IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 13.07.2018
Date of Hearing: 17.09.2024
Date of Decision: 18.11.2024

FIRST APPEAL NO.- 315/2018

IN THE MATTER OF

MS. RAMESH KUMARI,
W/O LATE SH. OM PRAKASH BHATIA,
R/O C-72, SANGAM APARTMENTS,
PLOT NO. 23, SECTOR-9,
ROHINI, NEW DELHI-110085.

(Through: Mr. Daljeet Singh, Advocate)

…Appellant

VERSUS

NATIONAL INSURANCE CO. LTD.,
DELHI REGIONAL OFFICE-I,
RO: JEEVAN BHARTI BUILDING, TOWER -2,
LEVEL IV, 124, CONNAUGHT CIRCUS,
NEW DELHI – 110001.

ALSO AT:
BRANCH OFFICE:
NATIONAL INSURANCE CO. LTD.,
DELHI REGIONAL OFFICE-II,
2E/9, JHANDEWALAN EXTN, NEW DELHI-110055.

(Through: Mr. Vikas Shokeen, Advocate)

… Respondent

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. Daljeet Singh, Counsel for the Appellant.
None for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are:

> *"Smt. Ramesh Kumari (in short the complainant) filed the instant complaint U/s 12 of the Consumer Protection Act 1986 as amended up to date (in short the Act) alleging therein that she is widow of Late Sh. Om Prakash Bhatia who died on 17.10.2014. He purchased a vehicle -TATA LPT truck bearing no. HR-55-M-4605 in the year 2011 and got the same insured since the year 2011 from M/s National Insurance company Limited (in short the OP) without any break. The said vehicle was stolen on 07.03.2015. FIR no. 287/2015 dated 07.03.2015 was registered at P.S. Samaipur Badli and OP was informed about the same. Complainant met the investigators of the OP and also had discussion regarding theft of the vehicle in question. All the documents required by OP were submitted for assessing the claim. Complainant is 78 years old women suffering from heart problem so after the death of her husband she was in complete shock and depression and did not understand complete formalities regarding the transfer of title of the said vehicle from the RTO as well as the OP. After two months of death of the owner of the vehicle complainant's son went to the OP and informed the OP about the death of the policy holder and requested for change of his name in the policy. He was informed by the OP that he had to first get the vehicle transferred from the RTO in the registration certificate of the vehicle. After that complainant's son went to RTO which is at*

Gurgoan for change of title in the registration certificate, RTO demanded certain documents but complainant being old could not go to RTO for change of the name of the owner of the vehicle in the registration certificate. When complainant was trying to get the vehicle registered in her name the vehicle was stolen on 07.03.2015. The insurance policy was valid at the time of theft of the vehicle but unlawfully and fraudulently OP repudiated the claim of the complainant . Hence the instant complaint seeking direction to the OP to pay a sum of Rs. 15,50,000/- with interest @ 24% p.a. from the date of filing of this complaint till realization along with cost of litigation."

2. The District Commission after taking into consideration the material available on record passed the order dated 18.04.2018, whereby it held as under:

"4. There is a dispute between the parties as to whether complainant informed the OP about the death of her husband. In para (i) page -5 of the complaint complainant pleaded that for safety and security of the vehicle complainant's son gave a cheque to agent of OP on 12/01/2015 towards renewal of the insurance policy qua the vehicle and that the agent of OP was duly informed about death of Sh Om Prakash Bhatia. Death certificate of Sh. Om Prakash Bhatia was also given to agent of OP yet new policy no. 35430031146300002609 valid from 01.02.2015 to 31.01.2016 was issued in the name of the deceased.

5. OP has denied that any information was given to it about the death of the insured. OP denied that despite having knowledge regarding death of the insured when it issued new insurance policy no. 35430031146300002609 valid from 01.02.2015 to 31.01.2016 in his name. It is stated that complainant got the insurance policy renewed in the name of a dead person without giving any information to the OP about his death.

6. In para (h) page 5 of the complaint it is pleaded that after two months of the death of the owner of the vehicle complainant's son went to OP to intimate about the death of the policy holder and for change in name of the policy holder. The insured died on

17.10.2014. It means that as per submissions made in para (h) page 5 of the complaint complainant's son visited the OP in the month of December, 2014 seeking change in the name of the policy holder. The policy was renewed w.e.f. 1.02.2015. Had the complainant already requested OP (as pleaded in Para h page 5 of the complaint) for transfer of the policy in her name, she would not have accepted the renewed insurance policy in the name of her deceased husband from 01.02.2015 to 31.01.2015 and would have returned the policy to the OP with a request to change the name of the insured.

7. Learned counsel for the OP submitted that the contention of the complainant that two months after the death of the insured her son visited the OP and intimated about death of the policy holder and requested for change of name of the insured is false as the cheque for an amount Rs. 25,562/- towards renewal of the policy was issued from joint account of the deceased and Sh. Dinesh Bhatia, the complainant's son. So, it is contended that insurer had no reason to know about the death of the insured.

8. There is nothing on record to prove that complainant made any effort to intimate the OP about death of the insured at the time of renewal of the policy in question. Infact, complainant in para (g) has stated that after her husband's death she was in a complete shock and depression and was not able to understand the formalities regarding transfer of title from RTO as well as insurer.

9. Learned counsel for the complainant has contended that all the necessary documents were supplied to OP to issue or renew the policy. It is further contended that complainant never concealed the fact of death of the insured from the OP. He has placed reliance on the judgment of Apex Court tilted United India Insurance Co. Ltd. Vs. ***Santro Devi & Ors Civil Appeal no. 7009 of 2008*** *arising out of* ***SLP (C) 4301 of 2006 dated 02.12.2008****.*

10. Per contra Learned counsel for OP has relied on condition no. 10 of the policy of insurance and Rule 56 of the Central Motor Vehicles Rules which have been reproduced in para 7 page 3 and para 8 page 4 of the written arguments submitted by the OP. Learned counsel for the OP has also relied on a judgment of Punjab State Consumer Disputes Redressal Commission (Chandigarh) titled as ***Kapil***

Attri **Vs Bajaj Allianz Ins. Co. First Appeal no. 345 of 2009 dated 05.10.2012** *wherein it was observed that:*

> *"There was no contract of insurance with the complainant under which the OPs can be compelled to pay compensation to the complainant. We are, therefore, of the opinion that the OPs have rightly repudiated the claim and the complaint was rightly dismissed by the learned District Forum.*
>
> *8. In this respect, we may refer to the cases "**New India Assurance Company Limited v. Shri Divya Prashad, I (2011) CPJ 22 (NC)**" and "**Oriental Insurance Company v. Kamal Tours & Travels III (2011) CPJ 39 (NC)**" in which cases it was held by the Hon'ble National Commission that if the complainant has no insurable interest in the vehicle at the time of the accident, there was no privity of contract between the insurance company and the complainant is not entitled to compensation."*

11. The facts of the case in Kapil Attri (supra) were that complainant's mother was the owner of the car bearing no. PB-65-D-1818 which was insured with OP1 for the period 01.09.2006 to 31.08.2007. The said insurance was renewed for the period from 31.08.2007 to 30.08.2008 and the IDV of the car was Rs. 3,60,000/-. His car met with an accident on 26.03.2008 regarding which information was given to the OP who appointed a surveyor. The surveyor assessed the loss to the tune of Rs. 3,58,402.74 but the OPs repudiated the claim on the ground that after the death of Krishna Kumari on 22.12.2006 , the car was not got transferred by the complainant in his favour and, therefore, he had no insurable interest in the vehicle. The complainant, therefore, filed complaint for payment of Rs. 3,60,000/- with Rs. 40,000/- as compensation for mental and physical harassment. OP1 admitted the insurance but contended that Krishna Kumari had died on 22.12.2006 which fact was not disclosed by the complainant and on 06.08.2007 , without getting the vehicle transferred in his favour, he obtained fresh insurance in favour of Krishna Kumari. It was submitted that OP appointed a surveyor who assessed the loss as Rs. 2,02,978.78.

12. Learned counsel for the OP submitted that the facts of the instant case are similar to the facts in Kapil Attri case and as such the *complainant having no insurable interest in the vehicle is not entitled to any compensation.*

*13. The judgment in the case of **Santro Devi (supra)** cited by learned counsel for the complainant is not applicable to the present case. The facts of Santro Devi case were that one Atma Ram Sharma was owner of the truck which was hypothecated to the bank. Atma Ram died in 1991. The vehicle was insured with the appellant. The insured vehicle met with an accident on 15.09.1994 in which the driver namely Chhater Singh died. His legal heir filed an application under section 4 of the Workmen's Compensation Act 1923 against the widow of the deceased Atma Ram Sharma and the appellant claiming a sum of Rs. 1,22,400/-. Commissioner of Workmen's Compensation allowed the application. An appeal was filed under section 30 of the Workmen's Compensation Act which was dismissed by the High Court on the basis of decision in **Rikhi Ram & Anr. V/s Sukrania (Smt.) & Ors (2003) 3 SCC 97.** The appeal was dismissed by the Apex Court.*

*14. The case in **Santro Devi (supra)** before Apex court was under Workmen's Compensation Act and the facts were different from the facts in the instant case. The contract of insurance was entered into by the bank with the insurer. The premium was paid by the bank. In the present case the policy in question was renewed and premium was paid by the complainant. The case before the Apex court was regarding the third party risk covered under the provisions of the compulsory insurance which has a social object and accordingly Hon'ble Apex Court observed:*

> *"There cannot be any doubt whatsoever that a contract of insurance must fulfill the statutory requirements of formation of a valid contract but in case of a thirdparty risk , the question has to be considered from a different angle."*

It was further observed by Hon'ble Apex Court that:

> *"24. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party but that benefit cannot be extended to the owner of the offending vehicle. The logic of fake licence has to be considered different in respect of the third party and in respect of own damage claims."*

Apex Court held that salutary statutory benefit cannot be extended to the owner of vehicle in respect of own damage claims.

15. The renewal of the policy being in the name of dead person is void. The judgment in the case of Kapil Attri (supra) is squarely applicable to the present case. There is a judgment to the same effect by National Consumer Disputes Redressal Commission New Delhi in Nirasha Sinha Vs HDFC Ergo General Insurance Company Ltd. in Revision Petition no. 3337 of 2016 against appeal no. 157/2016 dated 18.10.2017. The facts in Nirasha Sinha case were that late Ravi Sharma husband of the complainant owned a car which was insured with OP company. The policy was to expire on 25.10.2011. In the meanwhile insured died on 02.10.2011. The case of the complainant was that she requested the insurer to transfer the policy in her name. Thereafter fresh policy effective from 25.10.2011 was issued by the insurer in the name of the deceased husband of the complainant which was valid on 25.10.2012. The insured vehicle met with an accident on 06.01.2013. Claim lodged by the complainant for reimbursement of the loss was repudiated by the insurer on the ground that the policy was in the name of the dead person. District Forum dismissed the complaint. Appeal was also dismissed. Hence the Revision Petition before the National Commission. National Commission observed that:

> *"5. Admittedly, the policy in force at the time of death of the husband of the complainant expired on 25.10.2011. Admittedly, thereafter another policy was issued by the insurer for the period from 26.10.2011 to 25.10.2012 in the name of the deceased. On expiry of that policy, there was a break of 6 days and then a policy for the period from 1.11.2012 to 31.10.2013, again in the name of the deceased husband of the complainant was issued. Had the complainant already requested the insurer on 15.10.2011 to transfer the policy in her name, she would not have accepted the insurance policy issued in the name of her deceased husband for the period from 26.10.2011 to 25.10.2012 and would have returned the said policy to the insurer with a request to change the name of the insured in the said policy. That having not been done, the obvious inference is that no request on 15.10.2011 for transfer of the policy in the name of the complainant was made to the insurer.*

6. Even after the policy for the period from 26.10.2011 to 25.10.2012 had expired and then a policy effective from 1.11.2012 to 31.10.2013 was issued, the complainant did not protest on account of the said policy being issued in the name of her deceased husband and did not ask for amendment of the policy by changing the name of the insured from the name of her deceased husband to her name. This is yet another indicator that the complainant did not intimate the death of her husband to the insurer and did not seek issuance of the policy in her name.

7. It thus stand proved that insurance policy for two terms - firstly from 26.11.2011 to 25.10.2012 and then from 1.11.2012 to 31.10.2013 were obtained in the name of a dead person. The contract in the name of a dead person being a nullity in the eye of law, the insurer is not bound to make any payment to the complainant for the loss alleged to have been suffered by her due to accident of the inured vehicle."

16. The facts of the case in Nirasha Sinha (supra) are similar to the facts of the instant case. Therefore it is to be held that contract in the name of the deceased is void and not enforceable. The complaint therefore has to be dismissed in view of Nirasha Sinha judgment and is accordingly dismissed.

17. Before parting with the order we may submit that we found substance in the submission of learned counsel for the complainant that in such cases of death of the insured his LR's do not gain anything by concealment of his death. It is stated that the insurance companies receive huge premiums. They are rich and they have the infrastructure to verify requisite facts before issuing or renewing the policy. It is submitted that in terms of Insurance Regulatory and Development Authority's (IRDAI) notification dated 16.10.2002, the insurance contract should be by way of a written document and it is the duty of insurer to get a form of proposal filled by the insured so that it may become evident whether the insured suppressed any material information or provided false information. No proposal form was placed on record in the instant case.

18. Although it is desired that insurance companies should follow the procedure laid in the IRDA Notification dated 16.10.2002 so that the *possibility of taking plea of concealment of information, in absence of a written document, is ruled out. After all the LRs of the insured do not gain anything by concealing the fact of death of the insured. Lapse to inform the insurer about the death of the insured occurs on account of ignorance of law. However, in terms of the judgment of Nirasha Sinha (supra) the complaint is dismissed."*

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has preferred the present Appeal submitting that the Appellant had duly informed regarding the death of the husband of the Appellant before the renewal of the policy in the proposal form. The Appellant further submitted that the Respondent has failed to comply with the guidelines mentioned in the IRDAI and also failed to settle the claim of the Appellant. Pressing the aforesaid submissions, the Appellant has prayed for setting aside the impugned order passed by the District Commission.
4. The Respondent, on the other hand, denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the entire material available on record was properly scrutinized before passing the said order.
5. The ***main question*** for consideration before us is ***whether the impugned order dated 18.04.2018 passed by the District Commission (Central), suffers any infirmity.***
6. On perusal of record, it is clear that the vehicle in question was registered in the name of the husband of the Appellant which was insured with the Respondent insurance company for the period valid from 01.02.2014 to 31.01.2015. Further, the husband of the Appellant expired on 17.10.2014 and as per the terms and conditions of the policy, in the case of death of the insured, the policy shall not immediately lapse but shall remain valid for a period of three months from the date of the death of the insured or until the expiry of the policy, whichever is earlier.

7. Further, in the present case, the policy in the name of the deceased got renewed on 01.02.2015. However, till that time, the name of the deceased insured was not changed from the renewed policy and even no evidence regarding the request for the change of name of the deceased has been filed by the Appellant before the District Commission as well as before this Commission. Merely a submission has been made by the Appellant before the District Commission regarding the intimation to the Respondent insurance company by the son of the Appellant, but this intimation was made two months after the death of the insured.
8. Be that as it may, but the fact remains clear that despite knowing the fact that the insured had expired on 17.10.2014, the policy was got renewed by the Appellant in the name of the deceased insured and was accepted by her without any protest. Moreover, no cogent evidence has been filed by the Appellant either before the District Commission or before this Commission regarding the transfer of the name of the deceased insured from the registration certificate of the alleged vehicle, hence, no inference can be drawn in this regard.
9. Therefore, in our considered view, the Respondent is justified in repudiating the claim of the Appellant and had followed the standard terms & conditions of the policy while repudiating the claim of the Appellant as the Condition No. 10 of the terms and conditions clearly states that <u>in case the sole insured dies, the policy remains valid for three months or until its expiry, whichever is earlier and the legal heirs of the insured should apply for the transfer of the name of the insured from the policy within such period.</u>
10. ***In view of the above, we are in agreement with the reasons given by the District Commission and fail to find any cause or reasons to reverse the findings of the District Commission. Therefore, we uphold the order dated***

18.04.2018 passed by the District Consumer Disputes Redressal Commission (Central), ISBT Kashmere Gate, Delhi.

11. ***Accordingly, the present Appeal stands dismissed with no order as to costs.***
12. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
13. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
14. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
18.11.2024

LR-AJ