(1992) 04 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

PATEL RAMABHAI SHANKERDAS APPELLANT

Vs

BRANCH MANAGER, NATIONAL INSURANCE CO.LTD RESPONDENT

Date of Decision : 28-04-1992

Acts Referred:

Citation : 1992 2 CPJ 965

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Appeal allowed

Judgement

1. THE appellant is the original complainant who has taken insurance for his buffalo for Rs. 5,000/- from the opponent. THE buffalo died during the pendency of the policy and, therefore, the complainant claimed an amount of Rs. 5,000/- from the Insurance Company - respondent herein. He filed a complaint No. 31/90. It appears that the District Forum passed an order in favour of the complainant directing the Insurance Company to make the payment of Rs. 5,000/-.

2. THE complainant cannot receive the amount and, therefore, filed the complaint No. 154/91 from which this appeal has been filed. In the said complaint the opposite party filed a written statement (Ex. 5) and contented that the company had paid Rs. 5,000/- by cheque No. 32531 dated 25.9.91 which was sent by registered post to the complainant which has been received by the complainant and the cheque was deposited in the Central Co.op. Bank, Karannagar, Kadi and the amount has been cleared by the Central Bank of India, Kalol and debited to the account of the Insurance Company. THErefore without going into further merits the District Forum observed that inspite of the receipt of the amount, the complainant has filed the complaint to malign the Insurance Company and it is therefore required to be dismissed. The Insurance Company has also produced the postal receipt which is purported to have been signed by Patel Rama Shankardas. The District Forum therefore dismissed the complaint and directed the complainant to pay Rs. 200/- as cost.

The complainant being aggrieved by the 2nd order of the District Forum has filed this appeal and contended that he has not received any cheque for Rs. 5,000/- at all as directed by the District Forum in the previous complaint and he therefore served a notice to the other side dated 20.9.91. Even then the order of the Forum having not been complied, filed an application before the District Forum and the District Forum wrongly rejected the application with cost of Rs. 200/-. The summons of the appeal has been served to the respondent but nobody appears on behalf of the Insurance Company. Mr. G.P. Brahmbhatt, the learned Advocate appearing on behalf of the appellant states that his client has received the cheque for Rs. 5,000/- dated 13.4.92 i.e. after the filing of this appeal and the Insurance Company has taken a statement by way of receipt which has been signed by the complainant dated 14.4.92. Mr. Brahmbhatt produces that statement alongwith the purshish signed by him stating that Rs. 5,000/- has been received by his client after the filing of the appeal and requested that the order of the District Forum be set aside and the Insurance Company be saddled with cost.

3. ON reading the statement taken by the Insurance Company from the complainant-appellant it appears that the Insurance Company has sent a cheque of Rs. 5,000/- which was bearing the name of the complainant at Village Karannagar, Tal. Kadi where some other person in the same name was staying. The registered post was served upon that other person at Karannagar and the other person appears to have presented the cheque to the Bank and payment appears to have been made to him and not to the present complainant. Inspite of filing of a complaint neither the Insurance Company nor the District Forum gave any importance to the statement and complaint filed by the complainant and without making any enquiry or ascertaining the proof dismissed the complaint with cost and, therefore, he has filed an appeal. It appears that the cheque appears to have been delivered in the name of the same person at Karannagar whereas the present complainant is residing at Kadi proper and not Karannagar. We therefore ascertained the original policy which shows the address of Kadi and the place as Karanpur but not village Karanpur. We are satisfied that the complainant is staying at Kadi proper where Karanpur is the local area for purpose of his address. It appears that this mistake has been committed because of the similarity of name as well as address. Karanpur, which was the local area, the Company when sent the cheque wrote Karannagar which is the name of the village in Kadi Taluka where the post was delivered. The man who received the cheque appears to be honest and did not withdraw the amount, though the cheque was deposited. After making enquiry the Company came to the correct fact and has therefore made payment to the present complainant after receipt of the summons of this appeal and has remained absent, though served. This case clearly shows that while deciding the matter judicially it is not only the duty of the other side to ascertain the facts and take the complaint seriously it equally applies to the Court. We can understand the pain and suffering of the present complainant who has not received the money and still has been branded as dishonest man. The Court has passed some remarks which to our opinion are

uncalled for and should be struck off. We know that had the District Forum came to know the correct fact it would have never passed such remarks against the complainant who was, to our opinion quite innocent and was not capable to understand as to what actually happened. The Insurance Company has, to our opinion, not only remained indifferent but to an extent also negligent. The order passed by the District Forum therefore is neither proper nor correct and requires to be set aside.

4. THE advocate for the appellant states that the complainant is Ramabhai whereas the person who received the money at Karannagar designates himself as Rama Shanker and Karannagar is a separate village in Kadi Taluka. We are of the opinion that the Insurance Company might have bonafidely committed an error and it had no intention to make payment to any other party. However the very fact that an innocent man has also suffered may not be forgotten. We are, therefore, of the opinion that the appellant complainant is also entitled for some compensation for pain, suffering and considering the bona fide mistake of the Insurance Company we are awarding a very light damage of Rs. 1,000/- only. Since the cost has not been recovered by the Insurance Company no order is necessary for the refund of the same. As the complainant has received Rs. 5,000/- no order for payment of that amount is also necessary. ORDER THE appeal is allowed. THE order of the District Forum is set aside. THE respondent will pay Rs. 1,000/- by way of damages for pain and suffering. THE Insurance Company will also pay interest @18% on Rs. 5,000/- from 20.9.91 i.e. the date of notice till the date of payment plus cost which is quantified at Rs. 250/-. THE above payments shall be made within 4 weeks from the date of receipt of the order. Appeal allowed.