(2014) 04 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

RESHAM DEVI APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Citation : 2014 0 NCDRC 209

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : AJAY JAIN , ABHISHEK KUMAR

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 28.03.2012 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, ''the State Commission '') in Appeal No.338 of 2012 - Smt. Resham Devi Vs. The New India Ass. Co. Ltd. & Anr. by which, while dismissing appeal, order of District Forum allowing complaint partly was upheld.

2. BRIEF facts of the case are that Karam Chand husband of complainant - petitioner purchased 16 insurance policies from OP No. 1/Respondent No.1through OP No. 2/Respondent No. 2 for a sum of Rs.1,00,000/ - each for a period of one year from 18.6.2002 to 17.6.2003 and benefits were payable as mentioned in paragraphs 3 of the complaint. On 30.3.2003, Karam Chand fell down from stair case and sustained injuries and was taken to Janta Charitable Hospital from where he was referred to Maharaja Agrasain Hospital on 31.3.2003 and he expired on 2.4.2003. Claim was filed by the complainant for the amount of 16 policies and Rs.50,000/ - as expenses incurred in treatment. OP has not paid amount so far. Alleging deficiency on the part of OP, complainant filed complaint before District forum. OP No. 1 resisted complaint and submitted that claim was not yet rejected and it was pre -mature complaint. It was further submitted that one person could have been given only one policy and in such circumstances, OP was liable only for Rs.1,00,000/ - subject to accidental death and genuine claim. It was further submitted that complaint was liable to be dismissed for non -joinder of necessary parties. Also alleged that subsequent policies taken after first policy are null and void and prayed for dismissal of

complaint. . OP No. 2 did not appear before District Forum and was proceeded ex -parte. Learned District Forum after hearing both the parties allowed complaint partly and directed OP No. 1 to pay Rs.1,00,000/ - along with 10% p.a. interest and also awarded Rs.2,000/ - as litigation expenses. Appeal filed by the petitioner was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed. None appeared for Respondent No. 2 even after service and he was proceeded exparte.

3. HEARD learned Counsel for the petitioner and Respondent No.1 and perused record.

4. LEARNED Counsel for the petitioner submitted that as terms and conditions of the policy were not supplied to the assured, complainant was entitled to claim benefit of all the 16 polices and Learned District Forum committed error in allowing complaint only to the extent of one policy and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that petitioner has not placed on record original cover notes/policy issued by Respondent no. 1 and order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed. It is admitted case of the complainant that complainant ''s husband purchased 16 polices and as per allegations in the complaint, assured Karam Chand fell down from stair case and sustained injuries and ultimately succumbed to death. Perusal of policies placed on record issued by OP No. 2 clearly mentions salient features of Group J.P.A. policy, which runs as under: ''''The Policy Grant Benefits enumerated hereunder if the Insured person (s) sustain any bodily injury resulting solely and directly from an accident caused by external, violent and visible means, including fire, drowning, snacks bite, hit by animals, rail, road and air accidents etc.

5. THIS feature clearly indicates that benefits under this policy are available only when ''''an accident is caused by external violent and visible means '''' meaning thereby, he must have died due to visible external injuries caused by someone violently, whereas in the case in hand, injuries on account of which Karam Chand died, were not caused by violent means by any third person, but he sustained injuries on account of fall from stairs. Complainant has neither produced injury report, nor post -mortem report and in its absence, it cannot be presumed that on account of external violent visible injuries, Karam Chand died; so, apparently, claimant was not entitled to receive benefits of any policy.

6. COMPLAINANT has placed on record certificates of policies issued by OP No. 2 in favour of Karam Chand. Complainant has not placed on record any cover notes issued by OP No. 1 or issued by OP No. 2 in the name of OP no. 1 in favour of Karam Chand. Complainant has not placed any receipts depositing amount of 16 policies with OP No. 1 and in absence of all these documents, no liability can be fastened on OP No. 1. OP No. 1 has not challenged order allowing complaint partly against him. Learned Counsel for the petitioner submitted that terms and

conditions of policies were not supplied to insured during his life time and in such circumstances, insured was not bound by terms and conditions of the polices regarding issuance of only one policy to one person. He placed reliance on (2000) 2 SCC 734 - Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd. in which it was held that it is the duty of the insurance company and its agent to disclose all material facts in their knowledge to the insured. We agree with the proposition of law laid down in aforesaid judgment, but this citation is not applicable to the facts and circumstances of this case. Learned District Forum observed in its order that terms and conditions of policy were made known to OP No. 2 through letters Ex. R -30, 31 and 32 well before purchasing of the policy by the life assured. Complainant nowhere in the complaint has pleaded that terms and conditions of the policy were not supplied to assured. In such circumstances, it cannot be presumed that assured was not made aware of the terms and conditions of the policy by OP No. 2 acting as an agent of OP No. 1. As per Section 227, Indian Contract Act, OP No. 1 being principal is not bound by the acts of agent OP No. 2 when OP NO. 2 exceeded its authority in issuing 16 policies to the assured Karam Chand, whereas only one policy could have been issued.

7. WE do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

8. CONSEQUENTLY , revision petition filed by the petitioner is dismissed with no order as to costs.

