Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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Queries & Answers through the Web

(*www.advantageconsumer.com* is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

The National Commission can exercise the Revisional Powers only if there is some *prima facie* jurisdictional error in the concurrent findings of the Fora below.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

REVISION PETITION NO. 545 OF 2020

(Against the Order dated 06/08/2019 in Appeal No. 1119/2019 of the State Commission, Karnataka)

LIFE INSURANCE CORPORATION OF INDIATHROUGH DEPUTY SECRETRY (LEGAL CELL DELHI)2ND FLOOR, ORIENT BUILDING, M.G. ROAD,BENGALURU-560001. KARNATAKA

.....Petitioner(s)

Versus

DR. V.C. JAGANATHAN
S/O. V.C. NARASIMHA,
R/O. NO. 24, R V LAYOUT, KUMARA PARK WEST,
BENGALURU KARNATAKA

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

Dated : 03 August 2023

ORDER

1. This revision petition under sections 21(b) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order dated 06.08.2019 in Appeal No. 1119 of 2019 of the State Consumer Disputes Redressal Commission, Karnataka, Bengaluru (Principal Bench) (in short, the 'State Commission') dismissing the appeal of the petitioner against order dated 20.06.2019 of the Bangalore Urban II Additional District Consumer Disputes Redressal Forum, Shanthinagar, Bangalore (in short, the 'District Forum') in Consumer Complaint no. 158 of 2017.

2. The brief facts of the case, according to the petitioner, are that the petitioner obtained a LIC Jeevan Tarang Policy on 01.03.2011 on half yearly premium basis from the respondent. As he had failed to pay the premium in March 2015, he approached the respondent who advised him vide letter dated 20.07.2015 to revive the policy during the Special Revival Campaign by undergoing medical check up. Accordingly, the complainant underwent medical tests and submitted reports dated 14.09.2015 and 02.12. 2015. On 19.08.2016 the opposite party conveyed that the policy

was declined without assigning any reason. Complainant issued a legal notice on 08.12.2016 to refund the premiums totalling Rs 1,36,400/- and bonus of Rs 56,400/- which was not replied to. He then filed a complaint before the District Forum which allowed the complaint partly and directed the opposite party to refund the premium of Rs 1,36,400/- with Rs 10,000/- towards litigation costs within 30 days. The appeal of the opposite party before the State Commission was dismissed. Hence this appeal.

3. Heard the learned counsel for the petitioner. The respondent submitted through letter that his written arguments be treated as his final arguments. I have given thoughtful consideration to the material on record.

4. The petitioner argued that the State Commission erred in its finding that the premium paid could be refunded during the lifetime of the assured and/or before the end of the accumulated period as settled by this Commission in ***Life Insurance Corporation of India Vs. Kalluri Siddaiah*** II (2020) CPJ 277 (NC) which held that if the petitioner which incurs cost in ensuring the life of policy holders is made to refund the premium in the lifetime of the insured, *"it will not be possible for the Corporation to remain financially viable and it will not be in a position to grant insurance cover to the policyholders"*. While it is admitted that premiums of Rs 12,626/- were paid upto September 2014, there was a default as on 01.04.2015 and as per condition no. 2 of the policy, the policy was cancelled. According to the petitioner, the premium from March 2011 to September 2014 was Rs 1,01,008/-. Revival of the policy could not be done after the respondent failed to pay the instalment since the mandatory medical examination showed unsatisfactory results. During pendency of the complaint before the District Forum a further medical examination was recommended by the petitioner which was also not satisfactory. According to the petitioner, the *fora* below arrived at erroneous findings since the premium was not paid even during the grace period of 30 days and under the lapsed policy there existed no insurance contract. As the premium paid was Rs 1,01,008/- the order of the District Forum to refund Rs 1,36,400 was erroneous. It is also stated that under condition no. 3 of the policy relating to "Non -forfeiture Regulations" the paid up value of Rs 1,36,400/- inclusive vested bonus of Rs 56,400/- was due and payable at the end of the accumulated period on 01.03.2027. As per condition no. 4 of the policy the petitioner reserved the right to either accept or decline revival of the policy based on evidence of satisfactory health. It is argued that revival is not a matter of right and therefore the impugned order needs to be set aside.

5. *Per contra,* the respondent in his written arguments has stated that he is not in a position to travel to New Delhi and argue the case. Hence he has sent to written arguments by post which is taken on record. Respondent has stated that the revision petition was not maintainable as it was a case of concurrent findings of facts by the *fora* below. Respondent has also stated that the respondent had sought revival of the policy within six months of lapse due to non-payment of one premium. The policy allows five years time to seek revival. The respondent further states that the respondent has not suppressed any information at the time of seeking revival. The revival was sought within six months from the date of non-payment of the premium. The respondent has issued notice on 08.12.2016 to the petitioner/ opposite party. The respondent took the policy on 10.04.2011 and the respondent paid the premium regularly. He submits that due to oversight the premium for March 2015 was not paid. On realizing the oversight, the respondent approached the petitioner for revival and underwent medical tests at R V Metro Diagnostics and Health Care Centre, Bangalore. Respondent states that by a letter dated 20.11.2015, the respondent was called up to seek revival under Special Revival Campaign. The respondent was again asked to undergo medical check-up. The respondent underwent medical test at R V Metropolis Diagnostics and Health Care Centre, Malleswaram, Bangalore. The respondent again made enquiry about the policy, however, the respondent was asked to undergo medical tests again. Accordingly, the respondent underwent medical tests at Raksha Diagnostics, Bangalore on 12.07.2016.

6. The respondent submits that on 19.08.2016, the respondent received an undated letter stating that the policy has been declined. The respondent submits that the petitioner produced medical test reports before the District Forum. As per this report, except the sugar level being high no adverse health levels/ reports are in the test reports. The respondent further states that the policy provides for revival of the lapsed policies. This has been admitted by the petitioner. He further states that the policy nowhere states that revival will amount to fresh contract. Further, the respondent states that condition no.4 allows revival within five years period from the date of unpaid premium on

submission of continued insurability to the satisfaction of the Corporation and payment of all arrears of premium together with interest. He also states that condition no.4 does not empower the petitioner to impose fresh terms and conditions. Respondent states that the petitioner has issued a letter dated 17.01.2017 for revival of the policy; however, in the said letter the scheme is valid only up to 15.03.2017 and it also provides medical concession. He has also relied upon the judgment of this Commission in ***LIC of India vs Dr Manjunath Reddy*** decided on 22.10.2019 as well as the Hon'ble High Court of Gujarat in the case ***Mahesh Kumar vs LIC of India.***

7. From the records it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. The concurrent findings on facts of these two *fora* are based on evidence led by the parties and documents on record. The present revision petition is therefore an attempt by the petitioner to urge this Commission to re-assess, re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the impugned order are perverse.

8. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower *fora* are concurrent on facts. It can interfere with the concurrent findings of the *fora* below only on the grounds that the findings are either perverse or that the *fora* below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 21 of the Act is therefore, limited to cases where some *prima facie* error appears in the impugned order. Different interpretation of same sets of facts has been held to be not permissible by the Hon'ble Supreme Court.

9. The Hon'ble Supreme Court in ***Rubi (Chandra) Dutta vs United India Insurance Company*** (2011) 11 SCC 269 dated 18.03.2011 has held that:

"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."

10. Reiterating this principle, the Hon'ble Supreme Court in ***Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors*** (2016) 8 SCC 286 dated 02.08.2016 held:

"17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons."

11. The Hon'ble Supreme Court in its judgment dated 05.04.2019 in the case of ***T Ramalingeswara Rao (Dead) Through LRs & Ors Vs. N Madhava Rao and Ors***, Civil Appeal No. 3408 of 2019 dated 05.04.2019 held as under:

"12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction."

12. The *fora* below have pronounced orders which are detailed and have dealt with all the contentions of the petitioner which have been raised before me in this revision petition. It is also seen that the orders of these *fora* are based on evidence on record. In view of the settled proposition of law that where two interpretations of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in revisional jurisdiction, this petition is liable to fail.

13. I therefore, find no illegality or infirmity or perversity in the impugned order warranting any interference of this Commission. The present revision petition is, therefore, found to be without merits and is accordingly dismissed. ■

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Not communicating the change in travel through online was a deficient service rendered by the Railways, after having issued the ticket through online.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

REVISION PETITION NO. 1854 OF 2019

(Against the Order dated 25/03/2019 in Appeal No. 233/2018 of the State Commission, Punjab)

NORTHERAN RAILWAY & 2 ORS.
THROUGH ITS GENERAL MANAGER, BARODA HOUSE,
NEW DELHI .....Petitioner(s)

Versus

VINAY KUMAR GARG
S/O. RISHI KUMAR GARG, R/O. HOUSE NO. B V 1611, SANDHU PATTI,
BARNALA TESHIL AND
DISTRICT-BARNALA. PUNJAB .....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT
HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,MEMBER

Dated: 04 August 2023

ORDER

A.P. SAHI, J, PRESIDENT

1. This Revision Petition has been filed questioning the correctness of the Order of the District Consumer Disputes Redressal Forum, Barnala, Punjab (hereinafter referred to as the District Forum) dated 09.03.2018 and the Order in First Appeal before the Punjab State Consumer Disputes Redressal Commission at Chandigarh (hereinafter referred to as the State Commission) dated 25.03.2019, whereby the claim of the Respondent herein for refund of sum of Rs.230/- has been allowed and a sum of Rs.15,000/- has been awarded as compensation. The conclusion drawn by both the Fora below, on fact and law, has been assailed, contending firstly that it was a claim of refund of travel fare by train, as such the claim was entertainable under the Railway Claims Tribunal Act, 1987 under Section 13(1)(b) thereof and not the Consumer Forum. It is the case of the Revisionists that the jurisdictional bar contained in Section 15 of Railway Claims Tribunal Act also renders the claim petition not maintainable, on which grounds erroneous findings have been recorded by the District Forum as also the State Commission. Hence, the Impugned Orders are vitiated and deserve to be set aside.

2. On merits, it has been urged that the findings recorded by the Forums below on the issue of deficiency of service is contrary to the weight of evidence on record, in as much as due notice and announcements had been made for all

passengers, including the Respondent. As such, there was due intimation regarding the change of travel class. It is submitted that all formalities regarding intimation were duly and diligently followed as per the rules and regulations of the Railways and no inconvenience at all was caused to the Respondent as he undertook the journey as planned by him. In these circumstances, it is urged that he was not entitled for any compensation nor was he entitled to partial refund of fare, as claimed by him, because the Railways had offered full refund in case the passengers did not opt to travel in the alternative accommodation provided. Learned Counsel vehemently urged that to the contrary, the Respondent had voluntarily accepted the alternative travel plan in second class ordinary coach as per his planned journey without raising any protest. Hence, his claim petition deserves to be dismissed.

3. We have considered the submissions raised and, on the issue of jurisdiction, it is by now well settled by several pronouncements, including that of the Apex Court, keeping in view the provisions of Section 3 of the Consumer Protection Act, 1986 that the provisions of 1986 Act are in addition and supplemental to any other law for the time being in force. There is no ouster of jurisdiction or absolute bar. Hence, the claim petition was maintainable, and we approve of the findings on this issue by the Forums below.

4. The second contention as a corollary to the first is that the claim was for refund of fare, which was covered by Section 13(1)(b) of the Railway Claims Tribunal Act, 1987. The petition not being barred under Section 15 of the Act, there cannot be an implied bar taking recourse to Section 13(1)(b). As indicated above, neither is there a bar of jurisdiction nor is there ouster so as to maintain a claim petition before the Consumer Forum, which is essentially complaining about deficiency in service on the part of the Railways, as would be evident from the findings recorded by the Forums below and the reasons given hereinafter.

5. On merits, it is undisputed that the Respondent had purchased a travel ticket by train in AC chair car from Barnala to Sriganganagar on 18.04.2017 and a return journey ticket on 19.04.2017 between the same stations. The railway ticket purchased by the Respondent confirmed the reservation in his favour through an SMS and this online confirmation remains undisputed.

6. On 19.04.2017, when the Respondent reached the railway station for undertaking his return journey from Sriganganagar to Barnala, he found the AC chair car accommodation not available, whereupon he started making enquiries from the Train Ticket Examiner, the Guard and the Station Master and he was also sent to the Computer Room to seek information but, according to the Respondent, the same was of no avail and he was not given any intimation whatsoever about the change of coach from AC chair car to second class ordinary coach. Since the time was short, the Respondent in this helpless condition and being driven to the wall was left with no other option but to undertake the journey in the second class ordinary coach, with no help coming from any quarter to either inform him about this sudden *suomoto* change or provide any relief.

7. It is also clear from the pleadings on record and which fact remains undisputed that the confirmation of an AC chair car ticket was transmitted to the Respondent online but no information about any such change in the travel plan was intimated through SMS. The channel of booking and confirmation, therefore, being through SMS, could have been intimated to the Respondent online, which admittedly was not done. It is, therefore, apparent that it was at the time of boarding the train that this confusion erupted, for which the Railways contend that they had to bring about a change on account of defect in the AC coach, which was undergoing overhauling, and, therefore, in the interest of safety of the passengers, an alternative second class ordinary coach was attached, on which the Respondent undertook his journey. The defence taken by the Railways was that they had made an announcement and had also displayed a notice chart. A copy of the chart of reservation and booking, in which this change had been indicated, is said to have been placed before the District Forum. The Forums below did not find any such evidence so as to demonstrate actual intimation to the Respondent, and, to our mind also, this could have been very easily achieved digitally by sending an SMS message to the Respondent passenger, which was not done. The Respondent, therefore, did not have any intimation of this sudden change of class or any offer for refund of the entire amount. Even otherwise, an offer of entire refund is no substitute as that would have resulted in the cancellation of the journey of the Respondent, who as indicated in the pleadings, was a Bank official and had to return to attend the duties. The journey of the passenger was, therefore, made distressful on account of lack in services that were required to be tendered on both counts of lack of intimation through SMS and the option given to the passenger to cancel his journey. The Railways, therefore, did not act diligently and the deficiency in service is established. In these circumstances, both the Forums below were justified in ordering the partial refund that was claimed by the Respondent, being the difference of the amount of the fare of AC chair car and second class ordinary coach. The Respondent had simply asked for refund of the difference in fare of Rs.230/- on account of this harassment and distress pointing towards the deficient conduct of the Railways.

8. Having said so, we also find it necessary to mention it for some future guidance that the Railways have pursued this matter of a claim of Rs.230/- for the past six years, which must have entailed huge legal expenses at the cost of the public exchequer. The litigation could have been very easily avoided by the Railways instead of carrying out this litigative pursuit resulting in loss of public money, time and even the valuable period that was consumed in the litigation before the three Forums. Such a practice needs to be deprecated and, for this additional reason as well, we find that this Revision Petition ought to be dismissed.

9. In the Application for Stay, filed by the Revisionists, we find in para-11 it has been stated that a statutory amount of Rs.7500/- has been deposited before the State Commission, being 50% of the decretal amount, vide Demand Draft dated 09.04.2018. The balance of the amount shall also be reimbursed as directed by the State Commission and shall be released in favour of the Respondent as per the directions aforesaid without any further delay.

10. The Revision Petition is, accordingly, dismissed with the aforesaid observations. ■

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