(2016) 03 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

Case No : 1476 of 2013

SBI LIFE INSURANCE CO. LTD. APPELLANT

Vs

PUSHPA DEVI & ORS. RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Citation : 2016 2 CPR 144

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Kapil Chawla, Ashwani Kumar

Judgement

1. Revision Petition No. 1476 of 2013 has been filed by the petitioner/opposite party no.1 against the order dated 21.3.2012, passed by Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (short, "State Commission") in First Appeal No.19 of 2012.

2. Brief facts of the case as per respondent no.1/complainant are that respondent no.1, Smt. Pushpa Devi had obtained SBI Insurance policy for a sum of Rs.1,20,000/- for a period of fifteen years and paid a premium of Rs.10,474/- on 24.9.2005 vide receipt no.787510 which was issued by the respondent no.2/ opposite party no.2, who is the Insurance Advisor of petitioner/ opposite party no.1. Accordingly, insurance policy no.14004825001 was issued in favour of the respondent no.1 The policy was money back policy and the premium to the tune of Rs.10,198/- was to be paid annually on every 7 day of December. After the receipt of the policy in question, the th respondent no.1 had started paying the premium to the respondent no.2. The second premium could not be paid on 7.12.2006 and the same was paid on 7.2.2007 alongwith late fee amounting to the tune of Rs.10,402/- vide receipt No.1074. Thereafter, the respondent no.1 paid the premium for the year 2007 on 7.12.2007 amounting to Rs.10,198/- vide receipt No.4688 and similarly the respondent no.1 paid premium of Rs.10,198/- for the year 2008 vide receipt No.5876.

3. As per the policy, the petitioner and respondent no.2 had to pay the 1 survival benefits to st the respondent no.1 of Rs.12,000/- on 7.12.2008, 2 survival

benefits of Rs.18,000/- on nd 7.12.2010 and the 3 survival benefits of Rs.24,000/- on 7.12.2014. Similarly, the respondent rd no.1 had to receive 4 survival benefits of Rs.30,000/- on 7.12.2017 and 5 survival benefits of th th Rs.54,000/- on 7.12.2020. When the petitioner and respondent no.2 did not pay the 1 survival st benefit of Rs.12,000/- on 7.12.2008 as per the policy certificate, then the respondent no.1 visited the office of the respondent no.2 in the year 2009 for getting the 1 survival benefits and the st respondent no.2 assured that the same would be sent in few days.

4. Accordingly, the respondent no.1 sent a letter dated 2.6.2010 to the branch office of the petitioner at Ludhiana and sent a copy of the same to the petitioner with details of premiums. Thereafter, the petitioner replied to the respondent no.1 vide letter dated 16.6.2010 stating therein that the petitioner had registered a complaint of the respondent no.1''s claim. The petitioner then sent a letter dated 17.6.2010, stating therein that the policy of the respondent no.1 had been lapsed due to the non-remittance of the premium since 2006 onwards. In response to the said letter, the respondent no.1 again sent the details of the receipts vide which the respondent no.1 had paid the premiums in question, but same reply was sent by the petitioner that the policy had lapsed in 2006. It has been stated by the petitioner in the letter that the petitioner had not authorized any of its insurance advisors to collect premium amount on their behalf. The respondent no.1 in total had deposited Rs.41,272/- with the petitioner and respondent no.2 and they have lapsed the policy of the respondent no.1 wrongly which tantamounts to unfair trade practice and deficiency in service by not paying the survival benefits of Rs.12,000/- on 6.12.2008. Hence, the complainant was seeking directions to the petitioner and respondent no.2 to return back the amount of Rs.41,272/- alongwith interest @ 12% p.a. from the date of deposit, till its actual payment. The respondent no.1 had also claimed compensation to the tune of Rs.20,000/- for causing mental agony and harassment to her.

5. The petitioner contested the present complaint by filing its separate reply, in which they have contended that the respondent no.1 had taken the aforesaid insurance policy, through their agent namely Shri Gurbax Singh having insurance Advisor Code No.328757. The respondent no.2 was not their agent at all. It has been admitted that the aforesaid insurance policy was issued to the respondent no.1 with date of commencement with effect from 7.12.2005. The receipt of first premium to the tune of Rs.10,335/- from the respondent no.1 had been admitted. It had also been contended that they did not receive the premium due in December, 2006, hence, the policy was in lapsed stage since 7 of December, 2006. Since the respondent no.2 was not their agent at all th and if the respondent no.1 had made any payment of premium to respondent no.2, then the petitioner was not responsible for any embezzlement or misappropriation by respondent no.2. The respondent No.1 has got no cause of action against the petitioner and the complaint deserves dismissal with cost.

6. Respondent no.2 had also contested this complaint by filing his reply in which it had been contended that the complaint was legally and factually not maintainable in the present form against the respondent no.2 as the respondent no.2 was not Insurance Advisor of SBI Life Insurance Co.Ltd. The Insurance Advisor of the petitioner was Mr.Gurbax Singh Goraya from whom the respondent no.1 obtained the policy in question. The respondent no.2 was only office bearer of the said insurance advisor Shri Gurbax Singh. The respondent no.2 only did the office work at the instance of the said insurance advisor. Mr.Gurbax Singh Goraya was wholly and solely responsible and liable for any transaction. The respondent no.1 has un-necessarily dragged the respondent no.2 in the present complaint, without having cause of action against him at any point of time. Thus, a prayer dismissal of the complaint has been sought.

7. The District Forum vide order dated 2.12.2011 while partly allowing the complaint observed as under :-

"7. We will like to mention here that the opposite party no.2 has very intelligently taken a defence in his reply that he is not insurance advisor of the opposite party no.1. We have perused one letter dated 1.1.2010 relied upon by the opposite party no1,whereby the opposite party no.1 had terminated the agency of the opposite party no.2. It has been mentioned in this letter that from 18.12.2009, the opposite party no.2 would not be the authorized insurance advisor of the opposite party no.1. Thus, the defence raised by the opposite party no.2 that he is not the legal advisor of opposite party no.1, stands falsified in view of the letter dated 1.1.2010. We are of the view that the opposite party no.2 has received the premium amounts due on 2006, 2007 and 2008 vide receipts annexures C-5 to C-7 from the complainant on behalf of the opposite party no.1, being insurance advisor of opposite party no.1. The version of the opposite party no.2 is absolutely false. Infact, in order to save itself from legal consequences, he has taken this defence. It is also clear that either he or his employer had received the premium amounts from the complainant and failed to deposit the same with the opposite party no.1 and had embezzled the amount so received from the complainant. The opposite party no.2 had tried to cheat the complainant after embezzling the money of the complainant, as he had never deposited the premium amounts, in the office of the opposite parties no.1 in the year 2006, 2007 and 2008, after receiving it from the complainant, vide receipts (Annexure C-5 and C-7). The act and conduct of the opposite party no.2, also clearly amounts to deficiency in service, and unfair trade practice, for this the opposite party no.2 should be penalized with punitive damages which we assess to the tune of Rs.25,000/-. Due to aforesaid deficient act, and conduct of the opposite party no.2, the complainant has also suffered mental agony and harassment. So, we are of the considered view that the ends of justice will be met in case the opposite party no.2 is directed to pay the compensation to the tune of Rs.10,000/- to the complainant on this count, beside litigation charges to the tune of Rs.5,000/-.

8. The version of the opposite party no.1 that the opposite party no.2 is no more their authorized legal advisor as such, the opposite party no.1 is not liable for any misconduct or fraud, if any, committed by the opposite party no.2. We have perused one letter dated 1.1.2010 relied upon by the opposite party no.1, whereby the opposite party no.1 had terminated he agency of the opposite party no.2 on 18.12.2009. It stands proved on record that before 18.12.2009, the complainant was the insurance advisor of the opposite party no.1. As the opposite party no.1 has illegally and arbitrarily had lapsed the policy of the complainant as such, this act of the opposite party no.1 also amounts to deficiency in service on its part.

10. In view of the discussion made hereinabove, the complaint is partly allowed. The opposite party no.1 is directed to revive the policy of the complainant with all benefits from the date when it was lapsed i.e. with effect from 7.12.2006, without asking for any formalities from the complainant, within 30 days from the date of receipt of copy of this order. The opposite party no.1 is left at liberty to recover the amount which was not deposited by the opposite party no.2, with it, from the opposite party no.2, as per provisions of law. The opposite party no.2 is also directed to pay punitive damages to the tune of Rs.25,000/- to the complainant. He is also directed to pay compensation to the tune of Rs.10,000/- for causing mental pain, agony and harassment to the complainant besides litigation charges to the tune of Rs.5,000/-. The opposite parties are directed to comply with the order of the Forum, within 30 days from the date of receipt of copy of this order, which be sent to the parties, free of cost, by post and the file after its due completion be consigned to the record room."

8. Aggrieved by the order of the District Forum, the petitioner/opposite party no.1 filed an appeal before the State Commission. While, dismissing the appeal, the State Commission in its impugned order dated 21.3.2013 held as under :-

" It is made out from a letter of termination of agency of Vijay Bhardwaj, which is dated 01.01.2010 and is available on the record of learned District Forum that the said Vijay Bhardwaj was an agent of the appellant upto the date of termination of his agency. Now, if he was the agent of the appellant, in-connection with its business of insurance, the premium received by him from respondent/complainant is to be treated as receipt by the appellant, by invoking the doctrine of vicarious liability. There is no clause in the insurance policy that the policyholder was required to pay the premium, either directly to the appellant or through the agent, who had sourced the policy.

9. Hence, the revision petition.

10. We have heard learned counsel for the parties as also carefully gone through the record.

11. Learned counsel for the petitioner contended that the fora below failed to appreciate that this is a case where a "Third Party" i.e. respondent no.2 (who is not the agent in the present case) and who not only unauthorizedly collected

installment of premiums from respondent no.1 but also misappropriated the money so collected and did not deposit the same with the petitioner. Respondent no.2 has thus played a fraud not only upon the insured i.e. respondent no.1 but also upon the petitioner/insurance company. Under the law, if any one commits criminal offence, he alone is personally liable and liability cannot be shifted, under any circumstances to anyone else including his "Master" or "Principal". The fora below failed to appreciate that the respondent no.1 has not paid the premium of the policy to the petitioner. They also failed to appreciate the fact that the policy of the respondent no.1 has been sourced through the insurance agent, Mr.Gurbax Singh Goraya and hence, the respondent no.2 is no way connected with the policy issued to the respondent no.1. The complainant/ respondent no.1 has never claimed that she has paid any premium directly to the petitioner but has paid to respondent no.2, who is in no way connected to the petitioner in connection with the policy issued to the respondent no.1.

12. Learned counsel for respondent on the other hand argued in favour of the impugned order and insisted that they had paid the premium to Shri Vijay Bhardwaj, respondent no.2/opposite party no.2 and they had receipts to this effect.

13. We have gone through the receipts placed on file. The first premium receipt is for Rs.10,198/- on a letter head of SBI Life Insurance Co. Ltd. dated 7.12.2005. The proposal policy No. is 432441. The name of the Agent is Mr.Gurbax Singh Goraya and IA Code No. is 328757. The second receipt placed on file is dated 7.2.2007 is for Rs.10,402/-. The third receipt is dated 7.12.2007 and is for Rs.10,198/-. The fourth receipt is dated 20.11.2008 and is for Rs.10,198/-. We note that the second receipt signed by Ms.Meena Vahi Parmar indicating the I.A. 329105. The second and third receipts are signed allegedly by Vijay Bhardwaj with the same code number. The provisional acknowledgment of the proposal form has a formal stamp receipt for the premium which is issued separately on the company letter head. These receipts, by no stretch of imagination, are formal stamped receipt of SBI Life Insurance Co. Ltd. for amounts received. We have also gone through the affidavit dated 6.7.2007 of Shri Vijay Bhardwaj placed on file. Para 2 and 3 of the affidavit reads as under :-

"2. That the deponent was engaged by said Gurbax Singh Goraya, Insurance Advisor of opposite party no.1 at his office at Palampur, Distt. Kangra as office boy and no transaction was made by and between the complainant and deponent at any point of time. Said Gurbax Singh Goraya was and is responsible/liable for the consequences, if proved. The complainant has no cause of action against the deponent. The complainant who is assisted by an Advocate, has been wrongly advised to implead the deponent as OP No.2. IT flows from there that the complainant briefed false facts to his counsel. the instant complaint is not maintainable against the deponent. The complainant ought to have impleaded Gurbax Singh Goraya as party in the instant complaint for the reason that the deponent has neither been nor is employee of said Gurbax Singh Goraya who had his office at Gurudwara Road, Palampur at the relevant time and now he is running another office at B-53/58, Ujagar Nagar, Kadiyan Road, Batala, Distt. Gurdaspur (Pb.).

3. There is no other effective prescription for the complainant than to array Gurbax Singh Goraya as OP in the array of parties for the reason that the deponent has been

only an office boy of said Gurbax Singh Goraya and was not authorized to act as Insurance Advisor of SBI Life Insurance Co.Ltd. The name of deponent is liable to be deleted from the array of Ops."

14. The District Forum and the State Commission relied upon the letter dated 1.1.2010 which is Agency Termination with SBI Life Insurance Co.Ltd., Code No.14155141 from 18.12.2007. To conclude that Shri Vijay Bhardwaj was duly authorized appointed Agent of SBI Life Insurance Co.Ltd. They have omitted to note that IA Code No. of Shri Vijay Bhardwaj is 14155141 whereas IA Code No. on the purported receipt No. is 329105. The first receipt signed by Meena Vahi Parmar is dated 7.2.2007 whereas, the other two are signed by Shri Vijay Bhardwaj with the same Code No.329105. As per records, Shri Vijay Bhardwaj was appointed as Insurance Advisor on 18.12.2007 with code no.14155141. Hence, it is an admitted fact that the Agent who facilitated the insurance was Shri Gurbax Singh and not Shri Vijay Bhardwaj who as per office report was only an office boy working with Shri Gurbax Singh.

15. Petitioner has also clarified that SBI Life Insurance Co. Ltd. does not accept the premium in cash and they have not authorized any of their insurance advisors to collect premium on behalf of the company

16. It is also seen from the prayer that the complainant has nowhere prayed for revival of the policy. Hence, the fora below erred in directing the petitioner to revive the policy of the respondent no.1/complainant with all the benefits from the date when it lapsed i.e. 7.11.2006. We also see from the complaint that both opposite parties were SBI Life Insurance Company Ltd, with the opposite party No.1 being through Senior Manager and opposite party no.2 being through the Field Officer Shri Vijay Bhardwaj. Shri Vijay Bhardwaj was not impleaded separately as the opposite party, as given in the order of the State Commission.

17. In view of the above, we allow the revision petition, set aside the impugned orders of the fora below and dismiss the complaint.

