(2006) 10 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

TARA KAUNDAL APPELLANT

Vs

LIFE INSURANE COMPANY OF INDIA RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Citation : 2007 4 CPJ 380

Hon'ble Judges : Arun Kumar Goel , Narinder Singh Thakur , Saroj Sharma J.

Final Decision : Appeal allowed

Judgement

1. ADMITTED facts giving rise to this case are that the deceased Pawan Kumar Kaundal was the husband of appellant No. 1, father of appellant Nos. 2 and 3 and son of appellant No. 4. On 26.4.2002 he was insured in the sum of Rs. 4,00,000 (four lacs only) by agent of respondent No. 1 i.e. Smt. Sangita. Cheque of first premium in the sum of Rs. 5,401 was issued on the same date in favour of respondent No. 1. It was drawn on Punjab National Bank, Sarkaghat. Record of the case further shows that at that time and even thereafter there was enough balance in the account of the deceased for clearance of the cheque in question. Insured Pawan Kumar Kaundal died in a vehicular accident on the night of 4th May, 2002.

2. RESPONDENT No. 1 had sent the cheque for collection through its banker i.e. respondent No. 4, who in turn further sent the cheque for collection to Punjab National Bank. Banker had credited the amount to the account of respondent No. 1 Insurance Company. However, cheque was not encashed by the banker of the deceased Pawan Kumar Kaundal, as the account holder had died. This resulted in repudiation of the claim by the Insurance Company-respondent No. 1. Since according to the appellants there was deficiency in service on the part of the respondents, as such they have filed the complaint and before that notice was also served by the appellants. Stand of respondent No. 1 in reply to the complaint is that it admits having insured the deceased and also having received the cheque in question. Deficiency was pleaded on the part of respondent No. 2 H.C. Thakur, Scale 3 Manager, Punjab National Bank, Sarkaghat. Issuance of

policy under table and term 150-26, cheque having been sent on 30.4.2002 for collection was admitted to its banker i.e. respondent No. 4 who in turn sent it for collection on 20.5.2002, thus it was not sent in time. Vide memos Annexures R1/A and R1/B the cheque was dishonoured and the report of dishonour by PNB dated 1.7.2002 is placed on file as Annexure R1/C. Reply to notice was sent and in this background respondent No. 1 disowned its liability. Respondent Nos. 2 and 3 filed a joint reply and admitted that deceased Pawan Kumar had his account in PNB, Sarkaghat saying that it has an extension counter at Barchhwar. On 24.5.2002 the bills for collection of Sr. Nos. 1508 to 1640 were received in a clustered manner and no bank-wise schedule was given by the UCO Bank, Bilaspur, therefore, it was sent back to the said Bank by registered post. It was received back on 15.6.2002. Thus the schedule 1640 amounting to Rs. 5401 was returned on 19.6.2002 by courier to Uco Bank, Bilaspur as the cheque was bounced for the reason that its drawer on the night of 4.5.2002 died due to which fact the account was inoperative, having sufficient funds in the account.

So far as stand of respondent No. 4 is concerned, it admitted that the cheque was sent by the respondent No. 1 for collection of amount. It reached the bank on 18.5.2002 and was sent for collection on 20.5.2002 which was returned by the banker i.e. respondent No. 3. The amount was immediately credited on 20.5.2002, thus there was no deficiency in service on its part. After one month on 20.6.2002 this respondent received intimation from PNB-respondent No. 3 regarding non-payment of the amount due to "drawer reported dead" therefore, entry was reversed.

3. IN the aforesaid background after hearing the parties District Forum below dismissed the complaint. Hence this appeal. Core question involved in this appeal is whether there is deficiency in service if so by which of the respondents and whose liability it is to liquidate the amount in question in case it is held that there was deficiency in service.

4. LEARNED Counsel for the appellants submitted that cheque was dishonoured because the drawer was dead and not on account of insufficiency of finds. In our opinion in later case appellants have nothing to say in this case. As already noted from the replies of the respondents, there were adequate funds in the account of the deceased, what is its consequence is now to be examined. Learned Counsel for the appellants submitted that this is a clear cut case of deficiency in service on the part of the respondents and they are jointly and severally liable to indemnify them for the sum insured with interest and damages, besides cost of litigation. On the other hand learned Counsel for respondent No. 1 submitted that no exception can be taken to the impugned order and there was no deficiency in service on the part of his client. Branch Manager of respondent No. 4 who was present in person supported the impugned award and urged that it had sent the cheque for clearance, and had also credited the amount to the account of respondent No. 1 and it was only on receipt of information regarding dishonour of cheque that the entry was reversed. Thus according to all the

respondents the appeal deserves to be dismissed while upholding the order of the District Forum below. Reliance was placed additionally on behalf of respondent No. 1 Insurance Company that Section 64VB of the Insurance Act squarely covers this case and also on the decision of the Hon''ble Supreme Court of India in National Insurance Company Ltd. v. Seema Malhotra and Others, II (2001) SLT 229=I (2001) ACC 317 (SC)=2001 (2) Rent JR Civil 553 and Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and Others, AIR 1984 SC 1014. Whereas on behalf of the appellants reliance was placed on two decisions of the National Commission in Life Insurance Corporation of India & Ors. v. Rakshna Devi, IV (2005) CPJ 214 (NC)=2006 NCJ 297 (NC) and United Commercial Bank v. Smt. Anita Airan & Ors., III (2002) CPJ 371 (NC)=2003 NCJ 240 (NC).

5. AT the risk of repetition we may observe that cheque was not dishonoured because of insufficiency of funds. To the contrary it is admitted case of respondent Nos. 2 and 3 i.e. the banker of the deceased that there was sufficient money lying in his account, but it was dishonoured because the account holder had died. Therefore, the first decision relied upon in the case of National Insurance Company Ltd. v. Seema Malhotra and Others (supra), on behalf of the respondents is wholly inapplicable in the present appeal. The other decision in the case of Life Insurance Corporation of India v. Raja Vasireddy (supra), is also distinguishable and has no applicability to the present case. In this case it was held that the acceptance of Insurance proposal is complete only when it is communicated to the offerer, therefore either the silence or receipt and the retention of premium cannot be construed as acceptance. This is also not the situation in the present case. Here after receipt of first premium, policy of insurance was also issued by respondent No. 1, thus law laid down by this decision also does not improve the case of respondent No. 1.

6. IT is now well settled that payment by a negotiable instrument like a cheque is as good as cash and in the event of its encashment, it dates back to the date of its issuance. Cheque was deposited by respondent No. 1 on 30.4.2002, though it has been issued on 26.4.2002 by the deceased to the agent of the respondent No. 1. For reasons best known to the said respondent it was not deposited either the same day or the next day. Above all respondent No. 4 on 18.5.2002 sent it for collection to the banker of the deceased. On the other hand decision of the National Commission in United Commercial Bank v. Smt. Anita Auran & Ors. (supra), fully covers the claim of appellants in the present appeal as facts therein are almost akin to the facts involved in this appeal. Effect of Section 64VB was also considered by the National Commission. In this judgment Bank was held to be agent of Life Insurance Corporation of India and therefore it was exonerated, but the insurer was held liable for payment of the amount in question. What was held and is relevant in this judgment is extracted hereinbelow: "8. It is usual for the Insurance Company to accept the amount of premium by cheque. There is no doubt in regard to issue of receipt where it is written that payment by cheque will be valid subject to realization of the cheque. In the normal course of working

of the Insurance Company it has to send cheque received as premium immediately for collection. Payment by cheque is as good as payment in cash provided, of course, it is honoured. Payment by cheque in fact dates back to the date of cheque or to the time when it was given and it is not material when cheque was encashed. If the cheque had been presented for payment in time, it could have been encashed. The cheque was received on 25.3.1996 and sent for collection on 9.4.1996. It may be on account of the fault of the UCO Bank but that Bank acted as an agent of the Insurance Company and deficiency in service by the agent, as far as complainant is concerned, is attributable to the Insurance Company itself. For the complainant it is Insurance Company which sent the cheque for collection when it was presented on 9.4.1996 after receiving the same on 25.3.1996. No explanation is forthcoming and no explanation could be acceptable as well as to why the cheque could not be presented immediately for collection at least within a reasonable period. We do not think, in the circumstances of the case, provisions of Section 64VB are of any help to the Insurance Company. As a matter of fact those provisions cannot be pressed into service by the Insurance Company considering the circumstances of the present case. It is the Insurance Company which has been deficient in service and has to bear the consequences. Both the District Forum and the State Commission have correctly arrived at the conclusion after considering whole aspect of the matter that there has been deficiency in service on the part of the Insurance Company but at the same time holding deficiency in service on the part of the UCO Bank as well. However, as noted above, UCO Bank as an agent of the Insurance Company cannot be held liable so far as complainant is concerned".

[Emphasis added]

Similarly in the case of Life Insurance Corporation of India & Ors v. Rakshna Devi (supra), facts were that on 30.1.1998 deceased Ishwar Chand was having a subsisting insurance policy, approached its Moga Branch on 30.1.1998 for having insurance policy of insurance coverage of his life for a sum of Rs. 1 lac on 27.3.1998 (?) He met with an accident and was admitted in the hospital, where he died on 1st March, 1998 (?). Unaware of the death of the assured, proposal was accepted and insurance policy covering the risk of Rs. 1 lac was issued on 9.3.1998. In this case contention urged on behalf of the Insurance Company was, that the contract between the parties was concluded as the proposal submitted by the complainant was accepted on 2nd March, 1998 i.e. one day after his death. After referring to the provision of Contract Act and Insurance Act, it was urged that it is not liable for payment of any amount. Reliance was placed in this behalf on a decision of Kerala High Court in Life Insurance Corporation of India v. L. Kamalamma, AIR 1986 Ker. 215. After taking note of decision of Hon''ble Supreme Court of India, as also of the Insurance Regulatory and Development Authority Act, 1999 and Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002, revision petition of the Insurance Company was dismissed. This decision in our opinion also squarely covers the case of the appellants. After receipt of cheque, policy was issued in the instant case by respondent No. 1. Receipt of premium dated 30.4.2002 was cancelled and the appellant No. 1 was directed to treat the policy issued on the life of Pawan Kumar was cancelled. Cheque of 26.4.2002 was firstly sent late for collection on 30.4.2002 by respondent No. 1 and why not on the same day or the next day there is no reason given by the respondent No. 1, and then it was further belatedly sent by the banker of respondent No. 1 for collection on 18.5.2002. On the basis of the above extracted decision of the National Commission, respondent No. 1 is clearly liable in this case to indemnify the appellants. Ordered accordingly.

7. NO other point was urged. In view of the aforesaid discussion this appeal is allowed as a result of it, it is ordered that respondent No. 1 shall pay a sum of Rs. 4 lacs with 9% interest on this amount w.e.f. 1.10.2002 i.e. three months after the date when the claim of the appellant was repudiated together with Rs. 25,000 as compensation for mental agony and harassment caused to the appellants besides Rs. 10,000 as costs of litigation. The sum of Rs. 4 lacs is to be equally shared with proportionate interest on it besides costs and compensation also in the same ratio by the appellants.

8. OFFICE will make available a copy of this order to the parties free of costs as per rules. Appeal allowed.