(2018) 03 NCDRC CK 0109

In the National Consumer Disputes Redressal Commission

Case No : Revision Petition No. 3606 Of 2011

Sushila Kumari APPELLANT

Vs

LIC Of India RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Citation : (2018) 03 NCDRC CK 0109

Hon'ble Judges : Prem Narain, J

Bench : Single Bench

Advocate : Sanchar Anand, Rajesh K. Gupta, Arkay

Final Decision : Allowed

Judgement

1. This revision petition has been filed by the petitioner Sushila Kumari against the order dated 30.05.2011 of the State Consumer Disputes Redressal

Commission, Haryana (in short â??the State Commissionâ??) passed in First Appeal No.376 of 2008.

2. Brief facts of the case are that on 24.04.2003 , Ram Niwas, late husband of the revisionist obtained life insurance policy No.173485821 and policy

No.173485822 for a sum of Rs.5,00,000/- and Rs.50,000/- respectively from the respondent. On 28.07.2003, Ram Niwas, late husband of revisionist

obtained life insurance policy No.173489970 for a sum of Rs.50,000/- from the respondent. On 03.02.2004, Ram Niwas, the insured expired due to

sudden heart attack. On 17.03.2005, since inspite of the revisionist submitting all claim documents and completing all formalities, the respondent failed

to make payment of the insurance policy to the complainant. Therefore, the present revisionist filed the complaint No.92 of 2005 against the

respondent before District Consumer Disputes Redressal Forum, Hisar (in short â??the District Forumâ??). The District Forum passed the following

order vide its order dated 14.12.2007:-

â??7. So in view of the abovesaid discussion, we are of the considered view that it is a clear case of gross deficiency in service and negligence on the

part of the respondent corporation. Therefore, there is merit in this complaint which is hereby accepted. The respondent corporation is hereby directed

to pay the sum assured i.e. Rs.5.00 lacs (Rupees five lacs) under policy No.173485821; Rs.50000/-(Rupees fifty thousand only) under Policy

No.173485822; Rs.50000/- (Rupee fifty thousand only) under policy No.173489970 to the complainant. Compliance of this order be made within the

period of three months; failing which the respondent corporation would be liable to pay interest @9% per annum over this amount from the date of

default till its payment. There is no order as to costs and compensation. A copy of this order be supplied to both the parties free of cost as required

Sub rule 10 4 of the Haryana Consumer Protection Rules, 1988. File be consigned to the record room after due compliance.â??

3. Aggrieved by the order of the District Forum, the opposite party preferred an appeal bearing No.376 of 2008 before the State Commission and the

same was allowed by the State Commission vide its order dated 30.05.2011 and the order of the District Forum was set aside.

4. Hence the present revision petition.

5. Heard the learned counsel for both the parties and perused the record. Learned counsel for the petitioner stated that the husband of the

petitioner/complainant had taken three life insurance policies bearing No.173485821 dated 24.4.2003 for Rs.5 lacs, Policy No.173485822 dated

24.4.2003 for Rs.50,000/- and Policy No.173489970 dated 28.7.2003 for Rs.50,000/-respectively. The policy holder died on 03.02.2004. The claim was

preferred by the complainant. However, three insurance claims were repudiated by the Insurance company vide three repudiation letters dated

17.05.2005, 17.05.2005 and 28.06.2005 on the ground that Deceased Life Assured (DLA) had withheld the information in respect of his health as he

was suffering from cancer and he did not disclose this fact in the proposal form. Wife of the DLA has filed the complaint before the District Forum

and the District Forum has allowed the complaint on the ground that the Insurance Company could not prove that the DLA was suffering from cancer.

6. It was stated by the learned counsel for the petitioner that Insurance Company then preferred an appeal before the State Commission. Though the

State Commission has agreed with the finding of the District Forum that no evidence has been produced by the Insurance Company to prove that the

DLA was suffering from cancer and that this information was withheld in the proposal form, yet the State Commission has relied on forensic report

filed by the Insurance Company which was filed for first time before the State Commission wherein the forensic expert has given finding that the

signature of the DLA on the proposal form as well as on the form for medical examination are different and not of the same person. It has been

alleged by the Insurance Company that this was a case of impersonation before the examining doctor of the respondent.

The State Commission had disallowed the claim on this ground, whereas, this, ground was never taken by the opposite party either in the repudiation

letter or in their written statement filed before the District Forum. It was argued by the learned counsel that if the opposite party has failed to prove

that the DLA was suffering from cancer as is held by both the fora below, therefore, allegation of withholding of correct information about his health

is not proved. The Insurance claim should have been allowed. No evidence beyond pleadings can be relied upon by any consumer forum. To support

his contention the learned counsel relied upon the judgment of Honâ??ble Supreme Court in Sri Shivaji Balaram Haibatti Vs. Sri Avinash Maruthi

Pawar, Civil Appeal No.19421 of 2017, decided on 20.11.2017 (SC) which records as under:-

â??28. It is these issues, which were gone into by the two Courts and were concurrently decided by them against the respondent. These issues, in our

opinion, should have been examined by the High Court with a view to find out as to whether these findings contain any legal error so as to call for any

interference in second appeal. The High Court, however, did not undertake this exercise and rather affirmed these findings when it did not consider it

proper to frame any substantial question of law. It is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the

Court cannot record any finding on the issues which are not part of pleadings. In other words, the Court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. Any finding recorded on an issue de hors the pleadings is without jurisdiction.

Such is the case here.â??

7. On the basis of the above judgment of the Honâ??ble Supreme Court, the learned counsel mentioned that the parties cannot take any fresh ground

beyond their pleadings and the court can also not give any finding even if such points are raised. From this point of view, the learned counsel argued

that the State Commission has exceeded its jurisdiction in accepting the FSL report. It was further mentioned that the main ground for repudiation was

that the DLA was suffering from cancer and this fact was withheld in the proposal forum. Both the fora below have given concurrent finding on this

subject and have found that the opposite party/Insurance company has not been able to prove their allegation that DLA withheld any information about

his health. No other ground which was not in the repudiation letter, can be raised by the Insurance Company and the same could not have been

considered by the consumer fora.

8. On the other hand, the learned counsel for the respondent/opposite party stated that after the decision of the District Forum, the matter was

investigated and it was found that the signatures did not tally on the proposal form and on the medical form signed by the DLA. Accordingly, these

two signatures were sent to the forensic laboratory and forensic expert has confirmed vide its report dated 27.03.2006 that the two signatures do not

match and they depict hand writing of two persons. Thus, it is clear that some other person appeared before the authorised doctor of the Insurance

Company and signed for the DLA. Originally when the matter was repudiated on the ground of withholding of material information regarding his

disease of cancer, the report of the forensic laboratory was not available with the Insurance Company and therefore, no reference to the same was

either made in the repudiation letter or in the written statement filed before the District Forum. As now it has been proved that the DLA did not

appear before the medical doctor and somebody else has appeared before him, this becomes a valid ground for declining the insurance claim.

Accordingly, the State Commission has rightly dismissed the complaint.

9. I have carefully examined the record and have given a thoughtful consideration to the arguments advanced by both the learned counsel. As per the

IRDA guidelines, the claims are to be decided as quickly as possible and in the present case, the DLA expired on 03.02.2004 and the claim was

preferred on 17.03.2005. The claim was repudiated by three repudiation letters dated 17.05.2005, 17.05.2005 and 28.06.2005 in respect of the three

policies. The ground for repudiation has been the withholding of the information by the DLA in respect of his disease of cancer in the proposal form.

This was the only ground before the District Forum.

The District Forum after examining all the relevant material on record has given a finding that the opposite party has failed to prove their allegation

that the DLA had withheld any information in respect of his health. The State Commission has also upheld this finding of the District Forum. The

Insurance Company has failed in establishing their ground taken in the repudiation letter that there was any withholding of the information by the

complainant in respect of his health. Even during the arguments, the learned counsel for the respondent was asked as to on what documents the

Insurance Company had relied upon to repudiate the claim. No proper answer was given by the learned counsel for the complainant and he only

stated that it is a case of impersonation and claim cannot be permitted. Honâ?? ble Supreme Court in M/s. Galada Power and Telecommunication

Ltd. Vs. United India Insurance Co. Ltd. & Anr. Etc., Civil Appeal Nos.8884-8900 of 2010, decided on July 28, 2016 has held the following:-

â??12. The National Commission has relied upon Clause 5 and on that basis has rejected the claim by putting the blame on the complainant. The letter

of repudiation dated 20th September, 1999, which we have reproduced hereinbefore, interestingly, does not whisper a single word with regard to delay

or, in fact, does not refer at all to the duration clause. What has been stated in the letter of repudiation is that the claim lodged by the complainant does

not fall under the purview of transit-loss because of the subsequent investigation report.

It is evincible, the insurer had taken cognizance of the communication made by the appellant and nominated a surveyor to verify the loss. Once the

said exercise has been undertaken, we are disposed to think that the insurer could not have been allowed to take a stand that the claim is hit by the

clause pertaining to duration. In the absence of any mention in the letter of repudiation and also from the conduct of the insurer in appointing a surveyor, it can safely be concluded that the insurer had waived the right which was in its favour under the duration clause.

In this regard, Mr. Mukherjee, learned senior counsel appearing for the appellant has commended us to a decision of High Court of Delhi in Krishna

Wanti v. Life Insurance Corporation of India[1], wherein the High Court has taken note of the fact that if the letter of repudiation did not mention an

aspect, the same could not be taken as a stand when the matter is decided. We approve the said view.â??

10. From the above judgment, it is clear that no ground other than those mentioned in the repudiation letter can be raised during the proceedings and

even if any new ground is raised, the forum should not give any finding on this ground. Moreover, as argued by the learned counsel for the petitioner

the parties cannot travel beyond their pleadings and raise new ground during the proceeding as held by Honâ??ble Supreme Court in Sri Shivaji

Balaram Haibatti (supra). Thus, from both the angles, the Insurance Company cannot take any other ground, which was not mentioned in the

repudiation letter. Moreover, the ground of impersonation was not raised even in the written statement filed before the District Forum.

11. Though the ground taken by the Insurance Company on the report of the forensic expert that signature of the DLA on the proposal form and

medical form do not match, can be a serious ground for repudiation of the claim, however, in the present case, this ground has not been mentioned

either in the repudiation or in the written statement. Therefore, relying on the above referred judgments of the Honâ??ble Apex Court, I am inclined

to take a view that the State Commission should not have taken this ground into consideration for deciding the appeal.

Moreover, original ground of repudiation relating to withholding of important information in respect of health by the DLA in the proposal form has not

been found valid ground by both the fora below and even before this Commission, the learned counsel for the respondent/opposite party was unable to

show any proof or any document in support of the original ground of repudiation. In these circumstances, it is clear that the claim was originally

repudiated without valid reason and therefore, at that time the complainant was entitled to receive payment in respect of the claim. Accordingly, the

order dated 30.05.2011 of the State Commission is not sustainable and the same is liable to be set aside.

12. Based on the above discussion, the revision petition is allowed and the order of the State Commission is set aside and the order dated 14.12.2007

of the District Forum is upheld. In the facts and circumstances of the case, Insurance Company would be liable to pay only 5% p.a. interest from the

date of order of the District Forum instead of 9% p.a. allowed by the District Forum. This order be complied within a period of 45 days. Insurance

Company shall also be at liberty to file criminal and civil case against the complainant or the legal heirs of the DLA and against other persons involved

including the agent and the doctor concerned.

