NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2194 OF 2019

(Against the Order dated 03/07/2019 in Appeal No. 549/2018 of the State Commission West Bengal)

1. IDBI FEDERAL LIFE INSURANCE CO. LTD. & 2 ORS.
THROUGH ITS AUTHORIZED SIGNATORY, HAVING ITS REGISTERED OFFICE AT 22ND FLOOR, A-WING MARATHON FUTUREX, MAFATLAL MILLS COMPOUND, N.M. JOSHI MARG, LOWER PAREL(E)
MUMBAI-400013
MAHARASHTRA
2. IDBI FEDERAL LIFE INSURANCE CO. LTD.
THROUGH ITS AUTHORIZED SIGNATORY, HAVING ITS REGISTERED OFFICE AT 22ND FLOOR, A-WING MARATHON FUTUREX, MAFATLAL MILLS COMPOUND, N.M. JOSHI MARG, LOWER PAREL(E)
MUMBAI-400013
MAHARSHTRA
3. IDBI FEDERAL LIFE INSURANCE CO. LTD.
SHANTINIKETAN BUILDING, 2ND FLOOR, SPACE NO. 1, CAMAC STREET,
KOLKATA-700017 ....Petitioner(s)

Versus

1. KRISHNA BERA
W/O. LT. SHRI KRISHNENDU BERA, C/O. MR. SOUMEN SAMANTA, R/O. 128/B, BANAMALI NASKAR ROAD, 2nd FLOOR, FLAT NO. 2D 7 2C PARNASHREE PALLY, BEHALA,
KOLKATA-700060
WEST BENGAL ....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE PETITIONER :	FOR PETITIONER: MR. PIYUSH SINGHAL AND MR. ROBIN SINGH, ADVOCATES
FOR THE RESPONDENT :	FOR THE RESPONDENT: MR. ANUBHAV SINHA, ADVOCATE THROUGH VC

Dated : 01 May 2024

ORDER

1. This Revision Petition No. 2194 of 2019 challenges the impugned order of the learned West Bengal State Consumer Disputes Redressal Commission, Kolkata (‘the State Commission’) dated 03.07.2019. Vide this order, the State Commission allowed the Appeal No. A/549/2018 and modified the order of the District Consumer Disputes Redressal Forum,

Unit-II (Central) ('the District Forum') dated 26.04.2018 to the extent only liability of paying fine as ordered by the Ld. District Forum and instead saddle them with the liability of paying simple interest @9% p.a.

2. Brief facts of the case, as per the Complainant, are that her husband had an insurance policy under IDBI Federal Loan Insurance Group Life Plan to cover the housebuilding loan of Rs. 16 lakhs taken from IDBI Bank Ltd vide Policy No. 400465557 with sum assured of Rs.16 lakhs. It commenced on 30.09.2012 and was in force for three years till September, 2015. She approached OP Insurance Company for renewal of the policy on 31.12.2016 along with cheque No. 249/27 dated 31.12.2016 for Rs.22,457/- drawn on Parnasree Branch of SBI. It was credited to OP account on 03.01.2017. As per OPs policy, a lapsed insurance policy can be reinstated within 2 years from the date of last unpaid premium. She complied with the other mandate for such renewal. She had also filled the proposal form with details as to health condition of the life assured that her husband was recently suffering from Non-Hodgkin Lymphoma a disease which affected him in the right eye from April, 2015 and was spreading rapidly and subsequently affected the brain. As a result, her husband was not in a position to recapitulate the date when the premium was due. As such, he became defaulter and the policy lapsed. Subsequently, her husband died on 06.01.2017. She preferred the death claim. On 25.03.2017 she received a letter from OP-1 Insurance Company that her claim was rejected on the ground that the policy was in lapse condition. She protested the repudiation and approached Insurance Ombudsman on 09.04.2017. The Insurance Ombudsman conducted a hearing on 23.06.2017. However, she was not allowed to represent her case through any Advocate and no legal aid was granted. An order was passed without allowing her prayer and directed the OPs to refund Rs.22,457/- along with interest @ 2% per annum. Being aggrieved, she filed a Consumer Complaint before the District Forum.

3. In reply, the OP Insurance Company contended that the impugned policy lapsed on 30.10.2015 for non-payment of premium. The revival request of the husband of the Complainant was rejected due to malignancy which had spread in the body of the life assured. On proper verification it was confirmed that nothing was due and payable by the OP as the policy was not revived after its lapse on 30.10.2015. The said proposal was actually filed with OP insurance company on 02.01.2017 as 31.12.2016 was Saturday and only an office boy was present in the OP office, and he was forced to accept the said reinstatement form. The revival form was actually received by OP on 02.01.2017 and in that reinstatement form it was noted that the life assured was suffering from malignancy and said malignancy had spread to multiple organs. The OP insurance company after considering revival form and the medical papers refused to reinstate the policy and the said fact was intimated to the policy holder by its letter dated 20.01.2017. The life assured expired few days after the date of receipt of the proposal for revival of the policy on 02.01.2017 which makes it absolutely clear that the intention of the life assured was not fair. The complaint filed by the Complainant does not fall within the definition of the consumer dispute under the Act as there is neither any unfair trade practice nor any deficiency in service on their part. Hence, the Complaint be dismissed.

4. The learned District Forum vide order dated 26.04.2018, partly allowed the complaint and directed the Petitioners/OPs as under:

"Ordered

That the instant case no.423 of 2017 be and the same is allowed in part on contest against the OPs.

OPs are jointly and severally liable to pay the awarded amount.

The OPs are directed to settle the death claim of policy No.4000465557 and Claim No.DT201700000319 along with interest at the rate of 7 percent p.a. from the date of filing of this case till realization and litigation cost of Rs.5,000/- within 30 days from the date of this order, in default, the OPs to pay fine at the rate of Rs. 100/- per day delay and the amount so accumulated should be deposited to this Forum.

Failure to comply with the order will entitle the complainant to put the order into execution under appropriate provision of the C.P. Act."

5. Being aggrieved by the impugned order, the Petitioners filed an Appeal and the learned State Commission, vide order dated 01.11.2018 allowed the Appeal in part with following observations:

"Having heard both sides and on thorough scrutiny of the documents on record, we found no infirmity with the order impugned. Reasons follow.

It is a fact that no formal acceptance letter was issued to the deceased policyholder accepting his proposal to revive the subject policy. That said, we cannot lose sight of the fact that the policyholder, since deceased, did not suppress any material fact about his medical condition while applying for revival of the subject policy. It is though claimed by the Appellants that the cheque was deposited to the bank in usual course of business, we cannot appreciate such bizarre proposition given that one cannot blow hot and cold in the same breath. Pending decision regarding the revival prayer of the policyholder, since deceased, the Appellant had no authority to encash the premium cheque. Since a cheque remains valid for 3 months from the date of issuance of the

same, the undue haste showed in realizing the proceeds of the cheque was totally uncalled for. Presentation of the cheque to the bank signifies the fact that the Insurance Company was agreeable to the revival proposal of the policyholder. If the Insurance Company did not issue the acceptance letter immediately after encashment of the cheque, it was their fault. On account of their failure to issue formal acceptance letter the interests of a bona fide consumer cannot be jeopardized.

For this reason, we refuse to interfere with the decision of the Ld. District Form save and except relieving the Appellants from the liability of paying fine as ordered by the Ld. District Forum and instead saddle them with the liability of paying simple interest @ 9% p.a. over the decreetal sum to the Respondent for the entire period of default. The Appeal, accordingly, stands allowed in part."

6. The learned counsel for the Petitioners/OPs reiterated the grounds stated in the Revision Petition and asserted that the OPs repudiated the claim of the Complainant as there exists no contract of insurance on the date of the death of the DLA i.e. 06.01.2017 and hence the Petitioner cannot be fastened with the liability to pay the insured amount, when there is no contract of insurance at the time of death of DLA. He sought the impugned orders of the lower fora be set aside. He has relied upon the following judgments:

(i) Life Insurance Corp. of India And Anr. V. Sunita, SLP (Civil) No.13868 of 2019 decided on 29.10.2021;

(ii) Birla Sun Life Insurance Company Ltd. V. Bhanwari Devi, FA No.1033 of 2015, decided on 01.02.2022 by NCDRC;

(iii) Life Insurance Corpn. Of India and Ors. Vs. Siba Prasad Das (Dr.) and Ors, IV (2008) CPJ 156 (NC);

(iv) Kona Mohan Rao's v. M/s. New India Assurance Ltd., 2015 (2) CPR 393 (NC).

7. The learned Counsel for the Respondent/Complainant argued in support of the impugned orders passed by the District Forum and the State Commission. He has relied upon the following judgments:

(i) LIC of India V. Raja Vasireddy (1984) 2 SCC 719;

(ii) Kona Mohan Rao V. New India Assurance Ltd., 2015 (2) CPR 393 (NC);

(iii) D. Srinivas v. SBI Life Insurance, (2018) 3 SCC 653;

(iv) LIC of India v Pramila Basak 2021 SCC OnLine NCDRC 164;

(v) LIC of India v Savitri Devi 2018 SCC OnLine NCDRC 1264;

(vi) United India Assurance Co Ltd v. Harchand Rai Chandan Lal, 2005 ACJ 570;

(vii) Polymat India P. Ltd. v. National Insurance Co. Ltd, AIR 2005 SC 286;

(viii) Karnataka Housing Board VKA Nagamani(2019) 6 SCC 424;

(ix) Sunil Kumar Maity v. SBI, 2022 SCC OnLine SC 77.

8. I have examined the pleadings and associated documents placed on record, including the orders of the District Forum and the State Commission and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

9. The learned District Forum issued a well-reasoned order based on evidence and arguments advanced before it. The learned State Commission, after due consideration of the pleadings and arguments, determined that no intervention is warranted on the District Forum's order except relieving the Petitioners from the liability of paying fine as ordered by the Ld. District Forum and instead imposed the liability of simple interest @ 9% p.a. over the decretal sum to the Respondent for the entire period of default.

10. It is uncontested position that no formal letter with respect to the revival of the policy was issued by OPs to the deceased policyholder. The DLA died even before the letter of rejection dated 20.01.2017 was issued. It is also undisputed that the life assured did not suppress any material fact about his medical condition while applying for revival of the subject policy. He made his medical condition rather clear upfront. Along with the proposal, the said cheque as premium was also deposited. The contention of OPs that the DLA forced the office staff to accept the proposal is prima facie untenable as no such force is feasible. While considering the proposal for issue of a revived policy, OP had accepted the premium cheque, deposited it in bank and encashed the same. There emerged a situation wherein the DLA had applied for revival of the Insurance Policy in question within the timeline prescribed; completed all formalities, including submission of the proposal from with accurate details along with specific and truthful details of the medical condition of the DLA; and paid the premium on 30.12.2016 which was encashed by the OPs on 02.01.2017. The rejection for revalidation of the policy was notified on 20.01.2017. Without doubt, if OPs needed more time for proposal evaluation for revival, there was no reason to encash the cheque, which in any case has substantial residual life for encashing. Encashing of cheque into the OPs bank account amounts to acceptance of consideration and signifies that the Insurer was agreeable to the revival of the policy. If the Insurance Company did not issue the acceptance letter immediately after encashment of the cheque, the DLA/Complainant have genuine reason to believe that it would be issued anytime. If there was undue delay, it was the fault and the liability of the OPs.

11. It is a well settled position in law that the scope for Revision under Section 21(b) of the Consumer Protection Act, 1986 and now under Section 58(1)(b) of the Act of 2019 confers very limited scope on this Commission. In the present case there are concurrent findings of facts and thus revisional jurisdiction of this Commission is limited. After due consideration of the entire material on record, I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the learned State Commission warranting our interference in revisional jurisdiction. In this regard, I place reliance on the decision of the Hon'ble Supreme Court in the case of ***'Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., (2011) 11 SCC 269***. In addition, Hon'ble Supreme Court in ***'Sunil Kumar Maity vs. SBI & Anr.*** **Civil Appeal No. 432 of 2022 Order dated 21.01.2022** observed as follows:-

> *"9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. ....."*

12. Similarly, in a recent order the Hon'ble Supreme Court in **Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31** has held that:-

> *As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record.*

13. Based on the deliberations above, I do not find any merit in the present Revision Petition and the same is, therefore, **Dismissed**.

14. There shall be no order as to costs. All pending Applications, if any, are also disposed of accordingly.

....

AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER