(2006) 01 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

Pushpa Devi Jain APPELLANT

Vs

UNITED INDIA INSURANCE CO LTD RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Citation : 2006 1 CPJ 605

Hon'ble Judges : V.K.AGRAWAL J.

Judgement

1. THIS appeal, under Section 15 of Consumer Protection Act, 1986, is directed against the order dated 12.7.2005 in Complaint No. 328/04 directing the respondent to pay to the complainant/appellant Rs. 2,50,000 with interest @ 9% from 31.5.2004 to 17.2.2005. Cost of Rs. 1,000 was also awarded.

2. IT is not in dispute that the complainant is the mother of life assured Manish Kumar Jain. The said Manish Kumar Jain had obtained Janata Personal Accident Policy (hereinafter the Janata Policy for short.). Under the said Janata Policy an assured sum of Rs. 5,00,000 was payable, in case of death by an accident of the life insured Manish Kumar Jain. Risk under the said policy was covered for the period from 3.9.1996 to 2.9.2006. The appellant is the beneficiary under the said policy. It is not in dispute that Manish Kumar Jain died in train accident on 23.1.2004. According to averments in the complaint, though the complainant submitted claim form to the respondents on 31.5.2004 but the respondents did not respond and did not pay the claimed amount. Hence, the complainant filed the complaint before the District Forum.

3. THE respondent No. 2 in their written version submitted that the deceased had already obtained another Janata Policy from National Insurance Co. Ltd. The respondents/OPs Branch Manager sent a letter to the complainant/appellant for sending copy of the said policy to settle her claim. The copy of the policy was sent by the complainant on 23.11.2004. After studying the claim the Branch Manager recommended the Divisional Office to settle the claim for Rs. 2,50,000. It was averred that only Rs. 2,50,000 were payable as another Janata Policy was obtained by the deceased.

4. DISTRICT Forum in the impugned order held that only Rs. 2,50,000 were payable as per the terms of the policy. It was further held that since cheques worth Rs. 2,50,000 have been deposited before the Forum on 17.2.2005, hence the complainant was only entitled to get interest on the said amount for the period from 31.5.2004 to 17.2.2005. The learned Counsel for the parties were heard. Record and impugned order perused.

5. THE grievance of the complainant/appellant is that though she was entitled to whole of assured amount of Rs. 5,00,000, the District Forum erroneously held that she was only entitled to Rs. 2,50,000. It was submitted that complainant may be awarded additional amount of Rs. 2,50,000 and the impugned order be modified accordingly.

6. THE learned Counsel for the respondents, however, submitted that the impugned order is justified. The complainant having obtained another similar policy was not entitled to get more than Rs. 5,00,000 under all the policies. He, therefore, was not entitled to any additional amount. The question that arises for consideration is as to whether the complainant is entitled to whole assured amount of Rs. 5,00,000 or is entitled to only Rs. 2,50,000?

7. LEARNED Counsel for the respondent/insurer in the above context submitted that as per terms of the Janata Policy issued by the respondents, as the life assured had obtained other similar Janata Policy from other insurers, he was not entitled to more than the assured amount of Rs. 5,00,000 cumulatively, under all such policies. In the above context learned Counsel for the respondents referred to condition No. 6 as printed at the back of policy document, copy of which has been filed on record of the District Forum.

8. IT may be noted in the above context that copy of the Janata Policy, produced by appellant shows that assured amount as printed thereon was Rs. 25,000 which has been scratched out and instead the amount of Rs. 5,00,000 has been written by hand. In condition No. 6 printed at the back of said policy document, it has been stated that if the life assured during the currency of the policy obtained similar Janata Policy from one or more insurers, then irrespective of number of such policies obtained by the insured the combined liability of all the insurers would be limited to Rs. 25,000. The learned Counsel for respondents submitted that inadvertently the printed figure of Rs. 25,000 was not scratched out from condition No. 6 of the policy and in fact it should be read as Rs. 5,00,000. It is rather strange that the policy document as above should be discrepant in the above manner and important condition regarding the total liability under the policy should not be modified or updated as has been contended by the learned Counsel for the respondents/insurers. It is further important to note that in the above contest that the respondents/insurers have filed a certified copy of the policy of the insurer. In the back portion of the said certified copy, in condition No. 6 the amount of total combined liability has been left blank and no figure has been inserted. This would mean and imply that as per policy document issued by respondent insurer no amount was mentioned

about the limited combined liability of different insurers. Thus, the certified copy of policy produced by the respondent/insurer, itself, demolishes the contention of learned Counsel for the respondents that there was ceiling of total combined liability in case of different similar policies were obtained by insured.

9. AGAIN , it may be noted in the above context that though the respondents/ insurers averred that Surveyor and Claim Investigator informed them that deceased insured had obtained similar other policy and that the copy of other policy was also sent to them by the complainant, such other policy or copy thereof has not been produced. The report of the Surveyor is also not produced. It may be further observed in the above context that investigators report is also not on record. It may be mentioned that even assuming that the insured had obtained some other policy from some other insurer, even then the said policy or copy thereof was necessary in order to ascertain as to whether the said other policy, was similar to the policy issued by the respondent insurer. It may be reiterated here that condition No. 6 would be applicable, only when other policies were of similar to the policy issued by the respondents. The applicability of the said condition should have been duly proved by producing the other policy by the respondents. They have failed to do so.

10. THUS it is clear that there is discrepancy in condition No. 6 of the policy document. The certified copy of the policy document produced by the respondent itself does not mention the upper ceiling limit of the assured sum in case other policies were obtained. The other policies have not been produced and it has not been duly established by the respondents that the life assured obtained similar other policies besides the policy in question. Therefore the respondents plea that they were only liable to pay Rs. 2,50,000 in view of the some other policy cannot be accepted. Accordingly the complainants prayer that additional sum of Rs. 2,50,000 be awarded to her deserves to be allowed and the impugned order deserves to be modified accordingly.

11. THEREFORE the appeal is allowed. The impugned order is modified and it is held that the complainant/appellant is entitled to get assured sum of Rs. 5,00,000 from the respondents/insurers. Since the respondents admittedly have already given cheques of Rs. 2,50,000 they would be liable to pay additional sum of Rs. 2,50,000 to the complainant/appellant. The amount as above shall be payable with interest @ 9% per annum from the date of the complaint. The cost of this appeal shall be borne by the respondents/insurers and they shall pay that of the complainant/appellant, which is quantified at Rs. 2,000 (two thousand) only. Appeal allowed.

