
(1995) 05 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

SHANKAR PRASAD

APPELLANT

Vs

PEERLESS GENERAL FINANCE INVESTMENT CO. LTD.

RESPONDENT

Date of Decision : 15-05-1995

Acts Referred:

Citation : 1995 0 NCDRC 137 : 1995 2 CPC 67 : 1995 2 CPJ 251 : 1995 2 CPR 253

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , S.P.BAGLA J.

Advocate : D.D.DAYANI , Sidharath Pandit

Judgement

1. THIS Revision Petition has arisen out of the order " dated 22nd November, 1993 of the State Commission, Bihar at Patna upholding the order dated 22.3.91 passed by the District Forum, Patna dismissing the complaint.

2. THERE is no dispute to the fact that Shri Sita Ram Lal, the father of the Complainant was the holder of a Welfare Endowment Certificate of Rs. 10,000/- under the Social Welfare Scheme of the Peerless General Finance and Investment Ltd. and as such he was entitled to Accidental Death Benefit introduced by the said Company in collaboration with National Insurance Company Ltd. The Complainant who, is the nominee in the certificate alleged that the said Sita Ram Lal had an accidental fall from the stair-case of his residential house at 7.40 a.m. on 16.4.86 as a result of which he sustained head injury, that he was admitted to Popular Nursing Home at 8.00 a.m. on 16.4.86 and after examination and first aid he was referred to Barh Sadar Hospital for further treatment and that he was transferred to Barh Sub-Divisional Hospital, emergency on 16.4.86 at 6.30 p.m., but died at 7.00 p.m. on 16.4.86. The Complainant lodged a claim with the Opposite Party, but was not settled for considerable time. Opposite Party No. 2 by its letter dated 11.4.89 rejected the claim on the following grounds: "It is observed from the relevant claim papers that the death of the certificate holder was neither reported to the Police Station nor any post-mortem examination was conducted on the body of the deceased. Further the admission of the patient in

the hospital could not be traced and report of death had not been found, recorded in the register. Under the above circumstances we have no other alternative but to repudiate the claim and filing the papers as No Claim" which please note."

The Complainant then approached the District Forum with his Complaint Regd. No. 258/1989 alleging deficiency in service in settling the just claim. The same stand is taken by the Opposite Party No, 2 in their written statement filed before the District Forum.

3. , THE District Forum as well as the State Commission held that no evidence either oral or documentary was produced by the Complainant before the District Forum to establish that his father met with an accident or that he died as a result of that accident in the Sadar Hospital Barh, photocopies of the certificates filed before the District Forum by the Complainant was considered as no evidence in the absence of any affidavit or proof by the executant. THE complaint was dismissed by the District Forum and the dismissal was upheld by the State Commission.

4. WHAT is significant is the Surveyor's report which has been annexed with the version of the second Opposite Party. Although its copy is not on our record, it was read out before this Commission by the Counsel for the Opposite Parties in which the Surveyor accepted the factum of admission of the insured on 16.4.86 at 8.00 a.m. in Popular Nursing Home with the complaint of head injury due to fall from stairs and reference of the patient by the Popular Nursing Home to Barh Sadar Hospital for treatment. What is disputed is the genuineness of the certificate dated 16.4.86 purported to have been issued by the Sub-Divisional Hospital, Barh, certifying the death of patient at 7.00 p.m. on 16.4.86 not being in the proper form and the absence of post-mortem report/police report. It appears the record that the Surveyor, namely, M/s. Everest Surveyor and Investigator (P) Ltd. had addressed a letter to the Sub-Divisional Officer, Barh for investigation regarding the death of Sri Sita Ram Lal of, son of Han Lai on 16.4.86. This letter was not replied till 27th April, 1989. With the result that the survey report was submitted and the repudiation was made on 11.4.89. The letter dated 27th April, 1989 says: "Please refer to your above letters as per records of the Sub-Divisional Hospital, Barh, in the injury register page No. 104/105, S. No. 1072 on Sita Ram Lal son of Hari Lal, Bakhtiarapur Railway, Gumti Area, aged about 53 years was treated at 6.30 p.m. on 16th April, 1986. He was unconscious with gasping with bistong of fall and died at 7 p.m. on 16.4.86".

It is true that the orders of the Redressal Forums under the Consumer Protection Act, 1986 which undoubtedly are quasi-judicial, have to be based on acceptable evidence which may be either direct or circumstantial but the proceedings under the Act should be tilted against hyper-technicalities. The Complainant has filed a number of documents which he has referred to in his complaint but made no attempt to prove them either because of being illiterate or not being aware of the

procedure as to their formal proof by summoning the concerned official. The District Forum should have pointed it out and given an opportunity to the Complainant as well as the Opposite Parties to produce evidence, whether by way of affidavits or summoning an official of the Sub-Divisional Hospital, Barh, with the record of injury register, page 104/105, S. No. 1072 on Sita Ram Lai recording his treatment and ultimate death at 7.00 p.m. on 16.4.86 and to prove the death certificate on record. The impugned orders in our view suffer from irregularity in the exercise of jurisdiction and have resulted in manifest injustice in not directing the parties to substantiate their case.

5. IN the result the Revision Petition is allowed, the impugned orders of the State Commission and the District Forum are hereby set aside and the case is remanded to the District Forum, Patna. The District Forum shall give an opportunity to the parties to produce their evidence. On the facts and circumstances of the case there will be no order as to costs of the proceedings throughout so far.