
(2006) 09 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO LTD

APPELLANT

Vs

Neeraj Sharda

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Citation : 2006 4 CPJ 281

Hon'ble Judges : IRSHAD HUSSAIN , LUXMI SINGH J.

Advocate : Neeraj Sharda

Judgement

1. APPEAL No. 25 of 2005 is by the insurer whereas Appeal No. 61 of 2005 is by the assignee under the insurance policy against the order dated 20.12.2004 passed by the District Forum, Nainital in Consumer Complaint No. 158 of 2003, Sh. Neeraj Sharda v. Managing Director, United India Insurance Co. Ltd. and Others.

2. APPEAL No. 26 of 2005 is also by the insurer against the order dated 18.12.2004 passed by the said Forum in Consumer Complaint No. 157 of 2003, Smt. Maya Devi Sharda v. Managing Director, United India Insurance Co. Ltd. and Others. Late Sh. R.S. Sharda had taken two Janta Personal Accident Insurance Policies from the insurer, United India Insurance Co. Ltd., Branch Haldwani, District Nainital Office. Late Sh. R.S. Sharda admittedly died in a car accident on 25.3.2000. The two policies taken were: Policy No. Sum Assured Period covering the risk Assignee 47/11/10385/96 Rs. 5,00,000 (Five lacs) 5.8.1996 to 4.8.2006 Smt. Maya Devi Sharda (widow) 47/11/10682/98 Rs. 10,00,000(Ten lacs) 23.11.1998 to 22.11.2013 Sh. Neeraj Sharda(son)

3. ON the death of the life assured, the assignees lodged claims which were not accepted as such on the ground that under the scheme of Janta Personal Accident Insurance Policy, maximum limit of a single or more than one policy was Rs. 10,00,000 only and, therefore, the assignees under one or more such policy, cannot avail benefit of assured sum of more than Rs. 10,00,000. The insurer was thus ready to pay Rs. 5,00,000 under each policy. Sh. Neeraj Sharda alleged deficiency in -service in not agreeing to pay the sum of Rs. 10,00,000 as assured

under the policy and filed Consumer Complaint for grant of related reliefs.

4. A separate Consumer Complaint was also filed by another assignee Smt. Maya Devi Sharda and related reliefs were claimed. The District Forum by separate judgments allowed the claims under both the Janta Personal Accident Insurance Policy for Rs. 10,00,000 together with interest, etc. in favour of complainant Sh. Neeraj Sharda by order dated 20.12.2004 and for Rs. 5,00,000 together with interest, etc. in favour of complainant Smt. Maya Devi Sharda by order dated 18.12.2004. Aggrieved, insurer filed the aforesaid two appeals and whereas complainant Sh. Neeraj Sharda filed appeal for enhancement of rate of interest pleading that the interest awarded @ 9% p.a. is not adequate.

5. WE have heard the learned Counsel for the parties and have carefully considered their submissions in the light of the material on record and the legal aspects of the case. Learned Counsel for the insurer drew attention to copy of letter dated 16.12.1997 (Paper No. 34) sent by the Regional Office of the insurer to the Divisional Office, Haldwani and also another letter dated 30.3.1998 (Paper No. 36) also sent to the Divisional Office, Haldwani and submitted that the Janta Personal Accident Insurance Policy either one or more have ceiling of Rs. 10,00,000 as the sum assured. She also referred to Condition No. 6 printed on the back of the policies which is as under: "6. If the insured shall at any time during the continuance of the policy be insured against similar Janta Personal Accident Insurance Policy with one or more insurers, then the maximum liability of the insurers irrespective of such policies in force with one or more insurers shall be limited to a sum of Rs. only."

6. FROM above it is evident that in Condition No. 6 no amount had been mentioned in both the policies in question. As submitted by the learned Counsel for the complainants, the absence of any amount of combined liability in Condition No. 6 would mean and imply that no ceiling was fixed in regard to the sum assured under these policies. Absence of any figure would also indicate that there was no contract between the life assured and the insurer about the combined liability under these policies. Therefore, these policies demolish the contention that there was a ceiling in regard to combined liability to the tune of Rs. 10,00,000. There can also be no gain saying that when no figure or amount had been mentioned in the printed condition, the same could not safely be interpreted to mean that there was liability ceiling of Rs. 10,00,000 in one or more of Janta Personal Accident Insurance Policy by a single life assured. In a situation like this, the learned Counsel for the complainants rightly placed reliance on the decision of the Honble Apex Court in the matter of United India Insurance Co. Ltd. v. M/s. Pushpalaya Printers, I (2004) CPJ 22 (SC), wherein the principle was laid down that when two interpretations possible, one beneficial to insured should be accepted: Words of documents if ambiguous, shall be construed against party who prepared it. The Honble National Commission adverted to this decision in the judgment rendered in the case of Satayanarayan Jiwanram v. National Insurance Co. Ltd. and Others, II (2006) CPJ 58 (NC) and

laid down that complainant not to suffer for any vagueness in issuance of policy - Insurer liable. Learned Counsel also pressed into service a decision of Division Bench of Honble High Court of Gujarat in the case of United India Fire & General Insurance Co. Ltd. v. Manibehn and Others, 1993 ACJ 941, wherein it was stressed that if the Insurance Company had accepted a limited liability, it was the bounden duty of the company to say so clearly in the endorsement and in the event of blank gaps in the endorsement attached to and forming part of the policy, the liability of the Insurance Company cannot be held to be limited. These decisions amply support the argument that Condition No. 6 of these policies does not help the insurer, rather it clearly rebut the contention that under these contracts of insurance, there was a ceiling as to the liability of the Insurance Company.

7. THE above peculiar aspects of the case make it also abundantly clear that both the policies were issued in the name of one single person late Sh. R.S. Sharda and the details regarding his name, address, etc. were exactly the same in both the policies. The two policies were issued by the same branch of the insurer and declaration was made and verified by one and the same Development Officer namely Sh. Devpal Singh Bindra. Under these circumstances, it would not be unreasonable to infer that the concerning officers of the insurer were in the know of the fact or at least ought to know about the existing policy while issuing the second policy in the name of the same life assured. It appears that none at the insurers Divisional Office was aware of any letter dated 16.12.1997 (Paper No. 34) said to have been sent by the Regional Office of the insurer. This situation also put cloud on the very existence of the said letter having been actually sent by the Regional Office and received before these policies were issued by the Divisional Office of the Insurance Company. Therefore, the said letter cannot be taken to support the cause of the insurer and the claim made by the learned Counsel for the insurer cannot safely be sustained. For the same reason, the insurer cannot avail any benefit from the Journal, Circulars, Guidelines meant for Development Officers and Brochures published from time to time and pressed into service in support of the argument that the total liability for any one insured under Janta Personal Accident Insurance Policies had always been fixed irrespective of the number of policies held by the insured with one or more insurer. There can be no gain saying that in the instant cases, we are concerned with the contract of insurance as entered into between the parties and in which no ceiling had been fixed in regard to the liability irrespective of number of policies held by the insured. Therefore, these printed materials would not support the argument that total liability fixed was Rs. 10,00,000.

8. IT is also not the case that the life assured in answer to any question regarding existing policy gave false reply while purchasing the second policy. Therefore, it was not a case of fraudulent concealment or suppression of fact that the life assured has insurance coverage for a sum of Rs. 5,00,000 under an earlier Janta Personal Accident Insurance Policy. From these facts and circumstances, it is evident that the life assured had not suppressed a material

fact of taking a policy from the same insurer. It is also of significance that the Insurance Company had the means to verify the same from its record and if the officers of the Insurance Company were negligent in discharge of their duties, the beneficiaries under these policies shall not be permitted to suffer. Considering these peculiar aspects of the matter, we are not inclined to accept the argument that in view of Section 45 of the Insurance Act, 1938, the policies of insurance in question were liable to be questioned by the insurer in only to fix total liability of Rs. 10,00,000 under the two policies held by the insured. On the face of the facts of the case, the decision of the Honble National Commission in the matter of Goparatnam and Others v. LIC of India and Others, I (2006) CPJ 78 (NC), cited by the learned Counsel for the insurer has no application here in view of the fact that there was nothing to indicate that the insured made fraudulent concealment or suppression of fact in regard to the first Janta Personal. Accident Insurance Policy having already been purchased by him at the time of purchasing the second such policy from the same insurer. As is well settled, the insurance contracts being uberrima fides contracts, are founded on utmost good faith and if any party fails to observe this principle, the contract may be avoided by the other party and in these cases, we have found that the insured had acted with utmost good faith and the insurer cannot avoid the contract alleging that the liability exceeded more than Rs. 10,00,000 under both the policies taken by the insured and particularly when the amount as to the total liability under one or more such policies find no mention in Condition No. 6 of these policies. The facts of the case also do not warrant settling of the claim on non -standard basis and as such the decision of the Honble National Commission in the matter of New India Assurance Co. Ltd. v. Narayan Prasad Appaprasad Pathak, II (2006) CPJ 144 (NC), relied upon on behalf of the insurer would not be applicable here. Learned Counsel for the insurer also submitted that even if the life assured had been sold two policies for the sum exceeding the maximum liability, the same being against the public policy, the contract of insurance could have been enforced only to the extent of the maximum liability under both the policies and to the tune of Rs. 10,00,000 only and that the District Forum should have taken into account this aspect of the matter while deciding the cases. We do not think that question of involvement of public policy has been there. The terms and conditions of the contract of insurance have been construed in their natural and ordinary sense which rule out the plea that maximum liability had been agreed and fixed by the parties under both the policies together. In fact the consideration or object of the contracts of insurance in question was not opposed to public policy as contemplated by Section 23 of the Indian Contract Act, 1872. Therefore, the decision of the Honble Apex Court in the matter of Union Carbide Corporation, etc. v. Union of India, etc., I (1992) ACC 333 (SC)=AIR 1992 Supreme Court 248 pressed into service on behalf of the insurer cannot be taken to help the cause of the insurer. Under the circumstances of the cases, the District Forum was justified in coming to the conclusion that the insurer made deficiency in service in not settling the claims as prayed for by the assignee - complainants.

9. THE learned Counsel for the insurer lastly submitted that the District Forum fell in error in awarding interest, although under the condition of the contracts of insurance in question, no interest was payable on the sums assured under these policies and further that there was also no justification to award compensation for mental agony and suffering. Learned Counsel also urged that the interest had been awarded at an inflated rate. Learned Counsel pressed into service the decision of the Honble Apex Court in the matter of Life Insurance Corporation of India and Another v. Smt. S. Sindhu, II (2006) CPJ 18 (SC)=AIR 2006 Supreme Court 2366 to bring home her point of view that interest could not have been awarded in view of the fact that the contracts of insurance in question do not provide for payment of interest; no interest was payable under any statute, say Interest Act, 1978 and the Consumer Protection Act, 1986 and that the District Forum was not at all justified in awarding interest. On the other hand, learned Counsel for the assignees submitted that the interest is usually granted in such cases on the principle of justice and equity and in support of his submission cited the decision of the Honble Apex Court in the matter of Sovintorg (India) Limited v. State Bank of India, New Delhi, II (1999) CPJ 4 (SC)=2000 (1) Apex Court Journal 235 (SC), and wherein the award of interest by the Consumer Fora was found justified on equitable grounds. Learned Counsel also submitted that the decision of the Honble Apex Court in the case of Life Insurance Corporation of India and Another (supra), do not completely rule out awarding of interest on ground of equity and to support his argument, he referred to para 13 of the judgment. Considering the totality of the circumstances of the reported case, the submission of the learned Counsel cannot be said to be without force and it had to be seen as to from which date the interest could have been awarded. Normally the period of three months is allowed for settlement of claims by the insurance companies and this principle was laid down by the Honble Apex Court in the matter of United India Insurance Co. Ltd. v. M.K.J. Corporation, III (1996) CPJ 8 (SC). In these cases, the interest has been awarded from the date of preferring the claim under the policies by the assignees which in view of the above principle does not appear justified and the interest was required to be awarded after expiry of three months from the date of preferring the claim with the insurer by the assignees. To that extent also, the orders of the District Forum need to be modified.

10. IT need to be pointed out that the District Forum awarded interest @ 9% p.a. w.e.f. 5.1.2001 on the assured sum of Rs. 10,00,000 and also Rs. 5,000 as compensation for mental agony and suffering in Consumer Complaint No. 158 / 2003. In other Consumer Complaint No. 157 / 2003, interest was awarded @ 12% p.a. on the assured sum of Rs. 5,00,000 w.e.f. 16.9.2000 and further sum of Rs. 5,000 towards mental agony and suffering was awarded. It is well settled that double benefit of interest and compensation cannot be awarded to a consumer and that grant of interest itself constitute compensation as well. Therefore, the District Forum was not justified in awarding Rs. 5,000 as compensation for mental agony and suffering in both the said cases while also

awarding interest on the assured sum. So far as the rate of interest is concerned, we are of the view that interest @ 9% p.a. was on reasonable side and not inflative and, therefore, in Consumer Complaint No. 157/2003, the interest @ 9% p.a. should have also been awarded at the same rate. In the face of the facts of the case, the claim for awarding interest @ 12% p.a. as claimed by assignee - complainant Sh. Neeraj Sharda in his appeal, would be on higher side and inflative.

11. FOR the reasons aforesaid, Appeal No. 61/2005 filed by Sh. Neeraj Sharda is liable to be dismissed and whereas the other two appeal Nos. 25/2005 and 26/2005 filed by the insurer are fit to be partly allowed and the orders of the District Forum are to be modified to the above extent.

12. APPEAL No. 61/2005 is dismissed. Appeal No. 25/2005 is partly allowed and the order dated 20.12.2004 is modified to the extent that the assignee - complainant, Sh. Neeraj Sharda shall be entitled to assured sum of Rs. 10,00,000 together with interest @ 9% p.a. w.e.f. 6.4.2001 till payment and Rs. 1,500 as cost of the litigation as awarded by the District Forum.

13. APPEAL No. 26 / 2005 is partly allowed and the order dated 18.12.2004 is modified to the extent that the assignee - complainant, Smt. Maya Devi Sharda shall be entitled to assured sum of Rs. 5,00,000 together with interest @ 9% p.a. w.e.f. 16.12.2000 till payment and Rs. 1,500 as cost of the litigation as awarded by the District Forum.

14. COST of all these appeals are made easy. Let the copies of the judgment be kept on the record of Appeal Nos. 26/2005 and 61/2005. Appeal Nos. 25 and 26/2005 partly allowed. Appeal No. 61/2005 dismissed.