(2015) 10 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

Case No : 2232 of 2014

UNION BANK OF INDIA APPELLANT

Vs

AVINASH GOVIND JOSHI RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21 (b) - Jurisdiction of the National Commission

Citation : 2016 1 CPJ 216

Hon'ble Judges : V.B. Gupta

Advocate : O.P. Gaggar

Judgement

1. Petitioner/Opposite Party has preferred this revision against impugned order dated 24.2.2014, passed by State Consumer Disputes Redressal Commission, Maharashtra, Mumbai (for short, ''State Commission'') in First Appeal No.31 of 2013.

2. Brief facts are, that Respondent/Complainant got sanctioned housing loan of Rs.10 lacs in August, 2002 on certain terms and conditions and EMI of Rs.11,370/- was deducted from his Saving Bank Account from the next month i.e. from September, 2002. Undisputedly, amount of E.M.I. includes the premium for availing insurance policy to provide insurance cover to the mortgaged property and personal accident cover to the borrowers viz. respondent and his wife. However, respondent''s wife was murdered on 01.10.2002. Though, loan was released in August, 2002 and E.M.I. was effectively deducted from the month of September, 2002 (which includes payment of premium for the policy), the petitioner bank failed to avail the policy in month of September,2002. The one time premium as provided for in the agreement amounting to Rs.6,315/- was paid on 05.10.2002 to United India Insurance Co. by respondent to avail the policy. Though policy was issued and claim was preferred after the death of respondent''s wife, it was rejected by the insurance company on the ground, that there was no coverage of insurance as on 1 October, st

2002, as policy was effective from 05.10.2002. The Insurance Company accordingly, intimated the petitioner bank. Thus, alleging deficiency on the part of petitioner, the respondent filed a consumer complaint praying for following reliefs; "a) That the opponent''s bank be ordered, directed and decreed to pay to the complainant an amount of Rs.14,00,000/- as per the particulars of claim annexed and marked as Exhibit-"F" to the complaint ."

3. In its reply, petitioner has admitted that respondent has lodged the insurance claim due to death of his wife. Thereafter, insurance company vide their letter dated 9.09.2003 had informed the petitioner, that proposal for insurance policy was received by them on 10.10.2002. Since, death of insured had taken place on 1.10.2002, that is, much before the assumption of risk and MOU clearly states, that assumption of risk starts from the date of issue of pay order, hence insurance company was unable to accept the liability under the policy.

4. It is further stated, that petitioner again vide its letter dated 29.11.2005, once again called upon the insurance company to verify and ascertain whether the death of policy holder, falls within purview of the insurance policy The insurance company, vide its letter dated 28.12.2005 informed the petitioner, that death of the insured is not covered, as the death has occurred before the commencement of the policy. Hence, same is not covered under the contract.

5. District Consumer Disputes Redressal Forum, South Mumbai (for short, ''District Forum'') vide order dated 25.04.2012, partly allowed the complaint and passed following directions; " 2. On account of carelessness and deficiencies in the services given by the Opponent Union Bank of India, the complainant has not received the claim of Rs. 5,00,000/- on the accidental death of this wife from United India Insurance Company, hence the Opponent Bank to pay claim amount of Rs.5,00,000/- (Rupees Five Lacs only) to the complainant. 3. It is responsibility of the Opponent Bank to pay above amount for Rs.5,00,000/-(Rs. Five Lakh only) to the Complainant within One month time from the date of receipt of copy of the order otherwise to pay interest at 9% p.a. from the date of this order on the entire amount to be received by the complainant. 4. Opponent Bank to pay Rs.5,000/-(Rs.Five Thousand) to the complainant as the cost of his application ."

6. Being aggrieved petitioner filed appeal before the State Commission, which dismissed the same vide the impugned order.

7. I have heard leaned counsel for petitioner and gone through the record.

8. It is submitted by learned counsel, that as per terms of the Housing Loan Agreement, it was the duty of the respondent to get the house insured and petitioner is not liable to pay any insurance premium. It is further submitted, that insurance cover was obtained by petitioner in time, since loan was sanctioned in August, 2002. The the first equated monthly installment payment started

from September 2002. In such circumstances, petitioner was justified in sending the insurance proposal to the insurance company on 5.10.2002 for which insurance company issued receipt on 10.10.2002. Hence, there is no deficiency on the part of the petitioner.

9. The District Forum vide its order held; " It is agreed by the opponent bank that they have given the assurance of insurance protection for the mortgaged flat till repayment of entire loan without cost. In fact, it was required that the Opponent Bank should have sent insurance proposal of Rs.10,00 Lacs to the United India Insurance Company immediately after disbursement of loan. It is observed that from the Statement of Account of Dena bank submitted by the complainant, he has paid 1 Installment of the loan on st 06.09.2002 to the Opponent Bank. Though first installment of repayment of loan was received to the Opponent bank, they have not sent Insurance Protection proposal to United India Insurance Company. The Opponent Bank has also agreed that the Insurance protection proposal was sent on 05.12.2002. Before sending the proposal to the insurance company, the complainant''s wife was dead on 01.10.2002, thus the Insurance Company has refused to settle the claim as complainant''s wife was dead before issuance of insurance policy. Looking at the said fact, the Opponent Bank was careless and deficiency in their services, there was delay in sending Special Contingency Policy and therefore the complainant has not got the claim amount of Rs.5.00 lacs on the death of his wife. The Complainant has lost Rs.5.00 lacs on account of deficiency in the service ."

10. The State Commission, while dismissing the appeal observed; " Argument on behalf of the Opponent Bank opposing the well reasoned order of the District Forum under appeal is unfounded and not supported by any reasonable grounds and arguments. On the contrary the appeal suffers from infirmity on the ground that in the original complaint before the District Forum, head office of the Opponent ? Union Bank of India, Nariman Point, Mumbai, was made party. However, the appeal is preferred through the Branch Manager at Kalbadevi of the Opponent Bank. The Ld. Advocate for the Complainant could not justify the cause title of the Opponent nay there was no request for correction of the cause title before the District Forum. Be that may be, though it is a technicality and we do not want to give much importance to the procedural lapse on the part of the Opponent Bank, yet failure of the Opponent Bank to immediately subscribe for availing insurance policy after the loan agreement came into force has not been justified which is instrumental for depriving the Complainant to get benefit of Rs. 5,00,000/- under the Personal accident cover due to demise of his wife. Insurance Company cannot be blamed for the lapse on the part of the Opponent Bank for failure to avail the Insurance policy instantly. Opponent Bank has belatedly i.e. in the month of October, 2002 paid one time premium to avail the insurance policy on 05.10.2002 i.e. four days after the demise of the Complainant''s wife. No convincing explanation is coming forward to justify this delay which amounts to deficiency in service on the part of the Opponent Bank. The Ld. District Forum appreciated all the documentary evidence, pleadings of

the parties and rightly allowed the consumer complaint with directions to pay compensation of Rs. 5,00,000/- and costs of Rs. 5,000/- to the Complainant. Had there been insurance

policy as on 1 October, 2002 or prior thereto the Complainant had ground/cause st of action to agitate with insurance company to claim the benefit payable therein due to demise of his wife. Complainant is deprived of opportunity to do so and therefore, the delay in subscribing the policy on time amounts to deficiency in service to the borrower of the loan. We do not find any substantive evidence to invoke the appellate jurisdiction of this Commission to entertain this appeal. Therefore, the appeal is liable to be dismissed. Hence, we pass the following order:O R D E R Appeal stands dismissed ."

11. One of the salient features of Petitioner''s Bank ''Housing Loan Scheme'' (placed at Page No.12 to 14 of the Paper Book) is; " Free insurance of housing property plus personal accident insurance for loan tenure ."

12. Thus, as per petitioner''s own documents, it has to provide free insurance of housing property. Admittedly, the loan was sanctioned in August, 2002 and first E.M.I. was deducted in September, 2002. Unfortunately one of the loanee, that is, wife of respondent died on 1.10.2002, whereas premium to insurance company was paid by the petitioner only on 5.10.2002. Thus, deficiency on the part of petitioner is writ large in this case.

13. It is well settled, that under Section 21(b) of the Consumer Protection Act, 1986, scope of revisional jurisdiction is very limited. This Commission can interfere with the order of the State Commission only where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

14. The Hon''ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed; " Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on

the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora".

15. From the examination above it is clear that findings of fact reached by Fora below are based on correct appreciation of the evidence on record. The impugned order does not suffer from any illegality, material irregularity or jurisdictional error which could justify our intervention in exercise of powers under Section 21(b) of the Act. Thus, present revision petition having no legal force, is hereby dismissed.

16. No order as to cost.

17. Original record of Fora below be sent back, forthwith.