

(2003) 07 NCDRC CK 0123

In the National Consumer Disputes Redressal Commission

SHANU JAIN

APPELLANT

Vs

GOLDEN FOREST (INDIA) LTD.

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Citation : 2003 3 CLT 516 : 2003 4 CPJ 176

Hon'ble Judges : S.K.Dubey , B.L.Khare , Pramila S.Kumar J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order dated 1.11.2001 passed in Case No. 38/2001 by the District Consumer Disputes Redressal Forum, Vidisha (for short the "District Forum") whereby the complaint for deficiency in service was dismissed.

2. ADMITTEDLY, Smt. Kiran Jain purchased a bond of the Golden Forest by deposit of the amount of Rs. 18,000/- of which maturity amount of Rs. 19,800/- was payable on 5.3.1998. The New India Assurance Company covered the risk of such purchaser of the bond by Personal Accident Insurance Policy No. 42/525-43. Smt. Kiran while passing through level-crossing in spite of closure of the level crossing gate met with an accident from the train coming, where she died instantaneously. The appellant submitted the claim which was repudiated by the Insurance Company holding that the deceased committed a breach of law i.e. of Sections 147 and 160 of the Railways Act, 1989, therefore, the claim under exclusion clause "committing any breach of law with criminal intent" was not payable. The complaint filed was resisted. The District Forum dismissed the complaint holding that the life assured had died while committing an offence under Sections 147 and 160 of the Railways Act, 1989, therefore, the Insurance Company was justified in not making the payment of the claim. After hearing learned Counsels for the parties, in our opinion, non-payment of the claim was not justified. This Commission in similar circumstances, has considered the question in case of Life Insurance Corporation of India & Anr. v. Smt. Usha Jain, I (2003) CPJ 100, the life assured Kailash Chandra Jain had a Twenty Years Money

Back Policy with Profit (With Accident Benefit) for the sum assured of Rs. 1,00,000/- on the fateful day while crossing the level-crossing gate met with an accident with the goods train, the LIC did not make the payment as the life assured committed a breach of law. After referring to Condition No. 10 and Exclusion Clause (iv) that is "result from the life assured committing any breach of law" and relevant provisions of the Railways Act observed in paras 5 to 7 thus : "5. As to Exclusion (iv)-it would be appropriate to refer relevant provisions of the Railways Act, 1989 (for short the "Railways Act"). Section 2(22) defines "level crossing" means an inter-section of a road with lines of rails at the same level. Chapter xv of the Railways Act deals with an offence of opening or breaking a level-crossing gate and Section 161 deals with Negligently crossing unmanned level-crossing which we quote :

160. Opening or breaking a level crossing gate.- (1) If any person, other than a railway servant or a person authorised in this behalf, opens any gate or chain or barrier set up on either side of a level-crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to three years. (2) If any person breaks any gate or chain or barrier set up on either side of a level-crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to five years.

161. Negligently crossing unmanned level-crossing-If any person driving or leading a vehicle is negligent in crossing an unmanned level-crossing, he shall be punishable with imprisonment which may extend to one year. Explanation.-For the purposes of this section, "negligence" in relation to any person driving or leading a vehicle in crossing an unmanned level-crossing means the crossing of such level-crossing by such person- (a) without stopping or caring to stop the vehicle near such level-crossing to observe whether any approaching rolling stock is in sight, or (b) even while an approaching rolling stock is in sight."

6. Admittedly, the level-crossing is manned having a gate and a signal of stop when it is closed which is evident from photographs. The act or commission of the deceased life assured does not fall within the purview of Section 160 if the Railway Act i.e. opening or breaking a level-crossing gate. The act of the deceased life assured also does not fall under Section 161 of the Railways Act. In such circumstances, the submissions of the learned Counsel for the LIC placing reliance on P. Ramanatha Aiyar's The Law Lexicon, IIInd Edition 1997, Page 240 which defines breach of law i.e.. The breaking or violation of a law, right, or duty, either by commission or omission, cannot be accepted. On the other hand, the evidence has come on record that the Railway Administration itself has constructed a mini gate from where the pedestrians and the riders of the two wheelers or cyclists use to cross the railway track inspite of closure of level-crossing prior to arrival and passing of the train from the rails line of the level-crossing.

7. True, from a reasonable prudent man, it is expected that when the gate of level-crossing is closed he will not cross the lines of rails till the approaching train

passes, and level-crossing gate is not opened to permit the road traffic to go from one side to the other. However, it is generally seen that the pedestrians, cyclists or riders of two wheelers have no patience and they cross the railway lines inspite of the close of railway gates and at occasions such unfortunate incident occurs. A strict action against the persons who cross the railway crossing, deserves to be taken. Besides the persons should be educated not to cross the gate when it is closed and to maintain discipline. Railways Administration should also make proper arrangements so that no pedestrians, cyclists or rider of the two wheelers may pass through the rail lines to the intersection of the roads when the gate is closed.

Mr. Ravindra Tiwari, learned Counsel for the Insurance Company tried to distinguish the case on the basis of Section 147 of the Railways Act, 1989, which reads thus : "147. Trespass and refusal to desist from trespass-(1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of five hundred rupees. (2) Any person referred to in Sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid."

3. FROM a bare reading of Section 147 of the Railways Act corresponding Section 122 of the old Railways Act, 1890, it is evident that the word unlawful used in Section 147 means without the leave of the Railway Administration, if a person enters the railway line without such leave would be guilty of Section 147 of the Railways Act. However, it is not the case of unlawful entry but is a case of crossing railway level-crossing gate. Exclusion Clause No. 8 of the policy speaks of "whilst committing any breach of law with criminal intent". Therefore, for applicability of Exclusion Clause, Insurance Company has to establish that the crossing o level-crossing gate proves that while committing the breach of law, with a criminal intention to commit the offence. That having not been established, in our opinion, the repudiation of the claim by the Insurance Company was not justified. In view of the above, the Insurance Company is ordered to pay the amount of Rs. 1,800/- with interest thereon at the rate of 6 per cent per annum from the date of repudiation of the claim, i.e. 22.9.2000 within a period of two months from the date of receipt of certified copy of this order, failing which interest would be payable at the rate of 9 per cent per annum.

4. IN the result, the appeal is allowed. The order of the District Forum shall stand substituted as indicated hereinabove. IN the circumstances, parties to bear their own costs. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with the record of the case. Appeal allowed.