IN THE DELHI STATE CONSUMER DISPUTESREDRESSAL COMMISSION

Date of Institution: 28.07.2014
Date of hearing: 31.07.2024
Date of Decision: 29.11.2024

FIRST APPEAL NO.-737/2014

IN THE MATTER OF

CANARA BANK (e-SYNDICATE BANK),
HAVING ITS REGISTERED OFFICE AT:
CANARA BANK, MADHO MANSION,
ASAF ALI ROAD,
NEW DELHI-110002.

…Appellant
(Through: Mr. Anju Jain & Hitesh Sachar, Advocate)

VERSUS

1. **MS. SULAKSHANA BHATTACHARYA,**
   W/O PARTHO BHATTACHARYA,
   R/O FLAT NO 214, SECTOR 16 VASUNDHARA,
   GHAZIABAD-UP

2. **BAJAJ ALLIANZ LIFE INSURANCE CO. LTD.,**
   THROUGH ITS AUTHORIZED OFFICER/ THE MANAGER,
   G-85, 1ST FLOOR MAIN VIKAS MARG,
   PREET VIHAR DELHI: 110092

3. **BAJAJ ALLIANZ LIFE INSURANCE CO. LTD.,**
   THROUGH ITS AUTHORIZED OFFICER/ THE MANAGER,
   GE PLAZA. AIRPORT RD. YERVADA,
   PUNE MAHARASHTRA-411006

….Respondent

CORAM:

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

Present: Mr. Hitesh Sachar, counsel for the Appellant appeared on VC.
None for respondent

PER :HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

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

> *"This complaint has been filed with the allegation that OP-2 provided four life insurance policies of Bajaj Allianz Unit Gain Plus Gold Bearing Nos. 0107433275, 0107441257, 0107442401 and 0107444851 from their Delhi office The complainant had put forwarded a proposal for an insurance policy a Corporate Agent - to OP-3, a of OP-2, which was accepted and the above noted four policies were issued. OP-3 had been violating all the banking rules laid down by Reserve Bank of India for the purpose of achieving the targets and thereby cheating the honest and unsuspecting customers. The OP-3 with total disregard to Bank Nationalization Act of 1970 and rules laid down by IRDA sold the policies to the complainant. A total premium of Rs 1.20,000/- was paid through Cheque No. 0414967 The complainant wanted to surrender the policies but it was told by OP-1 that she will have to wait for one more year and it is only after the completion of 36 months from the date of the issuance of the policy that it can be surrendered. On 12.09 2011 she again went to the office of the OP-1 with a request for the surrender of the policies but was shocked and surprised that the total amount deposited for the whole policy amounting to Rs. 1,80,000/- had fetched her only Rs. 1,23,750/- thereby causing a direct loss of Rs 56,250/- in 36 months She suffered a great mental pain and agony due to the behavior of OP. She has prayed to this Forum for a compensation*

of Rs. 3,00,000/- Rs. 11,000/- towards the cost of litigation and any other relief which the Court deems fit and proper in this case.

The OP-1 & OP-2 in their reply stated that the complainant has already surrendered the policies and the amount is admittedly received by her, which was paid in accordance with the terms and conditions of the contract of the insurance. She has not raised any protest. Since, contract stands terminated, thus, the complainant is not a Consumer and there is no deficiency of services on the part of the OPs. The complaint is also barred by limitation U/s 24 A of Consumer Protection Act. The policies in question were issued on 01.09.2008. The main allegation that has been CONSUME OP-3 who has

sourced the policies as a corporate agent that the agents are independent contractors who are licensed by the Insurance Regulatory and Development Authority who act as a agent for solicitation of insurance business for insurance company. Since, there is no Principal- Agent relationship there is no imputed or vicarious responsibility on the part of the answering OPs All these policies were subject to the terms and conditions hence the complaint is not maintainable. It is also alleged that the complainant has alleged the fact of cheating and fraud which cannot be adjudicated upon under the Consumer Protection Act

WS filed by OP-3

In the rejoinder it has been alleged by the complainant that the OP-1 & OP-2 have not challenged the unfair trade practice on the part of the OP-3. Rest of the entire allegations have been denied.

Both the parties have filed on record their respective affidavits in evidence.

The OPs have taken the plea of limitation that the policies in question were purchased in me year 2008 and this complaint has been filed in the year 2011. This has been contested by the complainant Ld. Counsel Mr.

Bhattacharya who drew our attention to the documents filed along with the affidavit of Mr. Vineet, Sr. Branch Manager of the OP. who has filed Electronic Payment Mandate of 12th September 2011 transferring the amount into the account of Smt. Sulakshana Bhattacharya response to her request for surrendering the money. Allegation in the complaint is that the amount of Fts 50.250/ could not be deducted by the OP and it is only after transferring the payment of balance amount into the account of the complainant that the cause of action had arisen as such the question of limitation does not arise The complaint is within the imitation. The second question which has been raised by the Ld. Counsel for the OP is with regard to the maintainability of this complaint on the ground that it involves the question of fraud and misrepresentation,

We have considered the pleadings of the parties and the relief claimed. The main emphasis of the complainant in this complaint is with regard to the indulgence of OP-3 in selling the policies by suppressing material information. The complainant has challenged the desirability of OP-3 selling the policy in favour of the private insurance company in violation of the Reserve Bank of India directives and IRDA rules. As such the question of fraud is not of much relevance. The basic issue in the present complaint is as to whether OP-3 could pressurize its customers to purchase a policy of a particular insurance company Second question which remains to be answered is as to whether the OP-1 & OP-2 could deduct the amount from the total premium paid by the complainant. The Ld. Counsel for the complainant submitted that OP-1 & OP-2 have taken the plea that OP-3 is their corporate agent and they further contended that the OPs have not filed on record any such document which could prove that the Reserve Bank of India has ever permitted the Bankers to solicit the business for the insurance companies by pressurizing their own customers. The Bankers Fair Practice Code which has been placed on the record from the side of the complainant When spells out that *the banks have been given any such authority to sell the policies of a particular Insurance company The OP's have fail to place on record any rules and regulation of IRDA which may authonze the banks or the insurance company vice-versa to act for each other for the purposes of the selling the policies Admittedly, in this case it is categorically admitted by OP-1 &OP-2 that these policies were sold by the bank, where the complainant was maintaining her account by tying up with each other. The bank and the insurance company are mutually benefitted at the cost of the customer whose hard earned money has been siphoned in a systematic manner.*

counsel for the complainant has placed on record information under the provisions of RTI Act wherein the Bank has admitted that they have entered into a corporate agency arrangement with Bajaj Allianz Life Insurance Company from 29.09 2003 which continued upto 20.09 2009 for distribution of Life Insurance Policy. In this case, the policy which was sold to the complainant was Bajaj Allianz Unit Gain Plus Gold and it was not a Life Insurance Policy since, it was a unit gain policy thereby characterizing it as a speculative policy. As such as per the information given under the RTI Act even if there was any corporate agency arrangement which was per se in violation to the Reserve Bank of India directives and in violation of IRDA rules, such policies cannot be 1 by OP-3. It is clear from the RTI that by this arrangement the bank has collected Rs. 841.42 Crores for the OP-1 & OP-2 and earned a commission of Rs. 82.81Crores

2. The District Commission after taking into consideration the material available on record passed the order dated **09.04.2014**, whereby it held as under:

"We have earlier noted in our judgment in Case No. 461/11 that Banks and insurance companies are not only cheating the customers but they are also cheating the Govt. of India by not paying the tares on the amount colected and the

services rendemed by each of them. They are not paying the service taxes to the Govt. of India. The Off have failed to file on record that they have ever got themselves registered for carrying such type of business and if they have not got themselves registered how they could carry on such business which comes within the definition of service on which service tax is liable to be paid. They have not filed any service tax registration number. All these facts lead to one and only one conclusion that both the OPs are indulging in unfair trade practice

sis contended on behalf of the complainant that amount of Rs 56,250/- has been deducted from the total amount of premium paid without furnishing any details of the deduction made it is further contended that they showed their intention just after two years of the payment of the premium to surrender these policies and asked for the refund of the amount. They were asked to wait for one year and it is only after passing of 36 months that there request was processed and amount was directly transferred into her account without furnishing any details regarding the amount invested loss or profit sustained or earned or any charges which have been levied by the OP Without passing on any such information and justification with regard to the deduction made, how the OP d say that they were not entitled to refund this amount of Rs. 56.250/- to the complainant We find substance in the contention of the Ld. Counsel for the complainant There is not an iota of evidence placed on record by the OP or the copy of the statement regarding these policies showing the profit or loss in the investment, the amount for any service charged etc. It is the right of the where her
money was invested, whether the investment was justified or not the loss, if any, that has been sustained if it has been due to any act or omission on the part of the OPS The OPs in this case were under legal obligation to inform to the investor, the person whose money was invested, to be known that his/her money has been utilized in a particular manner which could occasion loss A blanket power cannot be given to the OPs. The insured person solely have right to know regarding the investment of his/her fund Without informing

the customer such deduction made by the OPs cannot be said to be justified. This is a clear cut case of unfair trade practice. The IRDA should be more responsible in finding out if there are any such insurance companies where the amount of investigators have been diverted in such companies which are loss making thereby indirectly causing the loss to the customers of the insurance company The possibility of such tie up can be ruled out. The Govt. of India and Security and Exchange Board of India (SEBI) should initiate investigation against such insurance companies. As we have already pointed out that the Bankers and insurance companies are violating the laws by such kind of transactions they are not paying the taxes and are earning huge profits at the cost of the innocent customers.

In view of the discussion made supra we, direct, OP-1 & OP-2 to refund to the complainant the amount of Rs 56,250/- with interest @ 9%p.a from the date of the filing of the complaint till it is credited into the account of the complainant. We, further, allow compensation of Rs. 50,000/- to be paid to the complainant on account of the mental pain, agony and harassment which is to be equally shared by OP-1, OP-2 & OP-3. We further, award a cost of Rs.5,000/- towards the cost of the litigation charges which shall also be shared equally by the OPs

Let this amount be paid within 45 days from the date of this order, failing which interest 9%pa will be chargeable till it is finally paid.

3. Aggrieved by the order of the District Commission, the Appellant/Opposite Party No. 3 has filed the present appeal, contending that the District Commission erred in finding deficiency on the part of the Appellant. The counsel for the Appellant further argued that the Appellant Bank was duly authorized by the Reserve Bank of India to act as a corporate agent and to distribute insurance products on an agency basis, without assuming any risk. Additionally, the Insurance Regulatory and Development Authority (IRDA) has granted

the Appellant Bank a license to act as a corporate agent for procuring and soliciting both life insurance and general insurance business. The Appellant also contends that it cannot be held liable for the actions of Respondents No. 2 and 3. Furthermore, the Appellant submits that the District Commission failed to recognize that no principal-agent relationship existed between the Appellant and Respondent No. 1 and did not examine the relevant documents outlining the Appellant's role. Based on these arguments, the Appellant has prayed for the order of the District Commission to be set aside."

4. The written submissions on behalf of the Appellant Bank are on record, wherein he reiterated the facts which are mentioned in the present appeal. However, the written submissions have not been filed by the Respondent till date. Moreover, he relied on Judgments namely ***Ram Lal Aggarwalla Vs. Bajaj Allianz Life Insurance Co. Ltd. 2013 SCC Online NCDRC 399, Narinder Kaur V. Birla Sunlife Company Limited Appeal No. 136 of 2013, Shrikant Murlidhar Apte V. Life Insurance Corporation of India 2013 SCC Online NCDRC 450***, ***Harish Kumar Chadha vs The Manager, Bajaj Allianz Life Insurance Co. Ltd. And Ors. (07.10.2013-NCDRC): MANU/CF/0659/2013.***

5. Additionally, Respondents No. 2 and 3 filed a cross-appeal, i.e., ***FA No. 1058/2014, titled Bajaj Allianz & Anr. v. Sulakshana Bhattacharya***, which was decided by an order dated 5th November 2024, as follows:

> *" The **main question** for consideration before us is **whether the District Commission has erred in establishing deficiency on the part of Appellants**.*
> *On perusal of record, we find that Respondent No. 1 made a total payment of Rs. 1,20,000 for the policies in question.*

When Respondent No. 1 indicated her intention to surrender these policies, the Appellants informed her that the surrender could only be processed after a minimum of 36 months from the date of issuance. After this stipulated period, on September 12, 2011, Respondent No. 1 approached the Appellants for the surrender. In response, the Appellants disbursed Rs. 1,23,750 to her from a total surrender value of Rs. 1,80,000, indicating that the payout was made in accordance with the policy terms. However, clarity on the exact computation of this amount is essential, as it raises questions about the calculations used in determining the surrender value.

It is noteworthy that the Appellants deducted Rs. 56,250 from the total amount due to Respondent No. 1. Despite this substantial deduction, the Appellants have not provided any detailed breakdown or justification for it, particularly in relation to the profits or losses that were incurred in the investments made in Respondent No. 1's name. This lack of transparency is concerning, as it leaves Respondent No. 1 without a clear understanding of how her funds were managed and what factors contributed to this deduction.

The Appellants bear a responsibility to offer a comprehensive account of the amount invested and to specify how these funds have been utilized. This obligation includes providing a detailed report on the performance of the investments, including any relevant documentation that outlines the growth or decline of the investments over time. Such transparency is critical for investors to ascertain where their money has been allocated and to understand the rationale behind any deductions or adjustments to the payout. Unfortunately, the absence of this information in the present case not only undermines the trust that Respondent No. 1 placed in the Appellants but also raises significant questions about the management of her investments and the accountability of the Appellants in this regard.

Additionally, it is imperative that the Appellants adhere to industry best practices and regulatory guidelines, which mandate clear communication with policyholders. The failure to provide detailed information regarding investments and deductions could be seen as a breach of fiduciary duty. This not only affects the financial outcome for Respondent No. 1 but also impacts the broader credibility of the Appellants as a trusted insurance provider. Ultimately, without the necessary documentation and justification from the Appellants, Respondent No. 1 is left in a position of uncertainty regarding her financial transaction. This situation underscores the need for greater accountability and transparency in the insurance industry, ensuring that policyholders are fully informed and supported in their dealings.

Therefore, in view of the abovementioned facts, we are in consonance with the reasons stated by the District Commission while allowing the complaint of the Respondent no.1 and failed to find any cause or reason to reverse the findings of the District Commission.

Moreover, on perusing the impugned order, it is noted that the contentions raised by the Appellants in the present appeal were already taken into consideration by the District Commission before passing the impugned order. The District Commission had thoroughly answered all the contentions raised by the Appellants in negative.

Consequently, we uphold the order dated 09.04.2014 passed by the District Consumer Disputes Redressal Commission (East), Saini Enclave, Delhi-110092. Resultantly, the present Appeal stands dismissed with no order as to costs."

6. We have perused the material available on record and heard the counsel for the parties.

7. The ***main question*** for consideration before us is ***whether the District Commission has erred in establishing deficiency on the part of Appellant***.

8. Upon perusal of the records and hearing the arguments, this Court finds that the Appellant was duly authorized by the RBI and IRDA to act solely as a corporate agent in soliciting and procuring insurance business. The Appellant, in this capacity, did not assume any risk and did not have a direct role in the underwriting or settlement of insurance claims.
9. Furthermore, the Appellant has established that there existed no principal-agent relationship between itself and Respondent No. 1. As per the terms and conditions of the agreement, the Appellant was merely facilitating the sale of insurance products and did not assume responsibility for the performance or services provided by the insurers (Respondents No. 2 and 3). It is therefore clear that there was no direct or principal-agent relationship between the Appellant and Respondent No. 1.
10. In view of the above, this Court is of the opinion that the District Commission erred in holding the Appellant liable for the actions of Respondents No. 2 and 3, especially when there was no direct contractual relationship or principal-agent relationship between the Appellant and Respondent No. 1. The Appellant acted within the scope of its authorized role and was not responsible for the deficiencies in service alleged by the Respondents.
11. In light of the above, ***we hereby modify the order dated 09.04.2014 passed by the District Consumer Disputes Redressal Commission (East), Saini Enclave, Delhi-110092, to the extent that the Appellant is absolved of all liabilities in the present case. Consequently, the present Appeal is allowed, with no order as to costs. The rest part of the order dated 09.04.2014 shall stand unchanged.***

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:
29.11.2024

L.R.-SM