(1994) 09 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

SHYAMPYARI APPELLANT

Vs

United India Insurance Co. Ltd RESPONDENT

Date of Decision : 06-09-1994

Acts Referred:

Citation : 1995 2 CPJ 302 : 1995 2 CPR 331

Hon'ble Judges : R.C.Mankad , Leelaben Trivedi J.

Advocate : N.R.Bhawar , M.C.Desai

Judgement

1. THE complainant''s husband Raghunath Ramjatan Yadav (deceased for short) filled in proposal form for personal accident policy for a sum of Rs. 2,00,000/- and submitted it to the Divisional Office of the opponent insurance company (opponent for short) on January 3, 1992. This proposal was accepted by the opponent and personal accident policy for capital insured amount of Rs. 2 lakhs for a period from January 3, 1992 to January 2, 1993 was issued in favour of the deceased. THE deceased was murdered on June 14, 1992. Intimation regarding the death of the deceased was given to the opponent by the complainant in whose favour the insurance policy was assigned. THE complainant submitted claim form and other necessary documents claiming the insurance money from the opponent. THE opponent, however, did not pay the insurance money to the complainant till December 11, 1992 and, therefore, the complainant approached this Commission by way of this complaint claiming total compensation of Rs. 2,41,000/- from the opponent alleging that there was deficiency of service on the part of the opponent. It appears that the opponent, thereafter, on March 17, 1993 repudiated the claim made by the complainant.

2. THE main defence of the opponent is that the deceased had practised fraud on it when he took out the personal accident policy and, therefore, no money was payable under the said policy. It is alleged that when the deceased made proposal for the personal accident policy, he was in jail as under trial prisoner facing charge of murder under Section 302 of IPC. He, therefore, could not have made the proposal or taken out personal insurance policy. It is further contended

that in view of the fact that the deceased was in jail, statement regarding occupation and income made in the proposal form also could not be correct. According to the opponent, the proposal form did not bear the signature of the deceased. Thus, according to the opponent, personal accident policy was procured by practising fraud. It is further contended that the insurance policy covers only accidental injury which is defined in the policy itself. THE policy defines accident injury to mean "any bodily injury caused to the insured solely and directly from an accident caused by external violent visible means". It is submitted that in the instant case injury caused to the deceased was not the outcome of sudden visible unforeseen event. THE deceased was convicted of offence of murder under Section 302 of IPC and sentenced to imprisonment for life. THE High Court of Allahabad had released him on bail pending the hearing and final disposal of his appeal against his conviction and sentence as aforesaid. THE deceased was under threat of murder by the relatives of the person for committing whose murder the deceased was convicted and sentenced as above. THE deceased came to Mehsana after he was released on bail and he was murdered by persons belonging to his rival group. THErefore, according to the opponent, the death of the deceased was not outcome of an accidental injury but it was outcome of "invited injury". It is further submitted that the death was not caused by any sudden unforeseen event; but was caused by a certain calculated event. THE deceased had not disclosed material and relevant facts in the proposal form and non-disclosure of such facts would render the contract of insurance null and void. On the above grounds, it is submitted that the opponent is not liable to pay any amount covered under the terms and conditions of the insurance policy. It does appear that the deceased was tried for murder of one Akhileshwar Singh @ Bacha Singh and he alongwith others was convicted of offence punishable under Section 302 r.w. Sec. 34 of Indian Penal Code on April 30, 1992. Xerox copy of the certified copy of the judgment convicting the deceased is produced by the opponent. We fail to see why certified copy of the judgment was not produced before us. However, if we peruse the copy of the judgment which is produced before us, it would appear from the final order of conviction passed by learned Additional Sessions Judge, Varanasi in Sessions Trial No. 279 of 1987 that the deceased and other accused were not in jail at the time of passing of the order convicting them. After they were convicted, they were taken into custody and later on sentence of imprisonment for life was passed against them. Therefore, even if we were to place reliance on the copy of the judgment produced before us, it would appear that the deceased was not in jail as under trial prisoner, in any case, at the time when the order convicting him was passed. We do not know whether he was on bail or parole at that time. The opponent also sought to rely on xerox copy of the order dated May 7, 1992 passed by Kundan Singh, J. of the Allahabad High Court admitting the Appeal filed by the deceased and releasing him on bail pending the hearing and final disposal of the Appeal. In the said order, the learned Judge has observed to the effect that the deceased had allegedly remained in jail for 5 years though he was released on parole for three months. Relying on this observation made by the learned Judge, it is sought to be argued that the deceased could not have been in Mehsana to make the proposal on January 3, 1992 for taking out the aforesaid personal accident policy. There is no explanation as to why the opponent has not produced certified copy of the aforesaid order passed by the learned Judge of the Allahabad High Court. In our opinion, there is no convincing evidence on record to hold that when the proposal in question was made, the deceased was in jail as under-trial prisoner. We are not inclined to place reliance on the xerox copies of the judgments and orders, which are not certified to be true, produced by the opponent. But, apart from that, as pointed out above, copy of the judgment of the Sessions Judge clearly indicates that when the order of conviction was passed, the deceased was not in custody. Under these circumstances, we do not see any reason to hold that the deceased was in jail at the time when proposal was submitted to the opponent. It is not the case of the opponent that the person in jail is not competent to make proposal for personal accident policy nor is it the case of the opponent that the deceased was required to remain personally present at Mehsana to sign and make the proposal. The opponent has not led any evidence to prove that signature which appears on the proposal form is not that of the deceased. It is significant to note that personal accident policy which is subject matter of this complaint was not first such policy taken out by the deceased. There were two such previous policies which were valid for the period from August 1, 1989 to August 3, 1990 and October 9, 1990 to October 8, 1991. The genuineness of the two earlier policies is not questioned by the opponent. It is pertinent to note that the Sessions case in which the deceased alongwith two others was tried for offence under Section 302 of IPC was 279 of 1987. In other words, the Sessions case was filed in 1987 and if what is stated on behalf of the opponent is true, the deceased had remained in jail as under trial prisoner during his trial before the Sessions Court. If that be the case and if there is substance in the contention raised by the opponent, earlier two personal accident policies also could not have been taken out by the deceased. However, as stated above, no question has been raised in regard to the two earlier insurance policies. Considering all the facts of the case, in our opinion, the complainant has successfully proved that the deceased himself had made the proposal under his own signature and taken out personal accident policy for the period from January 3, 1992 to January 2, 1993.

The next question is whether the murder of the deceased could be said to be covered under the terms and conditions of the insurance policy. It is the case of the opponent that accidental injury which is covered under the policy is such bodily injury caused to the insured solely and directly from an accident caused by external, violent and visible means. When the deceased was released on bail, he was under threat of murder and, therefore, it could not be said that the deceased died on account of accidental injury. The relevant dictionary meanings of the word "accident" are: (1) unexpected event, one that occurs without design or apparent cause; (2) an unexpected event, or undersigned act, of an unfortunate character; misfortune, injury, disaster. One of the dictionary meanings of the word "accidental" is "happening by chance or unexpectedly". The deceased, even assuming that threat to murder him was given by his enemies, he never expected that he would infact be killed. He would never have sought his release on bail had he thought he was sure to die. In fact, nobody can be certain as to how or when one would die. The death of the deceased was undoubtedly an unexpected event which had occurred without design or apparent cause. The deceased would not have designed his own death. The deceased was shot dead. The post-mortem report in regard to the postmortem examination performed on the dead body of the deceased disclosed that the deceased had died due to shock caused by bullet injuries. It is, therefore, obvious that "accident" causing death of the deceased was caused by external violent and visible means. There may be design and plan on the part of the persons who shot the deceased but it cannot be said that it was the deceased who designed or planned his death. It was not necessary for the deceased to disclose that he was under threat of murder when he made the proposal for personal accident policy. There is also no reason to disbelieve the statement regarding occupation made in the proposal form. Considering all the facts and circumstances of the case, in our opinion, the opponent is liable to pay the insurance money to the complainant. Under the policy taken out by the deceased it is not disputed that the deceased was insured for a total sum of Rs. 2 lakhs. In addition to the amount of Rs. 2 lakhs, the complainant has claimed cumulative bonus of 5% of the sum assured in respect of each completed year during which the policy was in force. It is not disputed that the deceased had taken out three insurance policies. One was for the period from August 1, 1989 to August 3, 1990, second was for the period from October 9, 1990 to October 8, 1991 and the third was for the period from January 3, 1992 to January 2, 1993. It is submitted that there is a special provision for cumulative bonus in the policy under which the complainant would be entitled to increase of 5% of the sum assured in respect of each completed year. The opponent did not dispute that there is cumulative bonus clause in the policy but it is submitted that this clause would be attracted only in case where policy is renewed within 30 days from the expiry of the earlier policy. It is submitted that second and third policies were taken out after expiry of 30 days from the end of the period of earlier policy. Therefore, cumulative bonus clause is not applicable. Now, this cumulative bonus clause reads as follows: "Compensation payable under Clause (a), (b), (c) and (d) of the Policy viz. death, loss of limb(s) or sight and Permanent Total Disablement arising out of accidental injuries shall be increased by 5% thereof in respect of each completed year, during which the policy shall have been in force, prior to the occurrence of an accident for which capital sum becomes payable but amount of such increase shall not exceed 50% of the Capital Sum Insured stated in the Schedule herein. The Clause shall not in any way alter the annual character of the insurance nor the right of the Company to decline to renew or to cancel this Policy as hereinafter provided. The earned Cumulative Bonus will not be lost if the Policy is renewed within 30 days after its expiry." It is the last sentence of the clause on which the opponent seeks to rely to deny the benefit of cumulative bonus to the complainant. This last sentence only provides that earned cumulative bonus will not be lost if the policy is renewed within 30 days after its expiry. The language of the sentence is rather strange. It does not specifically lay down that benefit of cumulative bonus would not be available in case renewal of policy takes place after expiry of 30 days. Unless there is a specific provision that the benefit of cumulative bonus would be lost, if renewal of policy is made after 30 days from the expiry of the earlier policy, such benefit, in our opinion, would not be lost. In our opinion, the complainant is entitled to cumulative bonus @ 5% of the sum assured for each completed year. It is not disputed that if such a view is taken, the complainant would be entitled to 10% of the sum assured by way of cumulative bonus. In other words, the complainant would be entitled to cumulative bonus of Rs. 20,000/- since the sum assured is Rs. 2 lakhs.

3. THE complainant has also claimed Rs. 10,000/- for the education of her three children under the terms and conditions of the policy. THE learned Advocate for the opponent disputed the complainant''s statement that her children were studying and contended that since the complainant has not satisfactorily proved that her three children are taking education, she would not be entitled to claim Rs. 10,000/- for the education of her children. Unfortunately, none of the parties has drawn our attention to the relevant clause regarding education under the policy in question. After carefully perusing the terms and conditions of the policy, we have not been able to locate such clause. We are, therefore, not inclined to award Rs. 10,000/- to the complainant for the education of her children. The complainant has claimed Rs. 4,000/- for the funeral of the deceased. Under the terms and conditions of the policy, maximum amount which could be awarded for transportation of dead body is Rs. 1,000/-. There is no provision in the policy to award any sum for funeral of the deceased. The complainant has not proved that she had transported the body of the deceased and for that expenditure of Rs. 4,000/- was incurred. Consequently, the claim of Rs. 4,000/- for funeral expenses will also have to be rejected.

4. CONSIDERING the facts of the case, in our opinion, there was absolutely no reason or justification for the opponent to reject the claim made by the complainant. It must therefore be held that there was deficiency of service on the part of the opponent. As stated above, the complainant is entitled to claim Rs. 2,20,000/- from the opponent under the terms and conditions of the policy. The opponent is liable to pay the said amount to the complainant with interest as stated in the final order. In the result, the complaint is partly allowed. The opponent is directed to pay Rs. 2,20,000/- together with interest @ 15% p.a. from December 11, 1992 till the payment is made. The opponent is further directed to pay Rs. 2,000/- to the complainant by way of cost. The aforesaid amount of Rs. 2,20,000/- together with interest and cost as stated above shall be deposited by the opponent within one month on receipt of this order. On the opponent depositing the amount as stated above, it shall be deemed to have been paid to the complainant. On the amount being deposited as. aforesaid, the Registrar of this Commission shall invest the amount except the cost in Fixed

Deposit with any scheduled bank/public sector undertaking in the following manner: One fourth of the amount shall be invested initially for a period of not less than three years in the name of each of the complainant and her three children on the condition that the complainant shall be entitled to receive only the interest payable periodically on such deposits but neither she nor any one or more of them shall be entitled to raise any loan or money on such deposits either by giving them by way of security or otherwise. The interest accruing due on the fixed deposits is to be paid to the complainant for maintenance of herself and her children and for education of her children. The Fixed Deposits shall be renewed from time to time till the expiry of the period of 15 years. The complainant and her children shall not be entitled to encash the Fixed Deposits for the said period of fifteen years except with the prior permission of this Commission. The Bank/ Public Institution in which the amounts as aforesaid are invested will be specifically informed about this order. Liberty to move this Commission for appropriate orders in case it becomes necessary to do so in future. The cost of Rs. 2,000/- shall be paid to the complainant by A/c. Payee cheque by the Registrar from the amount deposited as aforesaid. Complaint partly allowed with costs.

