(2004) 03 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

RAMSAKHI APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Citation : 2004 3 CPJ 589

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Advocate : Brijesh Mishra , Shishir Bhandarkar

Judgement

1. THIS complaint under Section 12 read with 17 is filed on behalf of the parents of the deceased insured Ram Dayal Singh claiming the amount under the Janta Personal Accident Insurance Policy (hereinafter called the ''Janta Policy'' for short) issued by the opposite parties.

2. IT was averred in the complaint that the deceased insured R.D. Singh son of the complainant had obtained Janta Policy No. 152501/47/99/00176, as a member of the Steel Workers Union (INTUC), Bhilai. The said policy covered the risk from 9.1.1999 to 8.1.2011. The assured amount under the said policy was Rs. 5 lacs which was payable in case of accidental death of the insured. The premium of the policy was duly paid by the insured. According to averments in the complaint Ramdayal Singh while travelling by train, met with an accident near Allahabad, as he slipped down from the train and was over run by it. The accident as above proved fatal. The claim was submitted by the complainant No. 1 to the opposite party on 5.10.2000. However, the claim has still not been settled despite notice served on the respondents. The opposite parties insurer resisted the complaint. It was averred that documents viz., FIR, post-mortem etc. submitted by the complainant did not bear the name of the victim, therefore, the investigation on the claim was necessitated. According to the opposite party they appointed investigator Anurag Mishra to investigate the matter. It was denied by the opposite parties/insurers that the deceased Ramdayal Singh died in train accident as averred by the complainant. It was further averred that the claim could not be settled earlier, due to delay in

investigation by the Surveyor. It was further averred by the opposite parties by way of amedment that though the complainant had specifically stated and declared that the insured Ramdayal Singh did not take any group personal accident insurance policy, from any other company but during investigation it was revealed that the said declaration of the complainant was wrong and that the deceased had taken another group insurance policy from United India Insurance Company ensuring for the period from 7.5.1998 to 5.5.2003. It was, therefore, averred that the deceased obtained the insurance policy by suppressing aforesaid material facts.

Averments as above by way of amendment were denied by the complainant. According to them the deceased was a member of Steel Workers Union, under the scheme known as SEWA, deductions of Rs. 20/- from the salary of the deceased as well as other employees were made by the employer-Bhilai Steel Plant and the complainant has been paid Rs. 30,000/- under the said SEWA scheme. It was also averred that the said scheme ''SEWA'' of United India Insurance Co. was not a Group Janta Personal Accident Insurance Policy. It was thus averred that the policy obtained by the insured from the opposite parties was of entirely different nature than the scheme ''SEWA'' run by other Insurance Company namely United India Insurance Company Ltd., of which the deceased was a member.

3. LEARNED Counsel for the opposite parties at the outset raised preliminary objections, regarding the pecuniary jurisdiction of the State Commission. It was contended that compensation claimed in the instant case was only Rs. 6.60 lacs. It was, therefore, contended that this complaint could not be competently heard by this Commission and the matter deserves to be considered by the District Forum, as pecuniary jurisdiction of District Forum has now been raised to Rs. 20.00 lacs as amended by Act No. 62 of 2002. However, it may be noticed that this complaint was filed on 20.9.2002 prior to the said amendment as above coming in force at that time the jurisdiction of the District Forum was limited to Rs. 5.00 lacs. Thus, the complaint was within the competence/pecuniary jurisdiction of the State Commission as the said amendment has not been implemented with retrospective effect. In the above context reference may be made to the decision of Himachal Pradesh State Commission in Vijay Kumar Joshi & Ors. v. Chief Executive Officer-cum-Chief Engineer, Simla Development Authority, III (1993) CPJ 1662. Therefore, the contention of the learned Counsel for opposite parties that this complaint deserves to be remitted to District Forum for consideration and decision is without merit and cannot be accepted. It is not disputed that the insured Ramdayal Singh son of the complainant was duly insured under the Janta Policy, copy of which is placed on record and is marked as Annexure O.P. 1. It is also not in dispute that the said policy was effective from 9.1.1999 to 8.1.2011 and it was issued to members of Steel Workers Union (INTUC), Bhilai subject to terms, conditions, limitations, exceptions, exclusions incorporated in the said policy. The copy of certificate of the said policy also indicates that the sum assured under the policy was Rs. 5.00 lacs. It is

undisputed that the complainant had submitted the claim form on 5.10.2000 on the death of their son Ramdayal Singh on 24.7.2000. Anurag Mishra, investigator was appointed by the opposite parties who conducted investigation in the claim of the complainants/appellants. There are two reports of the said investigator, one dated 28.3.2001 and the other dated 2.11.2001, copies of which are on record. Earlier report dated 28.3.2001 of the investigator Anurag Mishra mentions that investigator visited Police Station Kydgunj, Allahabad and sought information regarding the claim of the complainant. It was also mentioned by the investigator in the said report that the death certificate of deceased insured Ramdayal Singh was issued by an official of Nagar Nigam, Allahabad, and the investigator, therefore, stated in the said report that insurer may proceed in the matter. It appears that there-after again on the instructions of the insurer, vide their letter dated 19.6.2001 further investigation in the matter was made by the investigator. It would appear from the material collected by the said investigator as mentioned in his report dated 2.11.2001, that deceased died as he fell down from the train and, therefore, Anurag Mishra expressed his opinion in his report dated 2.11.2001 that the death of the deceased Ramdayal Singh was incidental (accidental). It may also be mentioned that as per the death certificate Annexure A-2 the deceased died on 24.7.2000 at Garhaiya Kydgunj on the railway line. Copy of the post-mortem report Annexure 4 also indicates that the cause of death was ante-mortem injury to the brain of the deceased.

4. IN the foregoing circumstances there appears little scope of doubt that the deceased died in a train accident as has been alleged by the complainant. IN view of the above, the complainants are entitled to the benefit under the Janta policy. Though the opposite parties have averred that the deceased was married but they have not placed material on record to substantiate the statement as above. Moreover, the complainant No. 2 being the nominee as averred in Para 5 of the complainant, and as also mentioned in the claim form and further also the complainants being the parents of the deceased/insured, appear to be entitled to receive the amount under the said policy. One other ground on which the complainant''s prayer has been resisted by the opposite parties insurer is that insured had suppressed facts that he had obtained another group insurance policy from United India Insurance Co. Ltd. It may be noticed in the above context that condition No. 6 of the insurance policy issued by the opposite parties stipulates that if the insured obtains similar Janta Personal Accident Insurance Policy from other insurer then the total payment by the insurers would be limited to the amount assured by the Janta Policy. Thus the said condition even if it is held to be applicable only postulated that if the other policy obtained by the insured is a similar policy as issued by the opposite parties, then the total payment under all the said policies would be subject to the maximum limit assured by the Janta Policy. However, no documents from the said other Insurance Company has been produced by the opposite parties/insurer to substantiate and prove their averment. The complainants by way of amendment have averred that the deceased/insured was already a member of the scheme

''SEWA'' instituted by his employer, under which subscription of Rs. 20/- per month was deducted from his salary. Copies of the salary slips have been produced by the complainants to substantiate the averments as above. The said salary slips indicate that under the head ''SEWA'' Rs. 20/- p.m. were being deducted from the salary of the deceased. The opposite parties/insurers have not placed any material on record to show the scheme as above was Group Personal Accident Insurance policy. Thus their averments as above remains unsubstantiated. Moreover, as noticed earlier there is nothing on record to show that the ''SEWA'' scheme of which the insured was a member was issued was similar to Janta Accident Insurance Policy issued by the respondents/insurers. Thus even if he was a member of that scheme (SEWA) and Rs. 20/- were being deducted towards subscription of the said scheme by the employer from the salary of the insured it would not mean and imply that the deceased had obtained similar Janta Policy from any other insurer. Therefore, the insurers/ respondents are not entitled to any benefit under condition No. 6 of the policy.

5. IN the foregoing circumstances, it is clear that the complainants are entitled to receive the amount of Rs. 5.00 lacs under the insurance policy issued by the opposite parties in favour of the deceased/insurer Ramdayal Singh. It may also be noticed that though the reports of the investigator were received on 28.3.2001 and 2.11.2001, by the opposite parties insurer, yet they did not settle the claim till the complaint was filed on 26.9.2002. There appears to be no justification whatsoever for not doing so. The delay as above clearly amounts to deficiency in service. Reference in the above context may be made to the decisions of National Commission in Rajendra Plastic Ltd. v. New INdia Assurance Co., II (2004) CPJ 19 (NC)=2000 (3) CPR 91 (NC) and M/s. Padamshree Tobaco Co. v. D.M. New INdia Assurance Co., II (2002) CPJ 96 (NC)=2000(3) CPR 172 as well as to the decision of Supreme Court in Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC)=1994 (1) SCC 262 wherein it was held that the delay on the part of public sector authorities is to be highly deprecated.

6. THUS, though the claim form was submitted by the complainants as long back as on 5.10.2000, the claim of the complainants, the unfortunate parents of the deceased insured was not settled for unreasonably long period and even till now. We will allow a reasonable period of 3 months in the circumstances of the case within which the claim ought to have been settled and since it was not so done, interest deserves to be awarded on the assured amount payable from 1.1.2001 @ 10% per annum. Further, as there was unwarranted delay and total lack of sense of responsibility and sensitivity, establishing deficiency in service on the part of opposite parties/insurers, we further award a sum of Rs. 20,000/- payable as compensation to the complainants. Accordingly this complaint is allowed. It is directed that opposite parties insurer shall pay to the complainant the assured sum of Rs. 5.00 lacs with interest @ 10% per annum from 1.2.2001 till payment. Opposite Parties shall also pay to the complainant a sum of Rs. 20,000/- as compenstion for deficiency in service. Opposite parties shall bear their own cost of this appeal and shall also pay that of the complainant which is

quantified at Rs. 5,000/- (Rupees five thousand) only. Complaint allowed.

