

Md.Ameena and Another Vs. the Manager, State Bank of India and Another

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jan-27-2012

Judge : Mr. R. Lakshminarasimha Rao, Honourable Member & Mr. Thota Ashok Kumar, Honourable Member

Appeal No. : F.A.No.1149 OF 2009 Against C.D.NO.42 OF 2004 District Forum
Nellore

Appellant : Md.Ameena and Another

Respondent : The Manager, State Bank of India and Another

Judgement :

Oral Order: (As per Sri R. Lakshminarasimha Rao, Honble Member)

1. The complainants in C.D.No.42 of 2004 are the appellants. The first appellant is the wife and the second appellant is the son of Mohammad Azmal Hussain. Mohammad Azmal Hussains father has filed C.D.No.158 of 2003. Mohammad Azmal Hussain during his life time obtained life insurance policy bearing number 840612861 for sum assured of `1,00,000/- from the second respondent insurance company. At the time of obtaining the insurance policy, Mohammad Azmal Hussain issued cheque bearing number 00493505 dated 29.12.2001 for an amount of `3,412/- towards the premium, in favour of the second respondent insurance company. The second respondent insurance company accepted the

proposal and issued insurance policy bearing number 840612861 for a sum assured of `1,00,000/- with the date of commencement of risk from 15.12.2001. The insured had appointed the first appellant as his nominee under Section 39 of the Insurance Act.

2. The second respondent insurance company had presented the cheque with its banker, Bank of Baroda for clearance and the Bank did send the cheque to the first respondent bank. The first respondent bank returned the cheque with the endorsement that there were insufficient funds in the account of the first appellants husband. By the time the cheque was returned unpaid, the second respondent insurance company issued the insurance policy. On 15.11.2002 the second respondent insurance company cancelled the insurance policy.

3. The case of the appellants is that there were sufficient funds in the account of the first appellants husband and the first respondent bank negligently dishonoured the cheque. The second respondent insurance company kept the cheque with it for a period of 15 days without intimating the appellants husband and he lost the opportunity to know about the dishonor of the cheque before he died on 9.01.2002. The respondents were at fault and for no fault of the appellants; they cannot be deprived of the amount assured under the insurance policy.

4. It is contended on behalf of the first respondent bank that the cheque was returned to the second respondent on 2.01.2002 and the second respondent insurance company sent back the cheque to the first appellants husband on 15.01.2002 and by that time he was no more in the world as he died on 9-01-2002. Had the second respondent insurance company sent the cheque to the insured, he would have arranged the amount towards the premium for which the cheque in question was issued.

5. There is no privity of contract between the appellants and the first respondent bank. The first appellants husband issued the cheque on 29.01.2001 and died on 9.01.2002 due to heart attack and as such he suppressed the ailment at the time of obtaining the policy.

6. It is contended on behalf of the second respondent insurance company that the premium receipt and insurance policy were issued in good faith even before the amount covered under the cheque was realized. It is contended that as per the contract of insurance policy, the life assured has to pay the premium within the stipulated time and the insurance company has to pay the sum assured on the happening of any event and that the contract between the policies is invalid since the life assured did not pay the first premium and as such the insurance policy is not binding on the second respondent company. It is contended that it is the responsibility of the life assured to see that the cheque issued is honoured.

7. On behalf of the appellants Ex A1 to A19 are marked. On the side of the respondents, ExB1 to B8 had been marked.

8. The point for consideration is whether the respondent no.2 insurance company is liable to pay the sum assured under the insurance policy?

9. The first appellants husband issued cheque on 29.12.2001 towards first premium and submitted the proposal to the second respondent insurance company. The second respondent insurance company issued on the same day receipt acknowledging the amount covered under the cheque as also on the very same day the second respondent insurance company issued life insurance policy bearing number 840612861 for a sum assured of `1,00,000/- with the date of commencement of risk from 15.12.2001. The statement of the first respondent bank that on 2.01.2002 the cheque was returned to the second respondent insurance company is not denied.

10. The first respondent bank had returned the cheque on the premise of insufficient funds in the account of the first appellants husband. The drawer of the cheque was holding two accounts, Account No 01192/083908 and the Account No. 01192/083908/00. The account number 01192/083908 has been inoperative for a long time and the cheques as and when presented for clearance used to be processed under the account number 01192/083908/00 irrespective of the drawer noting or adding /00 and the cheque in question was returned citing the reason that the account number mentioned in the cheque does not have sufficient funds to honour the cheque. The appellants questioned the impropriety of the first

respondent bank by showing how the first respondent honoured the cheques issued during the same period when the cheque in question was bounced.

11. The District Forum held that the first respondent bank added 00 to the account number mentioned in the two cheques and honoured them and at the same time the first respondent bank dishonoured the cheque in question though it was issued with the same account number as the other two cheques did contain. The finding returned by the District Forum as regards the amount in the account of the drawer of the cheque being sufficient constituted deficiency in service on the part of the first respondent bank which returned the cheque unpaid, being not challenged, it has attained finality and the award for an amount of Rupees Ten thousand against the first respondent bank does not warrant interference in the appeal filed by the complainants.

12. The first respondent bank had returned the cheque as early as on 2.01.2002. It is contended on behalf of the appellants that the second respondent insurance company kept the cheque with it for a period of 15 days without intimating the appellants husband and he lost the opportunity to know about the dishonor of the cheque before he died on 9-01-2002. The plea of the appellants is supported by the statement of the first respondent bank which contended that the cheque was returned to the second respondent on 2.01.2002 and the second respondent insurance company sent back the cheque to the first appellants husband on 15.01.2002 and by that time the drawer of the cheque was expired as he died on 9.01.2002. Had the second respondent insurance company sent the cheque to the insured, he would have arranged the amount towards the premium for which the cheque in question was issued.

13. The second respondent insurance company has issued receipt and the insurance policy even before the cheque issued by the first appellants husband was presented for collection of its proceeds and in order to cover the lacunae in its act, the insurance company brings into picture, theory of good faith . Application of the principle of good faith can be invoked when the cheque was issued by its drawer with an intention to avoid payment of the amount or in the circumstances where the cheque is bounced owing to lack of sufficient funds in the account on

which the cheque was drawn. It is proved and the District Forum has rightly held that the cheque was not returned on account of insufficient funds in the account of the first appellants husband. The premium can be said not to have been paid when the cheque is not supported by the amount in the account of its drawer. Till the cheque is dishonoured due to insufficient funds, the insurance company having in its possession the cheque for the amount paid towards the first premium is deemed to have received the amount.

14. The second respondent insurance company cannot unilaterally cancel the insurance policy without issuing notice to the insured. The second respondent insurance company has not taken prompt action soon after the cheque was returned by the first respondent bank on 2.01.2002 and by the lapse on its part or on the part of its banker, the second respondent did not inform about the dishonor of the cheque to the insured during till he died on 9.01.2002..

15. The second respondent insurance company has chosen to cancel the insurance policy after the insured died. The contract came in to existence with the meeting of the minds of the both parties and after the death of the one of the parties, the other party instead of performing its obligation in terms of the contract, proceeded to cancel the very agreement which by any standard or in any manner is not sustainable . Once the second respondent has issued the insurance policy its part of contract in terms of the policy has to be carried out and the insurance company cannot turn round to say that it has cancelled the insurance policy after the death of the insured and as such it is not liable to pay any amount in terms of the insurance policy. The unjust cancellation of the insurance policy and unreasonable repudiation of the claim constitutes deficiency in service on the part of the second respondent insurance company.

16. For the foregoing reasons, the findings recorded by the District Forum as regards to the liability of the second respondent insurance company is liable to be set aside and in the aforementioned circumstances, the second respondent insurance company is held liable to pay the sum assured under the insurance policy with interest @9% p.a. from the date of filing of the complaint, C.D.No.158 of 2003. The complainants in both the complaints are entitled to equal share in the

amount covered under the insurance policy and accordingly they are entitled to the amount payable by the respondents.

17. In the result, the appeal is allowed. The Order of the District Forum is modified. The first respondent/ opposite party no.1 is directed to pay an amount of `10,000/- (Ten thousand rupees only) and the second respondent /opposite party no.2 directed to pay a sum of `1,00,000/- (One lakh rupees) with interest @9% from the date of filing of the complaint C. D .No. 158 of 2003 till payment. The first respondent shall pay the costs of `2,000/- awarded by the District Forum and the second respondent directed to pay the costs of proceedings in the appeal being quantified at `5,000/-. For compliance four weeks.

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