(2003) 09 NCDRC CK 0100

In the National Consumer Disputes Redressal Commission

SANTI DEVI CHOKHANI — APPELLANT

Vs

Life Insurance Corporation of India — RESPONDENT

Date of Decision : 13-09-2003

Acts Referred:

Citation : 2004 2 CPJ 782

Hon'ble Judges : N.S.Singh , Ramesh Bawri J.

Final Decision : Appeals dismissed

Judgement

1. ON a complaint filed by Smt. Santi Devi Chokhani against Life Insurance Corporation of India (LIC, hereinafter), registered as Complaint Petition No. 18(S) of 96, the District Forum, Shillong passed its order on 19.4.1997. Both the complainant as well as LIC were aggrieved by this order and filed their respective appeals before this Commission. Both appeals were, therefore, heard analogously and are accordingly being disposed of by this common order.

2. SHORN of irrelevant details, the brief facts of the complainants case are that her husband, late Jiwan Ram Chokhani, (hereinafter the insured) executed Life Insurance Policy No. 480397587 commencing on 28.4.1991 for a sum assured of Rs. 2 lacs on a 10-year term. After payment of the first annual premium of Rs. 24,244.00 no further premiums were paid by the Insured and the policy, therefore, lapsed in April, 1992. Thereafter, vide letter dated 2.3.1995 the Insured requested LIC to revive the lapsed policy under the Special Revival Scheme and between the period 15.3.1995 - 8.9.1995 submitted to them various medical reports and his Personal Health Statement. Despite the request made on 2.3.1995 for revival of the lapsed policy and even though the Divisional Manager, LIC (O.P. No. 1) had, as it transpired, decided to revive the policy and had issued necessary instructions to the Sr. Branch Manager, LIC (O.P. No. 2) in this regard on 3.11.1995, the Insured did not get any communication from the latter and was, therefore, unable to deposit the arrears of premium and interest.

Unfortunately, soon thereafter on 26.1.1996 the Insured passed away. Thereupon the complainant - nominee submitted her claim on 8.3.1996 which was neither paid by LIC nor any written refusal given to her. She, therefore, approached the District Forum seeking redressal.

3. BEFORE the Forum, LIC denied any liability under the Policy claiming that their Branch office had already informed the Insured that although revival of the policy under the Special Revival Scheme was not permissible, sanction for revival under normal terms had been accorded by their Divisional office on 3.11.1995 and that this was immediately communicated to the Insured on 9.11.1995 calling for a declaration of good health in Form No. 680 and payment of a sum of Rs. 1,17,074/- (comprising 4 instalments of annual premium @ Rs. 24,244/- p.a. and Rs. 20,098/- being interest due thereon) which requirement was not complied with by the Insured and as such the policy remained in lapsed condition. In its detailed order dated 19.4.1997 the Forum concluded that the point that was required to be determined was whether the revival of the policy was in fact not done due to non-compliance of LICs requirements on the part of the Insured or was it otherwise. The Forum came to the finding that, except for the statement made by LIC in their show-cause reply that the letter dated 9.11.1995 asking the Insured for payment and declaration of good health had been sent to the Insured, there was no tangible proof whatsoever from LIC in that respect and they failed to prove that the letter had in fact been despatched by them and received by the Insured. The Forum also found it suprising that while the LIC Branch office admitted having received the approval from their Divisional Office on 9.11.1995, they claimed to have communicated the approval to the Insured on that very day.

4. THE Forum concluded that the letter dated 9.11.1995 communicating LICs decision to revive the policy and calling upon the Insured to pay the arrear premium, etc. could not be proved to have been despatched by LIC and that unless the Insured was informed of such requirements he could not be expected to act upon them. Negligence was, therefore, attributed to O.P. No. 2 for keeping the Insured in the dark about the revival of the Policy as a result of which the Insured was not able to take necessary action towards payment of arrear premium, etc. Accordingly the Forum held that the lapsed policy was deemed to have been revived on original terms subject to the condition that the arrear premium would be deducted from the sum assured and the rest be paid to the complainant together with interest @ 15% p.a. from the date of filing of the complaint till payment and if not so paid within 2 months additinal interest @ 18% p.a. would accrue on the said amount till payment. The Forum also awarded Rs. 5,000/- as compensation due to the deficiency in service on LICs part. We have heard Mr. R.K. Tomma Singh, learned Counsel for Smt. Santi Devi Chokhani, the appellant in C. Appeal No. 8(M) 97 and respondent in C. Appeal No. 9(M) 97. Although Mr. B.P. Dutta, Advocate, appeared on behalf of LIC on earlier occasions, none appeared for LIC on the date fixed for hearing of both the appeals, although this Commission had made it clear on the last date that no further adjournment would be entertained. We have also thoroughly examined and perused the records of the Forum which are before us and also both the

Memos of Appeal and have applied our minds thereto. Appeal No. 8(M)/97 :

5. THE main grievance that the complainant as Appellant in appeal No. 8(M) 97 has, is that the Forum ought to have granted her full relief as prayed for in the complaint petition in respect of the claim for compensation of Rs. 1 lac due to negligence and deficiency in the service rendered by LIC.

6. AS stated by us, the Forum has already directed that the policy be revived on original terms subject to deduction of the arrear premium and has further awarded interest @ 15% p.a. form the date of filing of the complaint till the date of payment besides an additional sum of Rs. 5,000/- as compensation to the complainant. Clause (d) of Section 14(1) of the Consumer Protection Act, 1986 empowers the Consumer Fora to award compensation to the consumer for any loss or injury suffered by him due to negligence of the opposite party. We are of the view that compensation may be quantified and awarded by the Consumer Fora in various forms and an award of interest is one such form. Under the Consumer Protection Act there is no separate provision for payment of interest and any award of interest by the Consumer Fora is in fact an award of compensation to a Consumer, both for the loss and the injury suffered by him due to the negligence of the opposite party it is not an award of interest in the general sense of being a return or compensation for the use or retention of anothers money. Therefore, under the C.P. Act, payment of interest can be said to be the general method and the rate of interest the general measure by which the loss and injury is determined and compensation awarded to an entitled consumer by the Consumer Redressal Agencies. We are fortified in this view by the decision of the National Commission in Ghaziabad Development Authority v. Dr. N.K. Gupta, reported in (2002) 258 ITR 337. In the above view of the matter, we are of the considered view that the award of compensation made by the Forum calls for no enhancement and stands confirmed by us.

The appellant has however also stated in the Memo of Appeal that non-awarding of Bonus and other benefits on the policy by the Forum had frustrated her claim. In this regard we are of the view that since the Forum had already ordered that the policy would be deemed to have been revived on original terms, whatever benefits accrue to her according to the terms of the policy would naturally follow. The Forum was not expected to spell out the benefits or to calculate the payable amount which is for LIC to do in accordance with the terms of the relevant Policy, treating it as having been revived and being in force on the date of demise of the Insured.

7. SUBJECT to the observation made above, Appeal No. 8(M)/99 is, therefore, dismissed as having no merit whatsoever. Appeal No. 9(M) 97 : Now coming to Appeal No. 9(M) 97 filed by LIC, it is contended that the Forum erred in its finding that there was no proof of despatch of the letter dated 9.11.1995 asking the Insured to pay the arrear premium. According to LIC, the photocopy of the extract from their Despatch Register which was filed by their Counsel during the course of hearing before the Forum was ample proof of despatch.

8. WE are, however, not convinced by this argument for the reason that the complainant having denied on oath the factum of receipt of the letter dated 9.11.1995 the onus fell upon LIC to prove that it had in fact been despatched and delivered to the Insured which LIC has failed to do. Although so much depended on proof of despatch of the letter dated 9.11.1995, LIC took no steps to prove the fact either by oral evidence or by Affidavit and merely filed a photocopy of the extract from their despatch register, that tool at such a late stage. However, we also have the following observations to make in this regard, based on the records before us : (a) The said extract was not filed by LIC along with its original show-cause but this was done only after the complainant filed her counter affidavit denying receipt of the letter dated 9.11.1995 and claiming it to be a fabricated one. (b) While LIC have categorically stated on oath that the sanction for revival was communicated to the Insured on 9.11.1995, the entry in the Despatch Register relates to 10.11.1995. (c) The entry relating to the despatch of letter is apparently fitted into the topmost line which is normally kept blank as is evident from the right hand page of the extract; moreover the entry appears above the line showing the date. (d) Finally, the letter dated 9.11.1995 itself does not bear any serial or reference number although LIC has stated in its Memo of Appeal that the letter was posted under Despatch Register Serial No. 4905 giving the impression that the serial number of the entry relating to the despatch of the letter was 4905 whereas from the extract filed by LIC it is seen that there is no despatch serial number mentioned against the letter at all and 4905 is in fact only the number of the form in which the Despatch Register is maintained. These aspects, prima facie, raise doubts in our mind about the despatch entry itself. In fact, the Forum has dealt with this issue in-depth and we have already referred to its findings and conclusions earlier. Thus, in view of our observations made above, we uphold the findings of the Forum in this regard while also recalling the judgments of the Honble Supreme Court in I (1988) ACC 327=AIR 1988 SC 719, National Insurance Co. Ltd. v. Jugal Kishore & Ors., and that of the National Commission in III (1994) CPJ 65 (NC), Life Insurance Corporation of India v. Consumer Education & Research Society & Anr., which emphasized that instrumentalities of the State are obliged to conduct their business fairly.

9. THE second major grievance in LICs Memo of Appeal is that the Forum failed to appreciate that in spite of receipt of an earlier demand on 25.4.1995 the complainant did not make payment of the arrear premium. We find that the Forum has in its order dealt with this aspect too and concluded that while no doubt in response to the challan issued by LIC (receipt of which the complainant admitted in her complaint petition itself) the Insured had not cleared the payment, but at that time no decision had been taken by LIC for revival of the policy and this decision was admittedly taken only on 3.11.1995. Hence the Forum did not give much weight to the issuance of the challan dated 25.4.1995 by LIC.

10. WE too are convinced that the Forum was correct in its approach. Although

the Insured applied for revival of the Policy on 2.3.1995, LIC did not send him any communication confirming that his application for revival had been accepted. Admittedly his application was approved only on 3.11.1995. Hence, the Insured could not be expected to make payment merely on the basis of a slip issued by LIC showing the arrears of premium and interest due upto 25.4.1995, without any surety or written confirmation from LIC that the policy would be revived. Moreover, despite non-payment of the arrear premium on the basis of the Slip dated 25.4.1995 issued by LIC, they themselves later admittedly approved the revival of the policy on 3.11.1995. As such this ground raised by the appellants deserves to be rejected on the principle of estoppel too. The next substantive ground of appeal is that the Forum erred in ordering that the lapsed policy is deemed to have been revived on original terms subject to the payment of arrear premium and that such an order is unknown to the Insurance world. In order to decide this question it is necessary to look into the conditions of policy relating to payment of premium and revival of discontinued policies which are reproduced below: Condition No. 2 : Payment of PremiumA grace period of one month but not less than 30 days will be allowed for payment of yearly, half-yearly or quarterly premium and 15 days for monthly premiums. If death occurs within this period and before the payment of the premium then due, the policy will still be valid and the sum assured paid after deduction of the said premium as also the unpaid premiums falling due before the next anniversary of the policy. In case of death, unpaid premium if any, falling due before the next policy anniversary shall be deducted from the claim amount. Condition No. 3 : Revival of discontinued Policies. When the premium is not paid within the days of grace the policy lapses. It may be revived during the life time of the Life Assured, but within a period of 5 years from the date of the first unpaid premium and before the date of maturity on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be prevailing at the time of the payment but not exceeding 9% per annum compounding half yearly. Now, Condition No. 3 of the policy cited above clearly lays down that the policy may be revived, inter alia, on payment of all the arrears of premium together with interest. Upon revival the policy obviously becomes as good a policy as one in which the premiums are paid regularly. In other words, the terms applicable to and the benefits accruing from a revived policy are the same as those which applied to it originally at the time of issuance. The order passed by the Forum is, therefore, in conformity with the conditions of the policy and cannot be faulted.

Lastly, while LIC has not disputed the award of interest made by the Forum in favour of the complainant it has challenged its award of compensation of Rs. 5,000/- for negligence and deficiency in service attributed to LIC by the Forum. As far as this question is concerned, in our considered view, an award by the Consumer Fora need not be restricted only to one mode of compensation. Directions may be either issued only for payment of a determined lumpsum compensation or only for interest or partly by way of interest and partly lumpsum, as was done in the cases of Mohd. Ishfaq v. Dr. Martin DSouza, I (2003) CPJ 116 (NC)=2002 (2) CPR 151, (NC) and Gora Academy of Education & Anr. v. C. Vani & Ors., 2002 (1) CPR 93 (NC) decided by the National Commission. Hence we see no illegality in the order of the Forum by awarding both interest and lumpsum compensation.

11. IN respect of the larger question arising from the Forums finding of negligence and deficiency in LICs services, we find from the facts of the case that such a finding was justified. We are of the view that once an application was made by the INsured to LIC seeking revival of the lapsed policy it was incumbent upon LIC to communicate to the INsured their decision to revive the Policy, or otherwise, within reasonable time. If LIC agreed to revive the policy, they were required to intimate the arrears of premium and interest thereon which the insured was under an obligation to pay immediately and also to submit proof of continued insurability to LICs satifaction, failing which the policy would no doubt get irrevocably lapsed. If, however, LIC decided not to revive the policy they would be obliged to convey this decision to the INsured, and if such decision was not in conformity with Condition No. 3 of the policy, it would be open to the INsured to challenge the same before the appropriate Forum. Under all circumstances, LIC was, however, required to communicate its decision to the INsured. In the present case, LIC agreed to revive the policy on 3.11.1995 but, as discussed above, neglected to communicate its decision to the Insured, as a result of which the Insured failed to comply with the requirements of Condition No. 3 by payment of arrear premium and interest thereon, although he had submitted proof of continued insurability. Per chance the Insured died shortly thereafter on 26.1.1996. The default in payment of arrears cannot, therefore, be attributed to the Insured. The fault lay with LIC. They neglected to communicate their decision and they cannot take advantage of their own negligence to deny the benefit of revival of the policy and the rights that accrue therefrom to the Insured or his nominee. Moreover, in our view, non-communication of LICs decision on the Insureds application dated 2.3.1995 for revival of policy for so long in itself constitutes deficiency in service on their part.

12. WE, therefore, reject this ground raised by LIC in its appeal and uphold the decision of the Forum in this regard. For the reasons, observations and discussions made above we are of the view that the District Forum, Shillong has dealt with the matter exhaustively and has passed a reasoned order and the findings and directions of the District Forum do not suffer from any infirmity or illegality. Further, the appellant Life Insurance Corporation could not make out a case to justify interference with the impugned order dated 19.4.1997 passed by the District Forum, Shillong in C.P. Case No. 18(S) 96. In the result, Appeal No. 9(M) 99, too, is devoid of merit and, accordingly it is dismissed thus affirming the order of the District Forum. No order as to costs. Appeals dismissed.

