

(2011) 09 NCDRC CK 0088

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ICICI Prudential Life insurance
Co. Ltd.

APPELLANT

Vs

Gurmeet Singh

RESPONDENT

Date of Decision: Sept. 1, 2011

Citation: 2011 0 NCDRC 570 : 2011 3 CPR 385 : 2011 4 CPJ 545

Hon'ble Judges: R.C.Jain , S.K.Naik J.

Final Decision: Appeal dismissed

Judgement

1. THIS revision petition is directed against the order dated 27th of January, 2011 of the State Consumer Disputes Redressal Commission, UT, Chandigarh (State Commission for short) in Appeal No. 181 of 2010 affirming the order dated 16th of March, 2010 passed by the District Consumer Disputes Redressal Forum-II, UT, Chandigarh (District Forum for short). Vide their order the District Forum had allowed the complaint of the respondent no.1/complainant.

2. BRIEFLY stated the facts of the case are that the respondent no.1/complainant through one Ashish Kumar (respondent no.2), the authorized agent of the petitioner-Insurance Company had obtained a "Life Time Super Pension Policy" of the petitioner-Insurance Company on 11th of January, 2008. The petitioner-Insurance Company had accepted the proposal, received the first premium and issued the policy document to the respondent no.1/complainant. In terms of the policy, payment of premium was to be made on yearly basis. When the next premium was due on the 11th of January, 2009, the respondent no.1/complainant wished to pay the premium amount of Rs.25,000/- by means of a

cheque in favour of the petitioner-Insurance Company but the said agent Ashish Kumar persuaded the respondent no.1/complainant to give him a "self cheque" for the said amount advancing the spacious plea to the respondent no.1/complainant that such account payee cheques often resulted not only in delay but also rebounded on one ground or the other. The respondent no.1/complainant going by the advice of the agent issued a "self cheque" in good faith. The agent thereafter encashed the "self cheque" but did not deposit the amount with the petitioner-Insurance Company nor did he issue any receipt. When the local officer of the petitioner-Insurance Company was approached in the matter for a receipt, the complainant was informed by their letter dated 17th of July, 2009 that no such premium had been received by them. When a representation to their Head Office at Mumbai followed by a legal notice failed to evoke any response, the complainant approached the District Forum. The agent of the petitioner-Insurance Company, who was opposite party no.2, failed to appear and was proceeded exparte. The petitioner-Insurance Company, however, contested the complaint and denied any deficiency on their part, contending that the respondent no.1/complainant by issuing a "self cheque" had contravened Clause 28 of the proposal form, which clearly stated that "any cash or cheque payment made towards First or Renewal Premium is deemed to be received by ICICI Prudential Life Insurance Company Ltd., only when the same has been received by any of its office or collection point and after an official printed receipt is issued by the Company". A plea was also advanced that an agent is adviser of the insured and not the agent of the company and, therefore, the petitioner-Insurance Company was not liable for any acts of the adviser. It was further averred by the petitioner-Insurance Company that the name of said Ashish Kumar had been removed from the list of authorized/approved agents prior to the date of issuance of cheque on 6th of January, 2009 and, therefore, they were not liable for any act of omission or commission of a dismissed agent.

The District Forum, on consideration of the pleas and evidence of the respective parties, allowed the complaint and directed the opposite parties to jointly and severally issue an official printed receipt of Rs.25,000/- as the yearly premium paid by the respondent no.1/complainant to the agent on 6th of January, 2009; regularize the policy; permit the respondent no.1/complainant to deposit the next installment of Rs.25,000/- which was due for payment in January, 2010; pay a compensation of Rs.10,000/- and a cost of Rs.5000/-; and further directed compliance of the order within 30 days, failing which a sum of Rs.10,000/- was to be paid along with interest @ 18% per annum from the date of filing of the complaint till the date of realization.

Aggrieved by the said order of the District Forum, the present petitioner-Insurance Company filed an appeal before the State Commission, who, as observed earlier, did not find any merit in their appeal and dismissed the same, resulting in the affirmation of the order passed by the District Forum.

3. AGGRIEVED upon the concurrent finding of the two fora below that the petitioner-Insurance Company has filed this revision petition to invoke our supervisory jurisdiction under Section 21(b) of the Consumer Protection Act, 1986.

Learned counsel for the petitioner-Insurance Company has strenuously argued before us that both the fora below have committed serious irregularities, inasmuch as they have failed to take note of Clause 28 of the proposal form, which was duly filled in and signed by the respondent no.1/complainant, which provided that "any cash or cheque payment made towards First or Renewal Premium is deemed to be received by ICICI Prudential Life Insurance Company Ltd., only when the same has been received by any of its office or collection point and after an official printed receipt is issued by the Company". Referring further to Clause 5.1(v) of the policy, the counsel contends that a premium shall be considered to be received only when the same is received only at company's office. The respondent no.1/complainant having issued a "self cheque" contrary to these provisions, that too to a dismissed agent, cannot pass on the blame to the petitioner-Insurance Company. He, therefore, contends that the orders of the fora below be set aside.

4. RESPONDENT no.1/complainant has appeared in person and his submissions made through his brother/authorized representative have been heard.

We find that the learned counsel for the petitioner-Insurance Company has raised the same grounds/pleas as were raised before the State Commission in their appeal. The State Commission has dealt with their contentions in great detail. It is not denied that the policy to the respondent no.1/complainant was issued through Ashish Kumar, who was their agent. Having garnered the policy through him, it does not now behove the petitioner-Insurance Company to say that the agent was adviser for the insured and had nothing to do with them. Insofar as reliance of the petitioner-Insurance Company on Clause 28 and Clause 5.1 of the policy document are concerned, it can only be said that the said terms in general are not explained to the customer and in this particular case it can conclusively be held that the agent had not explained the terms/clauses since he himself persuaded the insured to issue a "self cheque" and subsequently encashed the same with an ulterior motive and neither issued a receipt nor deposit the amount with the petitioner-Insurance Company, as is established in this case. The act of insurance is based on utmost good faith and if the insured had trusted the agent who had earlier obtained the

policy document for him, the conduct of the petitioner-Insurance Company resorting to such clauses to frustrate the claim of the insured cannot be sustained.

On the point of the agent having been dismissed or his name having been struck off from the list of authorized/approved agents, the same has to be rejected, firstly on the ground that the petitioner-Insurance Company has failed to produce any evidence with regard to the date from which his name has been struck off and, secondly, also for the simple reason that the insured/complainant had not been informed/warned to refrain from dealing with the said agent.

5. IN this case, both the fora below have delivered a concurrent finding and in that background our role in exercise of Section 21(b) of the Consumer Protection Act, 1986 is very limited. The Hon"ble Supreme Court in the case of Mrs. Rubi (Chandra) Dutta v. M/s United INdia INSurance Co. Ltd. on this subject has held as under :-

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. IN our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. IN this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora" .

6. RESPECTFULLY, drawing support from the observation of the Hon"ble Apex Court as above, we do not find that there is any prima facie jurisdictional error or miscarriage of justice in the impugned order, warranting our interference. On the contrary, any interference may result in miscarriage of justice to the complainant, who, having paid the premium amount to the petitioner"s agent, has been denied

the renewal of his policy.

The revision petition, accordingly, is dismissed with no order as to cost.