(2003) 03 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

AMBAJI MOTIBHAI THAKOR RESPONDENT

Date of Decision : 01-03-2003

Acts Referred:

Citation : 2006 2 CPJ 38

Hon'ble Judges : M.S.Parikh , M.K.Joshi , Leenaben P.Desai J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal arises from order dated 31.5.2004 rendered by the learned Consumer Disputes Redressal Forum, Banaskantha in Consumer Case No. 100 of 203 directing the opponent Insurance Company to pay to the complainant the insurance amount of Rs. 82,500.

2. WE have heard the learned Advocates for the parties. WE have gone through the impugned order. It is not in dispute that the complainants predecessor who died in the accident in question might be covered under the policy of insurance issued in favour of one Baishankar Mansukhlal Joshi, owner of the vehicle. The complainant alleged in her capacity as beneficiary of the insurance under IMT5 that she was entitled for the claim. Since the opponent Insurance Company did not send the claim form, she was required to approach the learned Forum but without the approval of the insured. The learned Forum granted the reliefs on the ground that the complainant would be entitled to the benefit under the policy in her capacity as beneficiary of insurance clause IMT 5. However, by virtue of the definition of consumer as contained in Section 2(1)(d) of the Consumer Protection Act, 1986 the beneficiary would be entitled to claim the benefit as a beneficiary only with the approval of hirer of service of insurance namely Bhaishankar Mansukhlal Joshi. Under such circumstances, no deficiency could be fastened on the opponent Insurance Company when it did not send any claim form for the complainant to apply for the benefit. This aspect of the matter clearly appears to have escaped the attention of the learned Forum. This Commission had an occasion to decide similar matter in Appeal Nos. 771 of 2003

to 774 of 2003 between United India Insurance Company Limited v. Ramanbhai Paragbhai Chaudhary and Others, on 12.4.2004. The learned Advocate appearing for the complainant has gone through the said decision. By virtue of the proposition as noted hereinabove and as referred to in para 5 of the aforesaid decision, the impugned order cannot be sustained. The learned Advocate for the complainant would however rely on a decision of the High Court of Karnataka in National Insurance Company Limited v. Sarojini (since deceased) by legal representatives and Others, reported in I (1998) ACC 382=2000 ACJ 126. There is no difficulty in reiterating the proposition that claim of compensation under Clause IMT 5 is a different set of claim of compensation from claim arising out of motor accident claim petition. That decision will however not apply to the facts of the case as noted hereinabove. In view of what is stated above, following order is passed. ORDER 1. Impugned order dated 31.5.2004 rendered by the learned Consumer Disputes Redressal Forum, Banaskantha in Consumer Case No. 100 of 2003 shall stand set aside. This appeal is accordingly allowed, with no order as to costs. It will be open to the complainant to follow appropriate remedy. Appeal allowed.

