of Rs. 1,375. Two months later, he took another Insurance Policy from the United India Insurance Company Limited on 22.6.1998 again for a sum of Rs. 5,00,000. Two and half months later, on 3.9.1998, Shri G. Ramamurthy''s corpse was found lying on its belly beside the railway track with head decapitated and both upper limbs (arms) separated from the body. This fact was brought to the notice of the appellant on 6.9.1998. A case was registered as Crime No. 16/1998 under Section 174 of Cr.P.C. by the Sub-Inspector of Policy, Government Railway Station, Bhuvanagiri at Nalgonda. An inquest report was also prepared.

3. A claim form dated 6.11.1998 was filed with the appellant claiming the cause of death being an accident. On receipt of the claim form dated 6.11.1998, F.I.R. and post-mortem report, appellant appointed, Shri Nageshwara Rao to investigate into the circumstances of death. Mr. Nageshwara Rao submitted his report dated 19.7.1999 stating that the decapitation as well as severance of the

upper limbs from the trunk of the body and the position of the body, accidental death seemed unlikely. It was stated that given the financial debts of the insured as stated by the insured''s son, there was strong motive to commit suicide.

4. THE matter was referred to the higher authorities for repudiation, the file was returned for a thorough investigation in view of the fact that there was no conclusive proof of suicide. Thereafter, Additional I.G. of Police (Retired) Shri Subba Reddy was appointed to investigate. He submitted his report on 9.7.2000 and gave the opinion that the death could not have been accidental but must have been a suicide. His conclusions are based on the following: (a) Discrepancies/improbability in the timings of the various police documents: the body was discovered at 7.30 a.m. on 3.9.1998; identified by 9-9.30 a.m. by the wife and other family members; the Panchanama, submitted to the appellant, was conducted between 2-4 p.m. (to investigator Mr. Nagesh Rao, the son of the deceased had said that the Panchnama was concluded at 12 noon. In fact in the requisition of PME the time is mentioned as 1600 hrs. whereas if seen carefully it is obvious that there has been over writing and the original time mentioned in the requisition is 12 noon); the requisition sent to the M.O. for PME and the receipt of the body for post mortem-4 p.m. and the actual time the post mortem commenced at 4.30 p.m. on 3.9.1998, whereas the distance from the site of the accident and Panchanama and the Government. Hospital where the post-mortem was carried out is nearly 20 kms.

(b) The deliberate concealment by the beneficiary of the policy, the present respondent, in the claim form dated 6.11.1998 submitted to the appellant that there were no insurance policies covering accidental death, whereas there was another policy again for Rs. 5,00,000 taken from United India Insurance Company Ltd. which claim the beneficiary admits to having realized in her complaint before the State Commission. The premium for both the accident policies taken within two months of each other totalled Rs. 2,750. This was all the more suspicious when considered in perspective that the deceased had allowed three LIC policies to lapse in which he had to pay premium of Rs. 1175 in every six moths.

(c) The extraordinary fact that out of the four Panchas, two were the relatives of the deceased, one of whom is the respondent herein above.

(d) The position of the body of the deceased-the head and upper limbs-were completely severed from the body and this could not have occurred in the case of an accident especially as the corpse was found lying on it belly."

5. TAKING into consideration the unanimous reports by the Investigator and Shri Subba Reddy, retired Additional I.G. of Police, that the death could not have been accidental, the claim was repudiated on 6.9.2000.

6. AFTER 19 months, a letter was received by the appellant from the respondent on 14.2.2002 requesting for reconsideration of the claim. It was stated therein that they had already realized a sum of Rs. 5,00,000 from the United Indian

Insurance Company Limited for the Insurance Policy obtained by them to which the respondent replied vide letter dated 15.3.2002 reiterating the repudiation of 6.9.2000. The contents of the letter are reproduced below: "As requested by you we have called the claim file from our Branch Office. We have perused the file once again and opine as confirmed our Divisional Office letter dated 6th Sept., 2000 advising you about the non-tenability of the claim as per provision No. 4 of the Policy issued. In view of the above we regret our inability to consider for settlement of your claim."

7. THEREAFTER, the complaint was filed by the respondent before the State Commission on 3.10.2002 seeking a direction to the appellant to pay the insured amount as per the Insurance Policy.

8. APPELLANT, after being served, filed its Written Statement contesting the Complaint on the ground of fact as well as law. Preliminary objection was taken that the Complaint filed on 3.10.2002 was after more than 2 years of the repudiation of the claim on 6.9.2000 and, therefore, the same was barred by limitation. On merits, the stand taken by the appellant was that deceased committed suicide and had not died because of any accident.

9. STATE Commission, after taking into consideration the complaint as well as the reply and the evidence led by the parties, held that the claim was not time-barred and the appellant was deficient in service in repudiating the claim and directing the appellant to pay Rs. 5,00,000 along with interest @ 9% p.a. with effect from 15.3.2000. Rs. 5,00,000 were awarded as costs.

10. AGGRIEVED by the Order passed by the State Commission, the present Appeal has been filed.

11. COUNSEL for the parties have been heard at length.

12. STATE Commission has held that the letter dated 15.3.2002 shows that there was a continuous cause of action and, therefore, the Complaint was not time-barred. State Commission has clearly erred in holding so. The claim of the respondent had been repudiated by the appellant on 6.9.2000. In the letter dated 15.3.2002, the appellant had merely reiterated its letter of repudiation dated 6.9.2002. The letter dated 15.3.2002 will not live a fresh cause of action as it was simply a reply to the letter received by the appellant-Insurance Company on 14.2.2002 written by the respondent. The appellant, at no stage, had neither reopened the case regarding respondent''s claim nor it had acknowledged the right of the appellant to receive the compensation. The complaint filed on 3.10.2002 was clearly time-barred as two years from the date of repudiation of claim on 6.9.2000 had already expired. Section 24A of the Consumer Protection Act, 1986 (hereinafter referred to as ''the Act'' for short) provides that Consumer Fora shall not admit a complaint unless it is filed within 2 years of the date on which cause of action had arisen. Section 24A(2) of the Act provides that the complaint can be entertained after the period specified in Sub-section (1), if the complainant satisfies the Consumer Fora that he had sufficient

cause for not filing the complaint within the prescribed period. In the present case, no application was filed by the respondent seeking condonation of delay in filing the complaint. Complaint is liable to be dismissed on the ground of limitation.

13. COMING to the merits, in our opinion, the State Commission has also erred in relying on the panchnama and the PME to come to the conclusion that the death was accidental. In the post mortem report, the Doctor had clearly stated that: "Head Decapitated, Two hands separated."

"Both upper limbs separated from body."

14. IF a train strikes against a person in the middle of the track, then, he would not get cut injuries severing the head and arms. This could have been possible only if the person had laid on the track and the train, running on the railway track, had cut his body and limbs into two separate parts. There is no evidence on record to show that the train had struck the deceased while he was crossing the track. As per the report of Mr. Subba Reddy, Additional I.G. of Police, the body was recovered at 7.30 a.m. on 3.9.1998 and identified by 9.30 a.m. by his wife and other family members of the deceased. This clearly indicates that the wife of the deceased was not present at the time of the incident. Panchnama prepared as to the cause of action was not based on investigation. It had been signed by the brother of the deceased and wife of the deceased where it was stated that the death was because of accident. Both were interested witnesses. They were not present at the time of accident to depose to the fact that the deceased had died because of accident. No reliance can be placed on the Panchnama. As against this circumstantial evidence indicates that the death of deceased was a suicide and not an accident. The deceased had taken two insurance policies of Rs. 5,00,000 each within a period of two months. While taking the second Policy, the deceased did not disclose the fact of having taken another policy two months earlier. He committed suicide because of the outstanding debts. It seems that the deceased had taken the insurance policies to secure his family after his death.

15. FOR the reasons stated above, the appeal is allowed, the Order of the State Commission is set aside and the Complaint is ordered to be dismissed as barred by limitation as well as on merits. There shall be no orders as to costs. Appeal allowed.