(2014) 03 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

VIRUPAXAPPA APPELLANT

Vs

SENIOR BRANCH MANAGER, L.I.C. OF INDIA RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 176

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : KAMAL MEHTA

Judgement

1. ABOVE petition has been received by Post in which there is a challenge to order dated 14.09.2011,passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore, vide which appeal filed by the Respondent/ Opposite Party was allowed.

2. BRIEF facts are, that Petitioner/Complainant is a holder of an Insurance Policy issued by the respondent which was due to mature on 25.6.2009. However, he received a premium demand notice on 24.5.2010 from the respondent which was unjust and improper. The policy had matured on 25.6.2009 and as such the annuity payment was to start from 01.07.2010 as per the policy. Though all these facts were brought to the notice of the respondent, but it failed to pay the annuity payment. Hence, petitioner feeling deficiency in service filed the complaint. Respondent in its written statement took the plea that the policy commenced from 25.6.1998 under T and T 96 -32 scheme and the Premium is payable for 32 years, that is, till 25.6.2019 and not till 25.6.2009 as alleged by the petitioner. The date of maturity will be 25.6.2020 and not 25.6.2010.There is a typographical mistake in the policy. Petitioner cannot take undue advantage and benefit of the mistake crept in. The approach of the petitioner is not fair and honest. Hence, respondent has prayed for dismissal of the complaint.

3. DISTRICT Consumer Dispute Redressal Forum, Dharwad (for short, ''District Forum '') vide order dated 19.11.2010, allowed the complaint in part, with direction to the respondent to pay Rs.1,000/ - monthly from 1.7.2010 along with Rs.500/ - as cost of the litigation.

4. BEING aggrieved, respondent filed an appeal before the State Commission, which allowed the same vide the impugned order. Since, present petition was received by Post, even then various notices were sent to the petitioner. However, petitioner did not appear but sent his written submissions.

5. WE have heard the learned counsel for the respondent and gone through the record as well as the written submissions of the petitioner.

6. IT has been contended by the learned counsel for the respondent, that though there was a mistake in the Policy Bond, but the same was rectified when it came to its notice. As such, petitioner cannot take advantage on the basis of such mistake. Moreover, it is fundamental principle of insurance that utmost good faith must be observed by the contracting parties and nobody can take advantage due to typographic mistake, which stood rectified later on. In support, learned counsel has relied upon a decision of this Commission reported as Life Insurance Corporation of India vs. Anil Kumar Jain (R.P.No.2802 of 2011) decided on 11.2.2013. Case of petitioner is, that as per Policy Bond issued by the respondent it was due to mature on 25.06.2009. Hence, the premium demand notice received by him on 24.5.2010 is unjust and improper. When Policy had matured on 25.6.2009, the annuity payment is to start from 1.7.2010. As per Policy Bond, respondent had failed to pay the annuity payment. So, there is deficiency in service and as such impugned order is liable to be set aside.

7. ON the other hand, it has been contended by learned counsel for the respondent, that though there was a mistake in the Policy Bond, which was rectified later on. However as per the proposal form submitted by the petitioner, the period of annuity had been mentioned as ''32 Years ''. The period of 32 years has not yet come to an end and as such, State Commission rightly dismissed the complaint.

8. THE State Commission in the impugned order observed; ''''9. As admitted, the complainant signed the form for Jeevan Dhara policy wherein it is clearly mentioned the period after which annuity starts is to vest with 32 years. When that is so, annuity last payment payable is 25.06.2019, payment of maturity starts on 25.6.2020. The admitted facts are ignored by the DF. When complainant is still liable to pay the premium up to 25.6.2019, he cannot seek the maturity by 25.6.2009 and seek for payment of annuity from 25.6.2010. There is a default on the part of the complainant. When he is the defaulter, he cannot allege the deficiency in service. 10. Complainant with all fairness, would have contacted the OP and get clarified the mistake crept in, he has not done so. He wants to take undue advantage of the mistake found in the policy. It is said he who seeks equity, must do equity, must come with clean hands, but here the approach of the complainant is otherwise. When complainant himself is liable to pay the premium up to 2019, he cannot seek for the payment of the matured annuity starting from 1.07.2010. 11. The appellant is liable to show that the impugned order is erroneous, suffers from legal infirmity, unsustainable in law. It also suffers from error apparent on the face of record requiring our inference. We

find there is an illegality and irregularity committed by the DF in allowing the said complaint. The rights of the complainant are not affected, let him pay the premium upto 25.6.2019 and seek for the annuity as per the policy terms and conditions. When such an equally efficacious relief is readily available to the complainant, we don ''t think that he can raise such kind of consumer dispute which is rather premature. Viewed from any angle, we find there is a merit in the appeal filed by the appellant ''''.

It is an admitted fact that there were certain typographical errors in the Policy Bond, ''Jeevan Dhara with Deferred Participation ''. As per the Policy Bond, first date of annuity installment has been shown as 25.06.2009. At the same time, deferment period has been shown as ''32 Years ''. However, as per the basic document, that is, the Proposal Form (copy placed at Page No.54 of the Paper - book)which was submitted by the petitioner, the period when Annuity is to start, has been mentioned as ''32 Years ''. Further, the Plan Term is ''92 -32 '', which means that the Policy was for a period of ''32 years ''. Under these circumstances, the mere fact that there has been some typographical errors in the Policy Bond, will have no bearing on the terms of the Policy Bond.

9. IN Life Insurance Corporation of India Vs. Anil Kumar (Supra) the issue was ''''whether Insurance Company can rectify typographical mistake and charge more premium, which is payable on term table 79 -30 ''''.It relied upon a decision of Hon ''ble Supreme Court in H.P.Forest Company Ltd. Vs. M/s United India Insurance Co. Ltd., Civil Appeal No. 6347 of 2000, where Apex Court held; ''''that on the basis of typographical mistake which has been rectified in the records of the Company before the occurrence, insured cannot get benefit of typographical mistake. In that case insured took insurance cover for a period of 8 months whereas by typographical mistake, one year was mentioned in the insurance policy and insured was not held entitled for compensation on account of loss caused after 8 months but within 12 months of insurance policy on the basis of typographical mistake in the insurance cover ''''.

10. IN view of the above decision, it is clear that typographical mistakes can be rectified as and when they are noticed. Thus, respondent has not committed any error in asking the petitioner to make payment of premium to continue as per term plan. Under these circumstances, there is no deficiency in service on the part of the respondent. Therefore, the State Commission vide its impugned order has rightly allowed the appeal of the respondent by dismissing the complaint of the petitioner/complainant filed before the District Forum. We do not find that there is any illegality, irregularity or infirmity in the impugned order passed by the State Commission in dismissing the complaint of the petitioner and allowing the appeal of the respondent. Consequently, we affirm the decision of the State Commission. Hence, the present revision petition stand dismissed. With the result, the complaint filed by the petitioner/complainant before the District Forum, also stand dismissed. 15. No order as to cost.