

(2004) 06 NCDRC CK 0069

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

United India Insurance Co. Ltd.

APPELLANT

Vs

Om Prakash

RESPONDENT

Date of Decision: June 14, 2004

Citation: 2005 2 CPJ 363

Hon'ble Judges: M.A.A.Khan , Sushma Tanwar J.

Final Decision: Appeal partly allowed

Judgement

1. HEARD. The respondent had purchased a she-buffalo on 17.10.1994 for Rs. 11,000/- and got the same insured with the appellant Insurance Company on 28.2.1995 for Rs. 11,000/-. The insured animal, however, died on 2.3.1995. The claim submitted by the respondent to the appellant Insurance Company was repudiated on the ground that the risk undertaken by them commenced after 15 days from the date of issue of the policy. On a complaint having been filed by the respondent, it was pointed out by the D.F. that the specific condition, which was the result of unilateral act of the Insurance Company, was not communicated by the appellant to the respondent and, therefore, the same was not effective against the interest of the respondent. The D.F., therefore, directed the appellant to pay the sum assured of Rs. 11,000/- to the respondent with interest @ 18% p.a. from 9.4.1995 and to pay further amount of Rs. 1,000/- as cost of litigation. The appellant is in appeal against such order of the D.F.

2. THE learned Counsel for the appellant has urged that since the condition with regard to the commencement of the risk undertaken by the appellant Insurance Company had been duly incorporated in the cover note issued to the respondent,

the inter-se rights and liabilities of the parties should have been determined by the D.F. in terms of the said condition. It was further submitted that since the animal had died within a period of 3 days from the date of issue of policy, the appellant was not liable to pay any compensation to the respondent.

The argument advanced by the learned Counsel, as stated above *prima facie* appears to be quite acceptable in view of the condition incorporated in the cover note and the policy issued by the appellant to the respondent. But the difficulty is that whereas the cover note was issued by the agent/field officer of the appellant company at Baran on 28.2.1995, the policy could not have been issued on the same day by the Insurance Company through its office in Madras. Had the field officer be in a position to deliver the policy also to the respondent on 28.2.1995 then of course the condition mentioned in the policy would have been applicable to the facts and circumstances of the case so as to deny the benefit of the insurance to the respondent. But in the cover note it has simply been stated that the risk will commence after 15 days from the date of insurance policy. It means that issuance of the policy on a particular date depended upon the sweet will of the Insurance Company. The very fact that both the documents are stated to have been prepared at one and same date-one at Baran in Rajasthan and the other in Madras, indicates that the case put forth by the appellant with regard to the preparation of the policy on 28.2.1995 was not correct.

In view of the above we find no force in this appeal save to the extent that the interest awarded by the D.F. @ 18% p.a. shall get reduced to 10% p.a. from 1.6.1995. With this modification in the impugned order the appeal is partly allowed with cost on parties. Appeal partly allowed.