(2013) 05 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

Rukma Devi W/O Radhey Shyam Khemka APPELLANT

Vs

Branch Manager, Sahara India Ltd RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 461 : 2013 3 CPJ 82

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Judgement

1. PETITIONER /Complainant addressed a letter dated 09.12.2011 to President of this Commission and same has been treated as revision petition. Following averments have been made in it; " Sir, I had appealed against the case no.183/03 of Cuttack State Consumer Disputes Redressal Commission, Orissa, Cuttack on 24.4.2004. Sir, I had gone to the Consumer Forum 3-4 times at Cuttack but there the officer told that why you come again and again. Whenever there is hearing of your case, we will inform you before. But at the time of hearing, they did not inform us anything; only judgment was sent through post. On going there and asking in the Court, the officer said that they had forgotten to inform about the hearing. Now, nothing can happen here. You appeal in the National Consumer Court. Therefore, I am sending photo copy of all the records and order of the State Consumer Court so that I get justice. Now, Manager of Sahara Parivar States that you did not give what we wanted. No, wherever you lodge the case, you cannot win. So, please arrange to get me proper compensation and give us justifiable help ".

2. BRIEF facts as emerges from record are that, one Radhey Shyam Khemka, his wife-Rukma Devi(Petitioner herein) and Tara Chand Khemka filed a complaint before District Consumer Disputes Redressal Forum, Bolangir (for short, ''District Forum '') alleging that they deposited amount under "Golden-7 Scheme " formulated by the Respondent/O.P. Tara Chand Khemka deposited Rs.42,000/- @ Rs.6,000/- yearly for 7 years vide A/c No. 18435001300 and his wife Rukma Devi deposited Rs.39,000/- @ Rs. 500/- per month for 6 1/2 years vide A/c. No. 184350080 As per pass-book chart, T.C. Khemka would get Rs.79,018/- but

respondent has paid Rs.73,216/- i.e. Rs.5,802/- less and Smt. Rukma Devi has got Rs. 63,872/- in place of Rs.72,473.65 P i.e. Rs.5,606.65P less. It is further alleged that not only that, respondent has not made entry of Rs.500/- in the monthly deposit of Smt. Rukma Devi. Complainants brought these facts to the knowledge of the respondent and requested him to pay the full maturity amount but respondent did not care to pay the same. Hence, this case.

3. RESPONDENT in its objection stated that no doubt Rs.500/- has not been entered in the account of Rukma Devi due to clerical error and when the said fact came to his knowledge he immediately contacted his higher authority and on their directions, made entry in the account of the Petitioner of Rs.1,043/- for Rs.500/-. Both the policy holders have received their amount without any objection. Policy holders are entitled to receive full maturity amount if they make the payment of the premium on or before the due date. In case of default there will be reduction in the payment of interest and ultimately the maturity amount will be less. Both the policy holders defaulted from the beginning to deposit the premium within due date as per policy condition for which less maturity amount was given to them rightly. There is no deficiency in service of the respondent. Hence, the case may be dismissed with cost.

4. DISTRICT Forum, vide its order dated 18.3.2004, partly allowed the complaint. Being aggrieved by the order of District Forum, Smt. Rukma Devi, one of the petitioners filed an appeal before the State Commission.

5. BEFORE the State Commission when the matter was called for hearing, none appeared on behalf of the petitioner while counsel for respondent was present. Vide impugned order dated 22.09.2011, appeal of the Petitioner was dismissed.

6. HENCE , this petition. On 30.3.2012, after hearing the husband of the petitioner, notice was issued to respondent for 27.7.2012. On 27.7.2012, none was present on behalf of the petitioner, hence revision petition was dismissed in default and for non-prosecution.

7. LATER on, petitioner filed an application for restoration which was allowed in the absence of the petitioner, vide order dated 4.12.2012 and matter was listed on 14.2.2013.

8. THEREAFTER , on 14.2.2013 at the time of admission hearing again petitioner did not appear. However, she has sent an application stating that due to her poor financial condition she is not able to undertake the journey to this Commission and the decision taken by this Commission shall be acceptable to her. As some of the documents filed alongwith revision petition were in Hindi, Registry was directed to get the same translated into English and the same has been done. We have perused the record.

9. DISTRICT Forum, in its order has held ; "On scrutinizing the pass books filed by the complainants with are marked as Ext. A and B and also the ledger folio filed by the O. P. marked as Ext. C and D, found that complainant have not

deposited some of their premium within due date i.e. in the first week of every month as enumerated in the terms and condition of Golden-7 Scheme in para 3(b). Complainants have submitted that they have paid the premium amount to the agent of the O.P. within due date and he must have not deposited the same with the O. P. in due time, for which complainants are not responsible. The said contentions is not acceptable, because as per terms and conditions of the Scheme mentioned in para-3(a) i.e. Mode of Payment- " All payments to the company shall be made either by way of cheques, draft or cash against receipt countersigned by its authorized signatory. Payment by any other mode or media other than mentioned above shall be at the Account Holder ''s own risk ". Policy holders are entitled to receive the full maturity amount if they would have make payment of the premium on or before the due date which complainants have failed to do so and ultimately the maturity amount will be less. O. P. has admitted the fact of non entry of Rs. 500/- in the Account Ledger of Smt.R. Devi for which O.P. is agreed to pay Rs.1,043/- including interest over Rs. 500/- as per payment advice(Ext. E). Hence, ordered: "Complainant Rukma Devi is entitled to get Rs.1,043/- with interest @. 9% P.A. since 20.09.2003 till payment with cost of Rs. 200/- ".

10. THE State Commission, concurred with the decision of the District Forum and consequently dismissed the appeal observing as under; " When the matter was called for hearing nobody appears for the appellant nor there is any mention made on behalf of the appellant. Heard Mr. S. Nanda on behalf of Mr. L. K. Kanungo, learned counsel appearing for the sole respondent. Perused the record, impugned judgment and order as well as the LCR. In the course of hearing, learned counsel for the respondent submits Xerox copy of Maturity/Stage Withdrawal showing the net payable amount of Rs.1,043/- to be paid to the appellant. In view of the above submission made by the learned counsel for the respondent, we are of the opinion that the Forum below has rightly passed the order in favour of the appellant and therefore, the impugned order needs no interference. Hence the impugned order is upheld being just, fair and legal ".

Under section 21 (b) of the Consumer Protection Act, 1986 this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

11. 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. "

12. IT is apparent form the record that, after filing the appeal none appeared for the petitioner before the State Commission. However, State Commission after carefully scrutinizing the record has categorically observed; "In the course of hearing, learned counsel for respondent submits Xerox copy of Maturity/Stage Withdrawal showing the net payable amount of Rs.1,043/- to be paid to the appellant ". It clearly shows that sum of Rs.1,043/- due to the petitioner has been duly paid.

13. IN view of the concurrent findings of facts given by the two fora below, no jurisdiction or legal error has been shown to call for interference in the exercise of power under section 21 (b) of the Act. Both the fora have given cogent reasons in their order which do not call for any interference nor do they suffer from any infirmity or revisional exercise of jurisdiction.

14. IT is not that every order passed by the fora below is to be challenged by a litigant even when the same is based on sound reasonings. Thus, present revision petition having no merits and the same being without any legal basis, is hereby dismissed.

15. NO order as to cost.

