(1996) 02 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

SRI NARAYAN SAHOO APPELLANT

Vs

BRANCH MANAGER L.I.C. OF INDIA RESPONDENT

Date of Decision : 13-02-1996

Acts Referred:

Citation : 1996 3 CPJ 373 : 1997 1 CPR 544

Hon'ble Judges : P.C.Misra , Biswanath Rath J.

Final Decision : Appeal allowed to the extent indicated

Judgement

1. THIS appeal is directed against the final order passed in C.D. Case No. 86 of 1992 by the District Forum, Keonjhar.

2. THE appellant as complainant had filed the aforesaid case before the District Forum with the following grievances. One Rajesh Kumar Sahoo, brother of the complainant made an insurance policy to the tune of Rs. 25,000/ through an agent of the Life Insurance Corporation (for short L.I.C.) It was alleged that the policy-holder was paying the premium through the agent of the L.I.C. THE complainant was the nominee in the said policy. It was alleged that the premium for two quarters was paid to the L.I.C. agent before the death of the deceased on 10.1.93. But it appears that the agent did not deposit the said money in time with the L.I.C. On the death of the deceased, the complainant made repeated demands for payment of the benefits under the policy, but having not received any response from the respondents, he approached the Consumer Forum. The respondents filed a show cause denying the claim of the complainant on the ground that the premium due for the month of July, 1992 was deposited on 13.1.93 and the premium due of the month of October'' 1992 was deposited on 19.1.93. Referring the terms of the policy, it has been said that the grace period for payment of the premium for each period was within thirty days from the due date and the aforesaid two premiums having not been paid within the said grace period, the policy automatically lapsed as per the terms mentioned therein. Thus it has been alleged by the L.I.C. that the payment of the aforesaid two premiums having been made after the lapsed condition of the policy, it was of no avail to

the policy-holder or its beneficiary. The further stand taken by the Insurance Company is that the policy having lapsed due to nonpayment of the premium, the premium paid earlier also stood forfeited and for that reason nothing becomes payable to the policy-holder or after his death to the complainant after it lapsed.

Having heard both parties, the District Forum came to the conclusion that it is essentially a dispute between the policy-holder and the agent of the L.I.C. which appears to have been agitated before the Consumer Forum remedy for which would lie by taking appropriate action under the India Penal Code by filing a complaint under Section 420 of the Indian Penal Code. The Forum, therefore, held that the complaint filed is devoid of any merit and accordingly dismissed the same. Hence this appeal.

3. IT has been emphatically asserted by the L.I.C. and has not been denied by the complainant that the payment of the aforesaid two premiums of which were received on 13.1.93 and 19.1.93 by the L.I.C. was beyond the grace period permissible under the policy of insurance. The complainant has not disputed the fact that the agent of the Insurance Company is not a person authorised to receive the payment of the premium. Hence the conclusion is irresistible that the policy holder had defaulted in making the payment of the aforesaid premium on due dates or within the grace period there from. The policy holder died on 10.1.93. If by the date of death of policy holder, the policy was not alive, the beneficiary of the life assured would not be entitled to the amount for which the life was assured. But the plea now taken by the L.I.C. appears to be that the nominee would not be entitled to any amount at all because the premium deposited by the assured earlier and those which were deposited beyond the grace period would be forfeited to the L.I.C. by virtue of the terms of the policy. We are, however, not inclined to accept the aforesaid plea for the reason that such term in the policy permitting forfeiture of the amount deposited in the case of a lapsed policy contravenes the provisions contained in Section 65 read with Section 74 of the Contract Act. The premiums that were paid by the policy holder were not gratuitous payment and therefore if the policy lapsed because of non-payment of the premium, the amount paid by the policy holder is liable to be refunded to him. In the policy of contract, no amount was indicated to be payable in case of breach of the terms of the policy. IT was neither stipulated in the policy that the party guilty of breach of contract would be liable to pay penalty to the other. Therefore, the Life Insurance Corporation would not be entitled to appropriate the premium paid by the policy holder due to the breach of the terms of the policy. The specific terms stipulating otherwise in the policy of insurance is opposed to the aforesaid provisions of the Contract Act and, therefore, not enforceable. We would, therefore, allow this appeal to the extent that the Life Insurance Corporation of India shall be liable to pay back the premium received on account of the policy within a period of two months from the date of receipt of this order to the nominee of the policy holder, namely, the complainant, together with simple interest at the rate of 12% per annum, failing

which it would be open to the complainant to get the order enforced in due course of law. Appeal allowed to the extent indicated.

