

(2010) 01 NCDRC CK 0012

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Sunayana Garg

APPELLANT

Vs

Icici Lombard General Insurance
Co Ltd

RESPONDENT

Date of Decision: Jan. 5, 2010

Citation: 2011 1 CPJ 150

Hon'ble Judges: Ashok Bhan , B.K.Taimni J.

Advocate: D.Vardarajan , Ajay Vikram Singh

Judgement

1. PETITIONER was the complainant before the District Forum, where she had filed a complaint alleging deficiency in service on the part of the respondents/opposite parties.

2. BRIEFLY stated the facts leading to filing the complaint were that Shri Sanjay Garg, late husband of the petitioner was one of the partners of M/s. Garg Automobiles in UP. Trade Tax Department of UP had obtained a policy from the first and second respondent covering the risk of life to the several categories of tax payers with them which included the partnership firm Garg Automobiles Ltd. of which late husband of the complainant, Sanjay Garg was one of the partners. In the instant case Shri Sanjay Garg died on a road accident on 21.1.2006 as a result of which a claim was preferred with the first and second respondents Insurance Company, through the Joint Commissioner Trade Tax, Moradabad, which was repudiated. It is in these circumstances, a complaint was filed before the District Forum, which was allowed and the respondents/opposite parties were directed to pay a sum of Rs. 4 lakh along with interest @ 9% p.a. from the date of the filing of the complaint till realization

within a period of 2 months. A cost of Rs. 1,500 was also imposed. Aggrieved by this order, the respondent Nos. 1, 2 filed appeal before the State Commission, which was allowed and the order passed by the District Forum was set aside. Aggrieved by this order, this revision petition has been filed, before us.

3. WE heard the learned Counsel for the parties. Admittedly, the parties are to be governed by condition 7 of the Policy which reads as follows:

"7. In the advertisement to be published by the Insurance Company in the month of April it will be mentioned that in case of sole proprietary firm the sole proprietor, in case of HUF the Karta and in the case of a limited companies Chief Operating Officer (CEO/MD) shall be considered as insured. As far as the insured person in the case of the partnership firm registered with the trade tax Department, UP is concerned, the published advertisement shall mention clearly that after the advertisement is published in the month of April 2005, the concerned partnership firm shall give the consent, by all the managers/partners as to which managers/partners shall be insured. Information in this regard must be submitted compulsorily by the partnership firm to Joint Commissioner (Executive) trade Tax by 15th of May 2005, if partnership firm is unable to give information by the above date then in such condition the partner who name appears in form 15 and he continues to be partner in that firm is alive till that date, shall be considered insured. However, if due to any reason the person named in form 15 does not remain partner or is not alive but his name was not changed, then the person whose name is mentioned first in form No. 14 and is alive and continues to be partner shall be considered insured and if that person is not alive or does not remain partner or Form 14/15 is not available in office of the trade tax then on the date of accident, the partner who is oldest in age and is alive shall be considered as insured."

4. IT is the case of the petitioner that as per condition 7, if the names of the partners to be eligible for the benefit under the scheme are not given by 15.5.2005, then all the partners whose names appear in Form 15 shall be considered insured.

5. WE are afraid we do not share this perception for the simple reason, that if we read the whole clause in a harmonious manner, then our deduction is that the spirit of the scheme is to cover not all the members of a partnership firm, a registered company or HUF, but a person nominated by the such bodies before 15.5.2005. The effect of non-nomination is also spelled out in the above para/condition 7, "...if partnership firm is unable to give information by the above date then in such condition the partner whose name appears in form 15 and he continues to be partner in that firm is alive till that date, shall be considered insured". It needs to be noted that word used is singular "he".. "is". Admittedly, in this case, M/s. Garg Automobiles, the partnership firm had not given any nomination. Thus, in our view, after reading condition 7 of the Policy as a whole, when the nomination is not given then the partner who is oldest in age as per Form 15 and is alive, would be considered as "insured". When we go through the form 15, which is despatched by Trade Tax Department, the name of late Shri Sanjay Garg does appear but since his father and mother were other partners, by no stretch of imagination, he could not be said to be oldest in age and thus, becoming eligible for the benefit of the policy.

6. IN the aforementioned circumstances, we find no infirmity in the order passed by the State Commission, which is as per law and terms of the Policy and does not call for any interference in revisional jurisdiction. This revision petition has no merit. Dismissed.