(1996) 08 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

Oriental Fire and General Insurance Co. Ltd. APPELLANT

Vs

SUJIT KUMAR PATRA RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Citation : 1996 3 CPJ 87 : 1996 3 CPR 186 : 1997 1 CLT 354 : 1997 1 CPC 123

Hon'ble Judges : V.Balakrishna Eradi , S.S.Chadha , R.Thamarajakshi , S.P.Bagla J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS First Appeal No. 787 of 1994 is against the Order dated 27th October, 1994 passed by the State Commission, Orissa in Consumer Case No. 273/92. The Oriental Fire & General Insurance Company Ltd., is the appellant and Shri Sujit Kumar Patra & Ors. are the respondents.

2. THE respondent''s grand-mother, later Radharani Patra, wife of Srihari Charan Patra, had purchased a Janapriya Social Welfare Certificate bearing No. 43/9034 of capital endowment valued at Rs. 1,75,000/- from M /s. Janapriya Finance & Industrial Investment (India) Ltd. THE policy carried an accidental benefit of Rs. 15,000/- under Janapriya Accidental/Group Policy in case of death resulting solely and directly from accident to be paid by the Oriental Fire and General Insurance Company Ltd., the appellant. THE case of the respondent is that the late Radharani Patra, died accidentally by drowning in a pond on 14.3.84. THE respondent No. 1 being the nominee under the policy, made a claim with M/s. Janapriya Finance & Industrial Investment (India) Ltd., for a sum of Rs. 1,90,000/- in all and was informed on 13.11.85 that his claim has been lodged with the concerned Insurance Company, namely, the appellant. THE appellant Company repudiated the claim on 14.2 86 on the ground that the death was in normal course of event and not by accident of drowning, and, therefore, the respondent was entitled to premium only as deposited by him. Aggrieved by this repudiation, the respondent filed a suit for a declaration that the complainant''s grand-mother, late Radharani Patra died by drowning on 14.3.84, which was an

accidental death, and further that the complainant being a nominee in the endowment policy is entitled to get the benefit arising thereof. THE learned Additional Munsiff, Balasore, before whom the suit was filed, decreed the suit and declared that the death of late Radharani Patra was an accidental death by drowning and also that the complainant being a nominee of the endowment policy had the cause of action to bring the suit and was, therefore, entitled to get consequential benefit, if any. Based on this declaration, the respondent, thereafter filed a complaint before the State Consumer Commission Orissa, which passed an order on 27.10.94 directing the payment of Rs. 1,90,000/-, as claimed, together with interest at the rate of 10% per annum from the date of judgment in the suit i.e., 4.7.91 till the date of payment, alongwith a cost of Rs. 1,000/-. It is against this Order that the present appeal has been filed before us. No new argument other than those made before the State Commission, has been given by the appellant. The main argument of the appellant is as to whether a party which has approached the Civil Court can be permitted again to approach the Consumer Forum for further relief which had not been granted by the Civil Court and whether a party which does not seek any specific relief from the Civil Court is entitled to approach a Consumer Forum afresh on the same cause of action. In effect, the case of the appellant is that the principle of res-judicata, as in Section 11 of the Civil Procedure Code, should apply to a subsequent proceeding under the Consumer Protection Act, 1986. This point has been very ably discussed by the State Commission stating that the principle of res-judicata is available for purposes of achieving finality in litigations. In support of this view, a decision of the Supreme Court reported in AIR 1960 SC 941, Satyadhan Ghosal & Ors. v. Smt. Darpan Devi &Anr., was quoted by the State Commission. We think it necessary to repeat the observation made in this order by their Lordships of the Supreme Court. They stated : "The principle of res-judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or a question of law has been decided between two parties is one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or a proceeding between the same parties to canvass the matter again. This principle of res-judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res-judicata has been applied by Courts for the purpose of achieving finality in litigation."

The repudiation of the claim by the appellant was on the ground that in an independent inquiry by an Investigator appointed by them it was found that the death was not due to accidental drowning as alleged. We have seen the extracts from this inquiry report which is primarily based on the statement of two local persons Lakshindar and Mongla. The Investigator says that these two persons told him in confidence that the insured died of natural death by old age. It has also been stated in the report that Shri Binoj Kumar Patra, s/o the insured is a very well to do person wielding considerable influence and has a tremendous notoriety for his litigant propensity. The report of the Medical Officer, who certified the death by drowning, has also not been believed by the Investigator by pointing a contradiction about the time of drowning as mentioned in the report and as stated by the respondent.

It is a fact that the appellant was a party in the civil suit in the Court of Additional Munsif, Balasore, for declaration about the death of the insured by drowning and that the appellant gave his version in writing before this Court. The declaration by the Civil Court in that suit has achieved the finality as no appeal was made against it by the appellant in a higher Court. It is not, therefore, appropriate to assert now that the declaration in this suit should not be taken as a ground for awarding the claim and that the nominee of the insured is barred from seeking any relief after the suit had been decreed as he did not seek the relief in the suit itself. The State Commission has discussed the legal questions raised in this regard particularly in respect of the meaning of the "claim" and the jurisdiction of the Consumer FORA for entertaining such claims and we fully agree with the view expressed in their order. Whatever justification or reason the Insurance Company may originally have had to repudiate the claim on the ground of the nature of the death, there appears to be no reason for withholding the payment under the policy after the judgment of the Civil Court which decreed that the death of late Radharani Patra was an accidental death. We are, therefore, of the view that the persistence of the appellant in not accepting the claim and making a payment after the decision in the declaratory suit, to which they were a party, is misplaced, if not unfortunate. In our view, it would have been better on the part of the appellant to save the expense and effort in mis avoidable litigation after the declaratory suit had achieved finality in the absence of any appeal against it as regards the nature of death - accidental or natural. We see no force in the argument of the appellant and, therefore, see no reason to interfere with the order of the State Commission. The appeal is dismissed. The appellants are directed to pay a sum of Rs. 2,000/- to the respondents over and above whatever has been awarded by the State Commission in their Order dated 27th October, 1994. Appeal dismissed with costs.