(2002) 10 NCDRC CK 0088

In the National Consumer Disputes Redressal Commission

NISHA SINGH CHAUHAN APPELLANT

Vs

BRANCH MANAGER, LIC OF INDIA RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Citation : 2003 3 CPJ 292

Hon'ble Judges : Palok Basu , D.D.Bahuguna , Rachna J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the judgment and order dated 4.9.2000 passed by District Consumer Forum, Jalaun in Complaint Case No. 63/1999.

2. MR. R.D. Kranti, learned Counsel for the appellant has been heard at length and the entire record has been perused. MR. M.S. Kotwal has appeared as an amicus curiae and both have argued the matter with great ability. MR. Vineet Srivastava has put in appearance for the respondents and has also drawn the attention of Commission to the various documents relevant for decision in this matter. A very short question arises in this appeal. The appellant Smt. Nisha Singh Chauhan is admittedly the widow of Sri Yogendra Singh Chauhan. It is said that late Sri Yogendra Singh Chauhan was insured for a sum of Rs. 1,00,000/- on 23.3.1998 and Policy No. 232003710 was issued. One half-yearly premium of Rs. 5,211/- was deposited with the opposite parties. The policy was received on 28.3.1998. It is further said that the complainant/appellant was the nominee in the aforesaid policy and was entitled to receive the policy money. It is further said that on 3.4.1998, the husband of the complainant was murdered and some persons have been named in the FIR arising out of the said incident. On the aforesaid murder of the husband of the complainant, the appellant/complainant lodged a claim for getting the policy benefits. The LIC repudiated the claim and it has taken the stand right from the very beginning that the proposal form submitted at the time of proposing the insurance of the deceased did not bear the signature of the said proposer.

The District Forum has concluded from the evidence produced that the deceased had not signed the proposal form and, therefore, no contract was established between the proposer and the LIC and once the contract itself was not established, the question of making the payment arising out of the said claim based on the said suggested contract does not arise and no claim was payable, therefore, it dismissed the complaint by the impugned judgment and order.

3. IT may be pointed out that while the complainant had filed before the District Forum copies of the FIR, Post Mortem Report, Charge Sheet, Claim Form, Premium Receipt and copies of some letters exchanged between the complainant and the LIC, on behalf of the respondents reliance was placed on the letter repudiating the claim, the allegation that the deceased was having a criminal history and further that the proposal made was itself a part of the planning under which some money was to be obtained as ill-gotten money. The LIC further obtained a certified copy of the order sheet of Criminal Case No. 2749/1998 State v. Durg Vijay Singh, registered under Section 304/504, IPC which was pending in the Court of Chief Judicial Magistrate, Mainpuri in which Raghuvendra, Yogendra the policy holder Durg Vijay Singh were accused. The said order sheet contains the signatures of the accused Yogendra Singh Chauhan, policy holder. The copy of the proposal form was also filed by the L.I.C. On the basis of the aforesaid material, the respective Counsel for the parties were heard by the District Forum. The only point which arose for consideration was whether the proposal form was that of the deceased. In other words the only question which arose was whether the deceased had signed the proposal form or not. As noted above, the District Forum has concluded that the signatures on the proposal form were not of Yogendra Singh Chauhan, proposer-policy holder. In coming to the said conclusion the District Forum saw the certified copy of the order sheet which at several places incorporates the signature of the accused Yogendra Singh Chauhan, proposer-policy holder.

4. THERE is no denial of the fact that murder took place within a few days of the deposit of the half-yearly premium. THERE is no denial of the fact that there was no other source of income for the deceased other than agriculture. THERE is also no denial of the fact that the deceased was himself involved in murder trial and in fact the deceased in that trial was related to the persons who are said to be now the accused in the murder case relating to the proposer-policy holder/ deceased. It was vehemently argued by Mr. M.S. Kotwal that the District Forum has exceeded its jurisdiction by becoming an expert within the meaning of the Evidence Act and recording the finding that the signature existing on the proposal form was not that of the proposer, policy holder whose signatures existed in the certified copy of the order sheet of the CJM''s Court. Before proceeding further, it may be pointed out that the certified copy was a photostat copy of the original order sheet in which the signatures, noting, writing are existing as it is on the order sheet of the Court concerned. On the other hand, Mr. Vineet Srivastava has said that the aforesaid finding recorded by the District Forum is based on perusal of the documents, seeing of the documents and perceiving the apparent distinction existing in the two writings and he insisted

that such a right exists in all Courts and Tribunals and so long as the Court or the Tribunal does not go into intricacy of examining the slant, pressure, (sic.) etc. in order to come to the conclusion of accepting or rejecting a signature to be that of a particular person, it can never be said that the Court tried to become an expert and based its reasons on intricate question which can be handled, tackled and evidenced by the opinion of the handwriting expert. This Commission has also perforce seen both the signatures because photostat copy of the said order sheet and the photocopy of the proposal form are available on record. This Commission does not claim to be an expert in any manner but without hesitation holds that the writing of the name of Yogendra Singh Chauhan in the order sheet at several places is apparently distinct and altogether different from the writing of Yogendra Singh Chauhan as existing in the proposal form. Without any hesitation it has to be said that the signature on the proposal form is not of Yogendra Singh Chauhan who has signed the order sheet of the CJM''s Court. Therefore, as of fact the finding recorded by the District Forum that the proposal made to the L.I.C for the life insurance of Rs. 1,00,000/- did not bear the signature of the proposer Yogendra Singh Chauhan is correct.

5. IN this connection, it should be at once mentioned that there was yet another limb of the aforesaid argument which should be dealt with. Mr. Kotwal said at the Bar that even if it be held that to that extent the Court or Tribunal is permitted to examine, look and find out the obvious difference, yet the fact that signature of Yogendra Singh Chauhan really existed in the CJM''s order sheet has not been proved. There is no force in this argument either. Court proceedings go by the law and the Cr.P.C. makes provisions of signature of accused on the order sheet when they appear in the Court for remand or getting next date, as the case may be. Therefore, all presumption will be in favour of the validity of the order sheet and also validity of the persons who have signed the order sheet as accused. It is open for anybody to dispute the correctness thereof by leading evidence. That has not been done. The complainant had an opportunity to dispute the L.I.C.''s stand which was made known to her right from the very beginning. The burden was lying entirely with the complainant to prove that the signatures of her husband as said to be existing on the order sheet of CJM''s Court were not that of her husband. The complainant has chosen to keep quite and silent over the aforesaid evidence produced by the L.I.C. which for all practical purpose clinches the issue.

6. THE last argument made by Mr. Kotwal was based upon the provisions contained under Section 45 of the Insurance Act. It was argued that since the proposal was made on 31.3.1998, the death took place on 3.4.1998 and the claim by the L.I.C. was repudiated on 1.1.2000, the benefit of Section 45 should accrue to the claimant/complainant and no advantage should go to the L.I.C. by such repudiation of the claim. THE basis of the argument was that nearly two years were just to pass and not much of irregularities had taken place, this Commission should hold that the repudiation was highly belated and, therefore, the advantage of Section 45 should be thrown open to the complainant. Mr.

Vineet Srivastava said that so long as the law requires a limitation of two years for L.I.C. to repudiate the claim, there is nothing in the said enactment making it permissible to reduce the said period of two years. THErefore, the L.I.C. was within the rights to repudiate it within two years of the date of death. After giving consideration to the aforesaid argument, the argument of Mr. Vineet Srivastava obviously has to be accepted because law must be interpreted as it is. Section 45 empowers the insurer to get the matter thoroughly investigated if the death of proposer-policy holder took place within two years of making of the proposal form/taking of the policy. In view of the aforesaid discussion none of the arguments advanced on behalf of the complainant are acceptable and the decision of the District Forum is factually and legally correct and is hereby upheld. The appeal is dismissed. The parties will bear their own costs. Let copy of this order be made available to the parties as per rules. Appeal dismissed.

