(2006) 02 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

PAHARU RAM — APPELLANT

Vs

ANIL KESHARWANI — RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Citation : 2006 3 CPJ 157

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 13.10.2004 in Complaint No. 136 of 2004 by District Consumer Disputes Redressal Forum, Raipur (hereinafter called the ''District Forum'' for short) dismissing the appellant''s complaint.

2. THE essential facts necessary for the disposal of this appeal are that the appellants are parents of deceased S.L. Yadav. According to the averments in the complaint, the deceased S.L. Yadav through respondent No. 1, who is an agent of respondent Nos. 2 and 3, LIC, deposited premium of Rs. 8,756 on 28.2.2003 for obtaining insurance policy for Rs. 6,00,000. It is not in dispute that S.L. Yadav died in a motor cycle accident in the intervening night of 23/24.12.2003. THE claim of the complainants was repudiated by the LIC on the ground that policy document was not issued by it till the death of S.L. Yadav. Aggrieved, by the repudiation as above, the complainants filed complaint in the District Forum. In the District Forum respondent No. 1, agent of LIC, denied that any amount was paid to him towards premium by the deceased S.L. Yadav. He also denied that he has deposited any amount with the respondent Nos. 2 and 3.

Respondent Nos. 2 and 3 averred in their written version that respondent No. 1 had deposited an amount of Rs. 8,756 in the name of S.L. Yadav in the office of respondent No. 2. It was averred that, no proposal of S.L. Yadav for the issuance of policy was ever received, nor any policy was issued in his favour. It was, therefore, averred that the complainants were not entitled to any benefit, due to the deposit of the said amount.

3. LEARNED District Forum held that there is no evidence that there was any proposal by the deceased S.L. Yadav for obtaining LIC policy, hence he is not entitled to any relief. Consequently the complaint was dismissed. Learned Counsel for the parties were heard. Record and impugned order perused.

4. INDISPUTABLY a receipt dated 28.2.2003 for Rs. 8,756 has been issued by the LIC in the name of S.L. Yadav. Copy of the said receipt has been filed. The respondent No. 1 agent denied having received any amount and also denied depositing the said amount. However, the agency code number mentioned in the receipt, clearly indicates that the amount was deposited through respondent No. 1. It would, therefore, appear that an amount of Rs. 8,756 was deposited by S.L. Yadav through respondent No. 1 agent. However, there is no material that the deceased S.L. Yadav submitted any proposal for issuance of insurance policy. Though the copy of proposal form filled up by the deceased has been filed on record, but it does not appear therefrom that the same was submitted or received by the LIC. No acknowledgement or endorsement on the said copies in that regard is put on said copy. The respondent Nos. 2 and 3 categorically denied in their written version and affidavit filed in support thereof having received the said proposal. In the circumstances, no proposal appears to have been duly submitted either by the deceased S.L. Yadav or by respondent No. 1 agent. In the circumstances it cannot be said that there was any contract of insurance between the deceased S.L. Yadav and the LIC. Reference in the above connection may be made to the decision of Apex Court in LIC of India v. Raja Vasireddy Komalavalli Kamba and Others, AIR 1984 SC 1014, wherein it has been laid down that the general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates its acceptance to the person making it. It has further been observed that the mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance. Similarly, National Commission in LIC of India v. Mrs. Bimala Routray, cited in Legal Digest-Jan-Apr. 99 Page 145, has held that there is no concluded contract of insurance, where a proposer dies before the acceptance of the proposal. In the instant case it is clear that there was no proposal, much less its acceptance by the respondent Nos. 2 and 3 and LIC. Therefore, in view of the ratio of the aforementioned decisions, it is clear that there was no concluded contract of insurance between the LIC and the deceased S.L. Yadav. Consequently, the complainants would not get any amount under any such alleged contract. However, it is noticed that respondent LIC have retained the premium amount of Rs. 8,756 which was deposited by the deceased S.L. Yadav on 28.2.2003. It appears that there was no action on the part of LIC regarding the above amount. They have neither taken any steps to communicate the agent-respondent No. 1 to take appropriate steps regarding the aforementioned deposited amount, nor they have sent any communication to the deceased S.L. Yadav till his death, which took place after

about 9 months, after the deposit of the amount. Obviously, if the amount remained deposited with the LIC, it was obligatory for them to have either refunded the said amount within a reasonable time or should have initiated action for obtaining proposal etc. They have not adopted any of the aforesaid courses of action. Obviously such delay resulted in possibly non-issuance of the policy. It thus appears that the policy could not be issued, on account of in-action as above.

5. THOUGH it appears that the respondent LIC, alleged that they have refunded the aforesaid deposited amount, but no acknowledgement has been produced by them for the refund thereof. Hence, they are liable to refund the amount admittedly deposited by and on behalf of the deceased S.L. Yadav.

6. SINCE it appears that respondent No. 1 deposited the premium amount has failed to take action to obtain proposal form and initiate action for issuance of policy. Therefore, the amount as above is also payable by respondent No. 1 with respondent Nos. 2 and 3. Besides, the laches as above of the LIC amounts to deficiency in service. Accordingly, it appears just and proper to direct that respondents LIC shall refund the deposited amount of Rs. 8,756 with interest @ 9% p.a. from the date of deposit as also to pay Rs. 10,000 as compensation to the appellant for deficiency in service by it, as pointed above. Accordingly the appeal is allowed. The impugned order dismissing the complaint is set aside. It is directed that respondent Nos. 1, 2 and 3 shall jointly and severally refund to the appellant the sum of Rs. 8,756 (eight thousand seven hundred and fifty-six) with interest @ 9% p.a. payable thereon, from 28.2.2003 as also compensation of Rs. 10,000 (ten thousand). The respondents shall also pay to the appellant cost of this litigation, including that of the complaint as well as this appeal, which is quantified at Rs. 5,000 (Rupees five thousand) only. Appeal allowed.