(2016) 07 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Case No : 924 of 2015

PNB METLIFE INDIA INSURANCE COMPANY LTD. APPELLANT

Vs

DEEPIKA RANI & 3 ORS. RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Citation : 2016 3 CPR 416

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : RITESH KHARE, Om Prakash

Final Decision : Petition Dismissed

Judgement

1. The present revision petition has been filed against the judgment dated 04.12.2014 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh (''the State Commission'') in Appeal no. 1172 of 2012.

2. The facts of the case as per the respondent/ complainant are that Shri Bimal Kumar got an insurance policy named ''Met Smart Platinum Unit Linked Life Insurance Plan'' for a period of 62 years with premium paying term of 5 years along with accidental benefits on payment of Rs.10,000/- on 01.02.2011 with the petitioners. The total sum assured was Rs.9,90,000/-. It was the case of the respondent that unfortunately on 13.03.2011, Shri Bimal Kumar died due snake bite. The respondents being the legal heirs of the deceased Bimal Kumar filed a claim with the petitioners to review the claim. By a letter dated 15.07.2011 the petitioners demanded the matriculation certificate of the deceased Bimal Kumar to process the claim. Qua on receiving the documents by the petitioners, an acknowledgement letter dated 01.08.2011 was received by the respondents.

3. The respondents were surprised to receive a telephonic message from the petitioners on 13.09.2011 and also an e-mail to this effect was received on 14.09.2011 repudiating the claim. The claim of the respondents was repudiated on illegal ground of non-disclosure of material facts regarding age proof. It was alleged by the petitioners that the deceased Bimal Kumar produced his

matriculation certificate of Himachal Pradesh Education Board as age proof. In fact, the deceased Bimal Kumar passed his matriculation from Punjab School Education Board and not from Himachal Pradesh Education Board and at the time of continuation of the policy, the deceased had given matriculation certification of Punjab School Education Board as age proof and not of Himachal Board. All these grounds are illegal, wrong and not based on actual facts. The respondents requested number of times to the petitioners to do the needful, but all went in vain. Non-payment of claim without reasonable cause amounts to deficiency in service on the part of the petitioners. Hence, the petitioners filed a consumer complaint before the District Forum. It was prayed that the petitioners may kindly be directed to pay Rs.9,90,000/- with other benefits and interest @ 18% per annum from the date of death till its realisation. The petitioners may kindly be directed to pay Rs.20,000/- as damages due to the inconvenience, harassment, frustration suffered by the respondents at the hands of the petitioners. The respondent may kindly be granted any further or such relief to which she may be found entitled to the facts of the present case.

4. On receipt of the notice, the petitioner''s/ opposite parties'' no.1 and 2 filed a joint written statement. The preliminary objections with regard to jurisdiction, cause of action, suppression of material facts and maintainability were raised. On merits, the claim put forth by the respondents was denied. It was replied that there was no contract of insurance between the DLI and the petitioners as the DLI died prior to communication of acceptance of his proposal for insurance that was the application form by the petitioners. The DLI died on 13.03.2011 while the said policy was issued on 01.02.2011 which was after the death of the DLI. The general rule was that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Therefore, the contract could not have come into existence in the present case. The said deceased had voluntarily filled up the proposal form bearing no. 165258304 signed the same on 03.01.2011 and had applied for the said product and offered to pay Rs.5,000/- monthly towards the premium to be paid for 5 years. Upon receipt of the duly filled form along with the initial premium, the petitioner no. 1 had issued the policy bearing no. 20499294 to the deceased policy holder. Thereafter, the policy documents along with the schedule and the standard terms and conditions thereto and a welcome letter to the respondent were duly delivered at the address of the deceased policy holder. The respondent was the nominee in the said policy. The age proof submitted on 31.07.2011 and was signed by the deceased Bimal Kumar and the same was verified and signed by the Financial Advisor who was the respondent herself. Within a few months from the issuance of the said policy on 23.06.2011, the respondent informed the petitioner about the death of deceased policy holder on 13.03.2011. On 15.07.2011 the petitioner sent a letter to the respondent requesting her to submit the additional documents in reference to which, the petitioners received a letter dated 20.07.2011 from the respondent stating that the age proof

submitted at the time of application was fake and tampered with. Being an early claim, an investigation was conducted by the petitioners which revealed that the petitioners and the DLI had mis-represented his age proof which was submitted at the time of application for insurance. However, as a customer friendly organisation an amount of Rs.9507/- was sent to the respondent along with a letter dated 16.08.2011 vide cheque no. 597791 dated 12.08.2011 drawn on Axis Bank Ltd., being the full and final settlement of the claim. Again on 19.10.2011, the petitioners received another letter from the complainant to reconsider the decision to repudiate the claim. The petitioner after detailed investigation again reiterated to the respondent vide letter dated 04.11.2011 the grounds for repudiation of the claim.

5. The District Consumer Disputes Redressal Forum, Hoshiarpur (''the District Forum'') vide its order dated 26.03.2012, observed as under: "We have anxiously considered the rival contentions in the light of evidence on record. It is noted that Bimal Kumar, husband of complainant no. 1 purchased insurance policy named "Met Smart Platinum Unit Linked Life Insurance Plan'' with policy term of 62 years along with accidental benefits after payment of Rs.10,000/- on 01.02.2011. It is not a dispute that insured died on 13.03.2011 while under treatment with Suri Poly Clinic. He was suffering from Snake bite. Certificate of Suri Poly Clinic in this respect is exhibit C 4. Insurance contract between the parties was alleged by the opposite parties to be void ab initio vide letter dated 16.08.2011, copy whereof is marked OP 3 on the ground that age proof submitted on 31.01.2011 was fake and tampered with. No material evidence except mark OP - 3 containing such allegations and photocopy of letter dated 15.07.2011 - marked OP 2 and letter dated 04.11.2011, copy whereof is marked OP 4 have been relied upon. Complainants have relied upon e-mail of opposite parties dated 14.09.2011 pursuant to the letter of complainant no. 1, photocopy whereof is marked C 6 as also photocopy of matriculation certificate of Punjab School Education Board - Marked C - 7. Complainant no. 1 in her e-mail letter - marked C 6 has specifically refuted the allegation that her husband had given fake certificate of Himachal Pradesh Education Board as proof of his age. Rather, she has come out to state that her husband had given matriculation certificate of Punjab School Education Board as regard his date of birth. Photocopy of said certificate has also been produced as marked C 7. As already pointed out above, no iota of documentary evidence except letters relied upon by the opposite parties alleging proof of date of birth of insured to be fake has been either brought or proved on record. It is not disputed that insured was 37 years of age at the time of purchase of policy and the policy was for a term of 62 years. Therefore, otherwise also, there is no nexus between the age of the insured at the time of purchase of policy and the insurance claim submitted by complainants after the death of the insured. The position would have been otherwise if the insured would have already reached the age of retirement or age above 60 dis-entitling the insured for the purchase of policy because in that case if insured had given far less age as 35/37 and the insurance company had found

him above 60, it would not have perhaps sold him the said policy. Therefore, for want of

material evidence allegation of furnishing of false document by the insured is not proved. So, the contention of learned counsel for the opposite parties qua contract between the insured and opposite parties having been rendered void ab-initio due to non-disclosure of material fact of his correct age by the insured cannot be accepted.

Insofar as the next contention of the learned counsel for the opposite parties is concerned, the same too has failed to find favour with us. As per the learned counsel for the opposite parties, complainants are entitled to only Rs.9507/- on the basis of Net Asset Value (NAV) as set out in statement of account as on 01.02.2011 available on record with proposal form - Marked OP 1. In support of this sub-clause, 2.1.1 (a) of clause 2.1 of Terms and Conditions has been relied upon. According to him, that amount was even sent to complainant no. 1 along with letter dated 04.11.2011 - marked OP 4 which the complainant no. 1 has denied. Stand of learned counsel for the complainants on the other hand is that as per sub-clause 2.1.1 (b) under clause 2.1 has relied upon by the opposite parties, complainants are entitled to base sum assured, i.e., Rs.9,90,000/-.

From sub-clause 2.1.1 of clause 2.1 it is evidence that if the insured dies before attaining the age 60 during the pendency of policy terms his nominee will be entitled to the highest of amount to be arrived at under clause (a), (b) and (c). In our considered opinion, complainants are entitled to Death Benefit under sub-clause 2.1.1 (b) because as per this clause the opposite parties are bound to give him Base Sum Assured. It is worth pointing out that this clause is not qualified by the provisions under sub-clause 2.3.1 under clause 2.3 nor there is any other clause warranting interpretation thereof in the light of sub-clause 2.3.1. It is evident that the amount given thereunder would be highest to the amount which can be arrived at under sub-clause 2.1.1(a) of clause 2.1 and sub clause 2.1.1(c) thereof. In this way, complainants are entitled to Base Sum Assured, i.e., full amount of life insurance cover of Rs.9,90,000/- as no partial withdrawal by the complainant is either alleged or proved by the opposite parties. In addition, the complainant would also be entitled to Rs.10,000/- as compensation for harassment and mental agony besides litigation expenses.

In the light of our above observations and findings, complaint filed by Deepika Rani and others is partly accepted with a direction to the opposite parties to pay Rs.9,90,000/- along with Rs.10,000/- as compensation and litigation expenses within a period of 30 days from the receipt of copy of this order failing which the opposite parties shall pay the aforesaid amounts with interest @ 9% per annum from the date of order till realisation."

6. Aggrieved by the order of the District Forum, the petitioner/ opposite party filed an appeal before the State Commission. The State Commission vide order dated 04.12.2014 while partly accepting the appeal observed as under: "The

only dispute in this case is regarding age proof. As per the plea of the OP, DLI had given the matriculation certificate of Himachal Pradesh School Education Board whereas the complainant has submitted the certificate of her husband of Punjab School Education Board. The plea of the OP is not acceptable because perusal of matriculation certificate of Bimal Kumar shows that his date of birth was 12.04.1973 as also shown in the policy documents. Even in the affidavit given by Deepika Rani is her affidavit, he deposed in paragraph no. 7 that her husband Bimal Kumar passed the matriculation under Punjab School Education Board instead of Himachal Pradesh School Education Board and at the time of contingency of the policy Mr Bimal Kumar (DLI) produced matriculation

certificate of Punjab School Education Board as age proof and not the matriculation certificate of Himachal Pradesh School Education Board. So plea taken by the OP is not believable. The OP has failed to place on record the matriculation certificate of Himachal Pradesh Education Board whereas the complainant produced the matriculation certificate of Punjab School Education Board. Once, the OP has received the premium and issued the policy after verification the facts in the proposal form then OP cannot repudiate the claim. The OP has placed on record the letter dated 04.11.2011 exhibit mark OP 4, relevant portion of the same is reproduced as under:

Remarks of the committee:

The committee found that age proof submitted at the time of application was tampered with. The age proof submitted dated 31.01.2011, was signed by late Bimal Kumar and also verified and signed by the Financial Advisor. In this case, the Financial Advisor and the nominee were one and the same. In light of above mentioned evidences, and after applying the principles of equity, justice and good conscience, in line with the provisions laid down under the insurance Act, 1938, as upheld by various courts in their judicial pronouncements, the Claims Committee has decided to uphold the decisions to repudiate the claim.

Sequel of the above discussion, we partly accept the appeal and the order of the District Forum is modified to the extent that the OP shall make the payment to the complainant in equal share minus the amount already paid by the OPs to the complainant and the share of the minor be deposited in the Nationalised Bank till the minor complainant attains the age of majority."

7. Hence, the present revision petition.

8. We have heard the learned counsel for the parties. Counsel for the petitioner contended that the order of the State Commission should be set aside because the impugned order has ignored the basic principles of insurance law and has also ignored the proper appreciation of evidence and observations. The State Commission has failed to appreciate that the claim was repudiated because the insured has submitted a fake and tampered documents at the time of submitting his application. At the time of applying for the policy, the respondent has submitted the matriculation certificate issued by the Himachal School Education

Board. However, while preferring the claim, the respondent, herself, has now contended that the deceased policy holder had passed matriculation from the Punjab School Education Board and not from the Himachal Board. The petitioner had relied upon the documents before it by the policy holder and on investigation, it came to know that the said documents were fake and hence, the claim was rightly repudiated.

9. Learned counsel for the respondent on the other hand argued in favour of the order of the State Commission and stated that it was based on the correct appreciation of the fact of the case.

10. We have gone through the record. Admittedly, while applying for the insurance policy, Bimal Kumar deceased insured had given not only a school certificate but also his ration card. The date of birth indicated in the application was 12.04.1973. The same date of birth has been given in the certificate of the Punjab School Education Board as also the alleged fake certificate of Himachal School Education Board. The ration card admittedly also gives the same date of birth.

Hence, we cannot appreciate the contention of the petitioner that the deceased insured Bimal Kumar had mis-represented his date of birth. Further, the State Commission in their order observed that " so plea taken by the opposite party is not believable. The OP has failed to place on record the matriculation certificate of Himachal Pradesh Education Board, whereas the complainant produced the matriculation certificate of Punjab School Education Board, which is as per the order marked C 7 before the District Forum" . From this it would appear that the Himachal Pradesh Education Board certification had not been placed before the District Forum and has been produced only before this Commission. There is no evidence on record, apart from the statement of the petitioner, that the deceased Bimal Kumar had given the matriculation certification from Himachal.

11. Learned counsel for the petitioner admitted at the bar that there was no mis-representation with regard to the date of birth or age of the deceased. The date of birth was as per the application

12. 04.1973. The petitioner have failed to establish that Bimal Kumar had in any way mis-represented the date of birth or age while obtaining the insurance policy. 12. The Hon''ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed:

"Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

13. Thus, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for our interference under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed and we uphold the order of the District Forum as modified by the State Commission.