(2004) 01 PAT CK 0072

In the Patna High Court

Case No : C.W.J.C. No. 1001 of 2002

Sandhya Sah — APPELLANT

Vs

New India Assurance Co. and Others — RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34
Contract Act, 1872 — Section 125

Citation : AIR 2004 Patna 42 : (2004) 2 PLJR 183

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Rama Kant Sharma and Lakshmi Kant Sharma, for the Appellant; Dinesh Kumar Singh and Sunil Kumar and Ajay Kumar Sinha, for the Bank, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—This case is now confined to the petitioner''s claim for interest for the delay in payment of the sum assured against the accidental death of her husband. In the facts and circumstances of the case, the claim of the petitioner appears quite irresistible. Hence, the only question that needs to be addressed is as to which of the two respondents would be liable to recompense the petitioner for the delay in payment. The two respondents in this case are the Central Bank of India and the New India Assurance Company, both well-known and big names in their respective areas of operation in the Public Sector. Unfortunately, in this case both the Public Sector giants appear in very poor light in regard to their internal functioning as well as in their dealing with one another. The sad part is that it was an individual person, the petitioner, who was made to suffer because the bank and the Insurance Company did not keep their records properly.

2. The facts of the case are very brief and can be stated thus. The petitioner is the widowed wife of Late Krishna Chandra Sah who died in a car accident at Durban, South Africa on 9-12-1995. At the time of his death he was holding a

''Centralcard'' and a ''Leela Centralcard'' issued by the Central Bank of India, Boring Road Branch, Patna. The Leela-Centralcard gave the card-holder an insurance coverage benefit of Rs. 10 lacs in case of accidental death. It appears that in the circumstances in which the death of her husband took place, the petitioner was not even fully aware of the different insurance policies/cards held by her deceased-husband. The Centralcard held by the deceased-husband of the petitioner was discovered earlier. It was submitted to the bank and the payment of the insurance money under that card (Rs. 1 lac) was made to the petitioner without much difficulty or delay.

3. In this case the Court is concerned with the payment under the Leela Centralcard. It is undeniable that the card in question was submitted by the petitioner before the Central Bank of India on 17-12-1998 and on the same day information in regard to its submission was sent by the bank to the New India Assurance Company. Yet no payment was made to the petitioner for over three years and she finally filed this writ petition on 7-1-2002 seeking a direction to the respondents-bank and the Insurance Company for paying her the insurance money of Rs. 10 lacs under the Leela Centralcard. A cheque of Rs. 10 lacs was offered to her by the Insurance Company in course of the proceedings before this Court on 22-4-2003. The petitioner initially declined to accept the amount without reasonable interest for delayed payment, but, later on, under constraint of her circumstances she accepted the cheque as recorded in the order, dated 20-5-2003.

4. However, Mr. Rama Kant Sharma, counsel appearing on behalf of the petitioner made a strong claim for interest on delayed payment of the insurance money. It is noted above that the card was submitted before the bank on 17-12-1998 and the payment of the assured sum was offered by the Insurance Company to the petitioner on 22-4-2003. A delay of over three years in payment of the assured sum cannot be justified by any reckoning and hence, the petitioner''s claim of interest is quite proper and reasonable. But the question arises as to who between the two respondents, the bank and the Insurance Company can be held liable for payment of the interest.

5. Before proceeding to examine this question, it may be stated that the position of the pleadings in this case remained highly unsatisfactory right up to the end. The writ petition itself was quite sketchy and did not state all the relevant facts. But the petitioner, the widowed wife of the person assured, cannot be much blamed for this. Her grievance was simply that her deceased husband at the time of his accidental death held a valid and subsisting Leela-Centralcard that provided an insurance cover of Rs. 10 lacs. The card was submitted by her to the bank on 17-12-1998 but no payment was made even after three years.

6. If the writ petition was sketchy, equally confusing and wanting in relevant details were the affidavits filed by the two respondents. In their respective affidavits the bank and the Insurance Company mostly wrangled with each other and tried to shift the blame for the delay in payment to one another. It appears

that on the question of payment under the Leela-Centralcard issued to the petitioner''s husband much correspondence took place between the Insurance Company and the bank. It appears that there was some confusion in regard to the number of the card issued to the deceased-husband of the petitioner and another card issued to some other client of the bank. The Insurance Company was also not fully satisfied in regard to the payment position of premium in regard to the card in question. At one stage the Insurance Company seems to have taken the position that the bank had issued cards in excess of the number for which premium were paid by it to the Insurance Company.

7. This was the position when the parties were earlier heard on 27-6-2003 and the order in the case was reserved. Later on, the Court found that the pleadings were owefully inadequate and it would not be possible to pass a proper and effective order unless all the relevant facts were placed before the Court. The case was then brought under the heading "To be mentioned" on 23-9-2003 and on 25-9-2003 the Court gave the following directions to the counsel for the bank and the Insurance Company :

"It is noted above that the husband of the petitioner, the person assured, had purchased the Leela-Central card from the local branch of the Central Bank of India. What were the terms and conditions of the card and under its terms and conditions who was liable to make the payment? This question assumes importance in view of the statement made in the pleadings by the Insurance Company (unsupported by any documents) that it was originally the liability of the Central Bank to make payment to the assured and to later settle the claim with the Insurance Company.

In view of the position as indicated here, Mr. Ajaykumar Sinha, counsel for the Central Bank is directed to produce before the Court the full scheme of Leela-Centralcard and the terms and conditions on which the card was issued to its clients, including the deceased-husband of the petitioner. The Bank and the New India Assurance Company are further directed to produce the full and complete set of documents on which their inter se relationship vis-a-vis the person assured is based in regard to the insurance cover under the Leela-Centralcard. Counsel for the Bank and the Insurance Company are allowed one month''s time for production of the aforesaid documents.

Put up this case as a part-heard matter on November 4, 2003.

Let a copy of the order be given each to Mr. Ajay Kumar Sinha and Mr. Dinesh Kumar Singh."

8. Even after six weeks neither the bank nor the Insurance Company produced the materials and documents asked for by the Court and consequently in the order, dated 4-11-2003 the Court observed that by withholding the relevant documents the bank and the Insurance Company seemed to be trying to frustrate the process of adjudication before the Court. It was further observed that the Managing Directors of the Bank and the Insurance Company had made

themselves liable to be proceeded for contempt of the Court. But before initiating any proceeding against them the Court allowed further time till November 17, 2003 for complying with its direction for production of the materials called for.

9. After that the bank filed two supplementary affidavits (calling them ''the supplementary affidavit'' and ''the second supplementary affidavit'') on 18-1-2003 and yet another affidavit (''3rd supplementary affidavit'') on 24-11-2003. The Insurance Company similarly filed a supplementary affidavit on 6-11-2003 and another supplementary affidavit on 14-11-2003. Even these further affidavits did not produce the materials called for by the Court but were, rather, in the nature of an apology.

10. The Bank in its bumbling way enclosed (as Annexure A/2) a photo copy of Policy No. 42/111700/1685. In the affidavit filed by the Insurance Company it was hotly denied that policy related to the Leela-Centralcard issued to the petitioner''s deceased-husband. Then the bank in its 3rd supplementary affidavit filed on 24-11-2003 admitted the fact that the photo copy of policy at Annexure A/2 did not relate to the Leela-Centralcard in question but sought to explain its action in enclosing an altogether different policy by stating as follows :

''The Central Card Department vide letter No. 258, dated 15-11-2003 informed this deponent that in February 1995 vide Policy No. 42/111700/100029 only one Leela Card i.e. the petitioner was insured under Personal Accidental Insurance Policy Group for Rs. 10 lacs but since the original policy was not traceable in bank''s record readily and a xerox copy of the same was obtained from the Insurance Company but since the enclosure containing the terms and conditions of the policy was not there another policy taken by the bank in relation to other card holders (Annexure A/2 series) were filed with Annexures as sample since the "Personal Accident Insurance Group" has standard set of terms and conditions for every such policy."

(This is only one of the examples of how records are maintained at the bank and how it conducted the case before this Court).

11. Along with its supplementary affidavit (filed on 18-11-2003) the bank also enclosed a photostat copy of a Central Office Circular, announcing the launching of the Leela-Centralcard. From this circular, it appears that it was issued in collaboration with "Leela Kempiksni", a leading Five Star Hotel in Bombay. The circular briefly mentioned the benefits and facilities available to the holders of the card which included payment by card in lieu of cash. Clause 5 of the circular letter referred to an Annexure furnishing the salient features of the Leela-Centralcard. The Annexure is quite brief, containing four clauses from (a) to (d). Clause (a) which is relevant for the present reads as follows :

"BENEFITS TO CARD HOLDERS :

(a) An automatic accident Insurance Coverage Benefit of Rs. 10 lakhs per card-holder.

*Rs. 10 lakhs on death.

*Rs. 2 lakhs on major loss and permanent disability.

*Rs. 1 lakh on major loss and temporary disability."

12. The Insurance Company in its supplementary affidavit filed on 6-11-2003 stated that the memorandum of understanding (MOU) executed between New India Assurance Company and the Central Bank was not traceable in the office. In the later affidavit filed on 14-11-2003 it was stated that in fact no MOU was executed between the bank and the Insurance Company. In the supplementary affidavit of the Insurance Company, it was further stated that the insurance contract was entered into between the Insurance Company and the bank. It was emphasised that the Leela-Centralcard holder had no contact with the Insurance Company at all. He had purchased the card from the bank and had no direct or indirect contract with the Insurance Company. The Insurance Company enclosed as Annexure 0/1 a photostat copy of Policy No. 42/111700/10029, stating that the Leela-Centralcard issued to the deceased-husband of the petitioner was covered by this policy.

13. From the averments made in the affidavits filed by the Insurance Company, it appears that the insurance policy is identified as relating to the Leela-Centralcard in question not on the basis of any direct or definite evidence but by a process of elimination. (This is the state of affairs of the record keeping at the Insurance Company).

14. In the supplementary affidavit by the Insurance Company, it is stated that the Insurance coverage was under the Misc. Accident Insurance Policy and, therefore, the terms and conditions of the Personal Accident Insurance Group were applicable in the case. A copy of the terms and conditions of the Personal Accident Insurance Policy Group was enclosed with the supplementary affidavit as Annexure ''Q''.

15. From the photo copy of Insurance Policy No. 42/111700/10029 it appears that the policy was taken by the Central Bank of India for the period 1-2-1995 to 31-1-1996. The total premium paid by the bank to the Insurance Company was Rs. 3,98,158/-. On the printed form, under the typed heading, ''Group Personal Accident Insurance Policy'' it was indicated that the premium was in regard to 10105 Central card and 1 Leela card. The card numbers or the names of the holders of the cards are not indicated on the printed form but it is stated, ''particulars as per list as attd.'' The list appended to the policy document has not been produced in Court and it is, therefore, not clear whether even the list contained the names of the card-holders or simply the numbers of the cards were given. It is further significant to note that even the copy of the policy document has come from the Insurance Company and not from the bank which had sold the card promising to the customer an automatic insurance cover.

16. These are all the materials that have finally come before the Court even after

the Managing Directors of the bank and the Insurance Company were put on notice for initiating a proceeding of contempt.

17. The way records appear to be maintained by the bank and the Insurance Company appears both baffling and unfortunate to the Court.

18. From the facts and circumstances discussed above, the position that emerges may be enumerated as follows :

(i) Krishna Chandra Sah had taken the Leela-Centralcard from the Central Bank of India, Boring Road Branch, Patna.

(ii) The card was taken by him with the bank''s promise that it would give him an insurance coverage of Rs. 10 lacs in case of accidental death. Though there was the promise of insurance coverage, the means for providing the insurance cover was not specified. There are no documents to show that following the sale of the card the bank took any insurance policy under his (cardholder''s) signature or directly on his behalf. From the materials brought before the Court, it does not appear that the purchaser of the card, Krishna Chandra Sah was made aware that the insurance cover would come from the New India Assurance Company or from any other Insurance Company X, Y or Z. The purchaser of the card was obviously not informed about the nature of the policy or its terms and conditions.

(iii) On issuing the card to Krishna Chandra Sah, the bank got for it an insurance cover by taking a policy from the New India Assurance Company and paid the premium for that card along with a number of other Central cards.

(iv) The card holder died in a car accident on 9-12-1995. On that date the card was valid and its insurance cover was subsisting.

19. From the foregoing it is clear that in this matter there were two distinctly separate contracts. One contract was in regard to the sale of the Leela-Centralcard. This was between the bank and the purchaser of the card, Krishna Chandra Sah. The other contract was a contract of insurance between the bank and the New India Assurance Company. The bank was a party to both the contracts but the card-holder and the Insurance Company were not directly parties to any contract. The contract of sale of the card being between the card-holder and the bank, the claim for enforcement of the promise under the card would lie only against the bank and the card-holder can have no direct claim against the Insurance Company as there was no privity of contract between the card-holder and the Insurance Company. As a consequence of the claim made against the bank by the card holder or his heir, as the case may be, a claim would arise by the bank against the Insurance Company under the policy of Insurance. But these are two separate claims, arising under two different agreements. In other words, on the death of the card-holder the bank was obliged to fulfil its promise to him by making payment of Rs. 10 lacs and then to realise the sum assured from the Insurance Company. In case the transaction between the bank and the Insurance Company were to be completed within a

reasonable time, without making the claimant to wait inordinately, the bank could have first realised the money from the Insurance Company and then passed it on to the claimant. But in case of delay it was quite unreasonable on the part of the bank to make the claimant wait inordinately, till the disputes between the bank and the Insurance Company were sorted out.

20. Mr. Ajay Kumar Sinha, counsel appearing for the bank submitted that the bank has no legal authority to do any insurance business. It had floated the card making the promise, inter alia, that the purchaser of the card will also be provided with an insurance coverage. The bank did provide an insurance coverage by entering into a contract with the Insurance Company and paying the premium for the insurance contract. Under the insurance contract the card-holder was the beneficiary. Hence, the claim of the cardholder would only lie against the Insurance Company and not against the bank. I am unable to accept the submission. As noted earlier even the policy document has not been placed before the Court in whole and it is not known whether in the list attached to the printed form only the card number was mentioned or the name of the cardholder was also indicated. But even assuming that the policy document had the name of the card-holder indicated on it, that will not prevent the card-holder/his heir from raising the claim against the bank on the basis of the promise made by it at the time of the sale of the card.

21. It is also true that finally the payment was made to the petitioner by the Insurance Company, But the mere fact will not create any contractual relationship between the parties giving rise to any rights or obligations.

22. This being the position the bank must be held liable for payment of interest for the delay in payment of the sum assured under the card. The Central Bank of India is accordingly directed to pay interest to the petitioner at rates applicable to a term deposit at the material time, For calculation of interest the sum of Rs. 10 lacs shall be deemed to have been put in term deposit with the Central Bank of India on 17-12-1998 (the date on which the card was submitted to the Bank). The term deposit would be renewable annually and the interest would be calculated till 22-4-2003 when the assured sum was offered to the petitioner. The amount of interest must be paid to the petitioner by the Central Bank of India within one month from the date of receipt/production of a copy of this order in the office of the Chief Manager, Central Bank of India, Zonal Office, Patna.

23. It is made clear that this order is being passed primarily on the principle of privity of contract. This Court is not expressing any opinion as to whether it was the Bank or the Insurance Company that was responsible for the delay in sorting out their inter se dispute after which the claim of the petitioner arising under the card could be settled. This order shall, therefore, not stand in the way of the bank in case it claims the amount of interest from the Insurance Company. In case the bank initiates a legal proceeding against the Insurance Company in that regard, that will be decided in accordance with law on its own merits and this order or any observations made herein shall not cause any prejudice to the

bank''s claim.

24. In the result, this writ petition is allowed with the aforesaid observations and directions.

