(2003) 02 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

Peerless General Finance and Investment Co. Ltd. APPELLANT

Vs

ORISSA CONSUMER ASSOCIATION RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Citation : 2003 4 CPJ 614 : 2004 1 CLT 238

Hon'ble Judges : D.M.Patnaik , Arati Mohanty , Pramodnath Das J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is at the instance of Peerless General Finance & Investment Company Limited (''the Company'', for short) against the order of the District Forum, Malkangiri, directing refund of Rs. 27,587/- with interest.

2. THE complainant took out an endowment policy of Rs. 1,68,000/- for a period of ten years. THE proposal along with initial deposit was made on 20.4.1991. He claims to have paid Rs. 27,587/- towards premiums. It is his case that at the time of signing the proposal, he was given a wrong impression by the Agent of the Company that the insurance policy would also cover life risk. It is further his case that no policy/certificate in original was sent to him at all and, therefore, he was unaware of the terms and conditions of the policy. On 5.2.1997 he came to know that the policy was not to cover life risk and thus wanted to get back the deposited money. The Company in its written version took various defences challenging the claim of the complainant. They deny the fact of their Agent giving out false representation that the policy would cover the life risk. They denied to have received certain portion of the amount claimed to have been paid by the complainant directly. As regards handing over the original policy they took the stand in paragraph 21 of the written version that the complainant admitted in Para 2(a) of his complaint petition to have received the policy. The other grounds taken is that the case is covered under the Contract Act and the Consumer Court would have no jurisdiction.

We have heard the learned Counsel for both sides and have perused the impugned order. It is not disputed that the complainant has paid some premiums as claimed by him. In the written version they stated that they have not always received the premium from the complainant directly. Yet they admitted that some of the deposits were made through the Agent which they have received. But their case is that details of the policy number were not there in the draft for which this could not be accounted for against the policy in the name of the complainant. To this we may say that none else than the complainant has come forward to ask for refund in respect of the amount. The Company has admitted to have received the amount. They do not deny the fact that Policy No. 522033950 was issued to the complainant. The District Forum has taken the correct view that the Company is liable to refund this amount. We do not like to take a different view. We accept the finding of the District Forum that the complainant has paid towards the premiums a total sum of Rs. 27,525/-.

3. THE case of the Company is that the policy lapsed after January, 1992 for non-payment of the premiums. THE explanation of the Company that the complainant received the policy which was admitted by him in Paragraph 2-a of the Complaint Petition is not correct. On going through the paragraph we find that the complainant has stated that he only received the policy number from the Agent, G. Srinivas Patnaik. In the subsequent lines of the complaint petition he clearly averred that he could not get his policy/certificate bond and was kept all along in darkness about its terms and conditions. Once the policy was not issued, there would be no excuse/explanation on the part of the Company to take a defence that the premiums would not be refunded and we are also not able to accept its case that in such a situation when after receiving the premiums the policy was not issued the Company should be allowed to say not to refund the amount. This is clearly a deficiency in service. THE complainant having been deprived of the enjoyment of his money which was kept back by the Insurance Company, he is entitled to get refund in spite of the fact that there might have been some delay or laches on the part of the complainant in not paying the premiums in time. 7. We uphold the decision of the District Forum and dismiss the appeal. No cost. Appeal dismissed.