(1998) 11 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

RAMESH KUMAR APPELLANT

Vs

SENIOR DIVISIONAL MANAGER, NEW INDIA ASSURANCE COMPANY LTD. RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Citation : 1999 0 CTJ 447 : 1999 2 CLT 349 : 1999 2 CPC 193 : 1999 2 CPJ 502

Hon'ble Judges : A.L.Bahri , Davinder Kaur Bhamrahs J.

Final Decision : Appeal dismissed

Judgement

1. DISTRICT Forum, Faridkot on August 18,1997 dismissed the complaint filed by Ramesh Kumar against New India Insurance Company. Hence the complainant Ramesh Kumar is in appeal. Ramesh Kumar claimed Rs. 3 lacs from the Insurance Company on account of loss suffered due to death of a Colt, which was insured. The Colt died on January 20, 1991. The said Colt was got transferred in the name of the complainant from M/s. Sunder Stud Agricultural Farm, Kot Kapura vide Transfer Voucher dated November 12,1990. It was thereafter that the aforesaid Colt alongwith others was got insured. Premium of Rs. 24,750/- was paid on January 17,1991 to the Insurance Company. On January 20, 1991, the Colt in question sustained head injury while hitting against the wall. The Colt died. Insurance Company was informed. Report of Dr. Prem Kumar Singla regarding the cause of death was submitted to the Insurance Company. Since claim was not-settled, a registered notice was sent on August 14,1993 to the Insurance Company. The Insurance Company deputed V.I. Nathan who visited the spot and investigated the matter and submitted his report. Inspite of that the claim was not settled. Hence a sum of Rs. 2,75,000/- was claimed as the loss suffered on account of death of the Colt and another sum of Rs. 25,000/- on account of mental agony. On the aforesaid amount/interest was also claimed. The Insurance Company contested the complaint denying the factum of insurance. Necessary parties were not impleaded. Though amount was stated to have been deposited with Insurance Company but no proposal form was submitted. No policy was issued. The complainant was not the owner of the Colt

in question. In other words, the Col t in question was not sought to be insured. Both the parties produced their evidence on affidavits and documents. The claim put forth by the complainant did not find favour with the DISTRICT Forum and the complaint was dismissed.

2. AT the outset, it may be stated that no Cover Note or Insurance Policy was issued. Since the receipt was produced, which is dated January 17,1991, it was assumed that the policy was for a month commencing from January 16, 1991. Two important questions that arise for adjudication in this case are, one, about ownership of the complainant of the Colt in question and second, about the concluded contract of the insurance. On both the points, evidence produced by the complainant is not considered sufficient to record any finding in his favour. The value of the Colt is stated to be Rs. 2,75,000/-. In case the complainant has purchased the Colt from the Stud Farm aforesaid, there would have been documentary evidence of making payment of the consideration for the purchase of the Colt. None has been produced. The only reliance is being placed on some transfer vouchers having been executed by the Stud Farm. Merely because the Colt had died will not prove that the Colt belonged to the complainant. The other significant fact to be noticed is that the complainant had not submitted any Proposal Form for obtaining the insurance policy. The stay of the complainant is on the allegations of the Stud Farm that other Colts of the Stud Farm were got insured on payment of the premium. In case the complainant had proved that he was the actual owner of the Colt and further that the same Colt was got insured, being a beneficiary of the transaction of the insurance contract, he could be treated as a consumer. Since no reliable evidence of ownership of the Colt has been produced by the complainant, he cannot take any benefit of the insurance contract which was sought to be proved having been entered into between the Stud Farm and the Insurance Company.

By merely payment of the premium, no contract of insurance came into existence. Copy of the proposal has not been got produced on the record much less any evidence to indicate that the Insurance Company had accepted the proposal. The contract of hiring services of the opposite party has to be established and consequently it is further to be established that the said contract was for consideration. In the absence of proof of any of the two referred to above, it cannot be held that there was any concluded contract of insurance, deficiency in rendering of which could be a consumer dispute. The file of the Insurance Company was got produced in evidence. But this does not indicate that any such proposal was ever made or accepted by the Insurance Company, Since, there was no policy, that came into existence, obviously there was no question of any repudiation of the claim to be made by the Insurance Company. Furthermore, such complicated questions cannot be gone into in the summary proceedings contemplated under the Consumer Protection Act. The complainant has to be relegated to his remedy in the Civil Court.

3. LEARNED Counsel for the appellant has argued that since number of the policy

was given in the complaint itself, the opposite party was not justified in denying the policy. In the written statement filed by the Insurance Company, it is specifically stated that no such policy was issued. Reference may be made to the decision of Himachal Pradesh State Commission in Smt. Sureshta Devi & Ors. v. The Life Insurance Corporation of India, I (1997) CPJ 459=1997 (1) CPR 477, wherein it was held that there had to be a concluded contract of insurance to enable the complainant to seek remedy under the Consumer Protection Act. Mere receipt or retention of premium did not give rise to a contract. It was held that in the case of insurance proposal silence does not denote consent and mere receipt of premium until after the death of the applicant does not give rise to a contract till acceptance of proposal was communicated. To the same effect is the decision of the Rajasthan State Commission Life Insurance Corporation of India v. Smt. Chandra, 1992 (1) CPR 152. We fully agree with the view expressed in the decisions referred to above for the reasons already discussed above. In the facts and circumstances of the case referred to above, placing reliance on Section 64-VB of the Insurance Act by the complainant is misplaced. This provision only refers to completion of the contract on receipt of the premium in advance. But the question in the present case is entirely different. Even if any premium was received in advance, that per se does not prove conclusion of any contract of insurance. By a positive act of the Insurance Company, the proposal for the insurance is to be accepted and such acceptance is to be communicated to the insured to make a contract of insurance complete. Additional evidence was sought to be produced in the form of affidavit filed on behalf of the Stud Farm indicating Ramesh Kumar was the owner of the Colt which had ultimately died. As already discussed above, in the absence of any reliable documentary evidence of passing of the consideration i.e. price of the Colt, merely on the basis of the affidavit, such a question cannot be decided in favour of the complainant. Additional evidence at this stage cannot be permitted, to be allowed. For the reasons recorded above, this appeal fails and is dismissed with costs of Rs. 2,000/-. Appeal dismissed.

