(2002) 07 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

UNITED COMMERCIAL BANK — APPELLANT

Vs

ANITA AIRAN — RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Citation : 2002 0 NCDRC 88 : 2002 3 CPJ 371 : 2002 3 CPR 232

Hon'ble Judges : D.P.WADHWA , B.K.TAIMNI , J.K.MEHRA , RAJYALAKSHMI RAO J.

Advocate : D.M.MATHUR , RAM GOPAL AGARWAL , VINEET MALHOTRA , S.SHARMA

Judgement

1. THESE two revision petitions, one by the United Commercial Bank (UCO Bank) and other by the National Insurance Company, insurer are against the common order of the Rajasthan State Consumer Disputes Redressal Commission by which the order of the District Forum in a complaint filed by the first respondent-complainant, Smt. Anita, was upheld. Both the insurer and he Bank were held guilty of deficiency in service and were required to pay Rs. 5.00 lakhs to Anita on account of death of her husband Shailash, the insured, in a car accident.

2. SHAILASH , the deceased, took Janta Personal Accident Insurance Policy from the National Insurance Company on 25.3.1996 for Rs. 5.00 lakhs when he gave Cheque No. 0882491 dated 25.3.1996 drawn on Bank of Baroda, Nasirabad, for Rs. 1,800/- towards premium at the time of proposal. Insurance Company issued art insurance policy on the following day it being Policy No. 370701/47/96/00918 bearing Cover Note No. 93341. This cheque was sent by the Insurance Company to its banker, UCO Bank for collection on 26.3.1996. The UCO Bank sent that cheque for collection by its letter dated 4.4.1996 to the Bank of Rajasthan which was acting as a clearing house and which received the cheque only on 9.4.1996. Bank of Rajasthan sent the cheque to the Bank of Baroda on the same day but it was returned by the Bank of Baroda on the ground that the account holder had since expired. It is not that Shailash, the insured had no money in his account to honour the cheque and in fact a sum of Rs. 25,597.44 was in his account. The

cheque was, therefore, returned unpaid. Shailash, the insured unfortunately died on 2.4.1996 in a car accident. His wife Anita, therefore, made a claim to the Insurance Company for payment of Rs. 5.00 lakhs, the amount of the policy. When Anita made a claim, it was repudiated on the ground that the premium on the policy of her husband remained unpaid and thus there was no policy. She offered to pay Rs. 1,800/- in cash but it was declined. Anita, therefore, filed a complaint before the District Forum complaining deficiency in service against the Insurance Company, UCO Bank. District Forum allowed the complaint and held both the Insurance Company and the United Commercial Bank liable to make payment of insurance claim of Rs. 5.00 lakhs to Anita with cost of Rs. 1,000/-. Both the Insurance Company and UCO Bank filed separate appeals to the State Commission, which, as noted above, dismissed the same with cost of Rs. 5,000/-.

3. AGGRIEVED by the order of the State Commission both the Insurance Company and the UCO Bank have come before us by way of these two separate petitions under Clause (b) of Section 21 of Consumer Protection Act, 1986.

4. WHILE admitting the revision petition filed by the Insurance Company we recorded that the only question which arose was as to who would be liable whether it was the Insurance Company or the UCO Bank. At the same time by interim order we directed the Insurance Company to pay 50% of the amount of insurance to Anita, the widow of the insured. Against the interim order Insurance Company filed a Special Leave Petition under Article 136 of the Constitution in the Hon''ble Supreme Court. While issuing notice to show cause as to why leave be not granted Supreme Court stayed the interim order of Commission. However, subsequently, Supreme Court directed that both the Insurance Company and the Bank would pay Rs. 1.00 lakh each to Anita which would be without prejudice to the rights and contentions of the parties. Supreme Court, however, did not deal with the controversy involved in the case and directed that the deposits so made would abide by the order of the Commission. While making this order, Supreme Court disposed of the Special Leave Petition. The Insurance Company bases its claim on Section 60VB of the Insurance Act which provides that no risk be assumed unless premium is received in advance. Sub-sections (1) and (2) of this section are relevant which we reproduce as under : "64VB. No risk to be assumed unless premium is received in advance. - (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. (2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Explanation - Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be."

5. STAND of the Bank is that it could not be accused of any deficiency in service as at best it was agent of the Insurance Company and it could not be said that the insured or his widow was consumer qua the Bank. There is no doubt that Bank is extremely negligent and could be accused of extreme deficiency in service in relation to the Insurance Company though it sent the cheque for collection. The letter with which the Bank sent the cheque for collection is dated 4.4.1996, it was in fact, appeared to have been sent later than this date as it was received by the Bank of Rajasthan on 9.4.1996. If the Bank had been prompt in sending the cheque for collecting payment could have been received prior to 4.4.1996 when the insured met with his unfortunate death in car accident on 2.4.1996. But then the Bank would be answerable to the Insurance Company for its conduct in rendering deficiency in service to the Insurance Company. It could be made liable as far as Anita, the widow, is concerned. Bank was certainly deficient in service in not sending the cheque for collection in reasonable time as has been so rightly held by the Forums below.

6. 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 realisation 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 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. We would, therefore, allow the revision petition (R.P. 817/2001) filed by the UCO Bank and would dismiss that of the Insurance Company being

Revision Petition No. 1004/2001 with cost of Rs. 5,000/-. We further order that the amount of Rs. 5.00 lakhs payable by the Insurance Company will carry interest @ 9% per annum which would become due and payable from 2.7.1996 three months after the date of death of the insured. Interest shall be calculated on the diminishing amounts, already received by Anita. Both the Insurance Company and the UCO Bank had paid Rs. 1.00 lakh each to Anita, the widow, by the order of the Supreme Court. To make the amount of Rs. 5.00 lakhs due to her, Insurance Company will pay to her Rs. 3.00 lakhs and Rs. 1.00 lakh will be paid by the Insurance Company to the Bank as refund which Anita has to make to the Bank in view of our order allowing the revision petition of the Bank.

