

SUPREME COURT OF INDIA

Usha Kumari Ranawat

Vs.

The Senior Divisional Manager, LIC of India

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

12.05.2011

ORDER

1. Leave granted.

2. These appeals are directed against order dated 21.1.2009 passed by the National Consumer Disputes Redressal Commission (for short, "the National Commission") whereby the appeal filed on behalf of the Life Insurance Corporation of India against the order of the State Consumer Disputes Redressal Commission, Rajasthan (for short, "the State Commission") was partly allowed in the following terms:

In the result, the appeal is partly allowed. We direct the State Commission that out of the total amount of Rs. 38,24,592/- lying in deposit with the state commission, a sum of Rs. 19,45,953/- i.e. (Rs. 11,21,361/- on account of balance amount of annuity for 57 months plus Rs. 4 lakh as compensation and besides Rs. 4,24,592/- deposited in excess by the complainant) be paid to the Respondent and the balance amount be refunded to the Appellant-LIC. The appeal stands disposed of accordingly.

3. For the sake of convenience, the parties are being referred to by their description in the appeal arising out of Special Leave Petition (Civil) No. 9485 of 2009.

4. Shri Kamal Singh Ranawat (the Appellant's husband) submitted proposal dated 9.5.2003 to the Respondent for issue of New Jeevan Akshay1 policy and deposited the premium of Rs. 26 lakhs. In terms of that policy, Shri Kamal Singh Ranawat was to receive monthly annuity/pension at the rate of Rs. 19,673/- during his lifetime. However, instead of issuing New Jeevan Akshay-1 policy, the

Respondent issued policy under the scheme known as "New Jeevan Dhara1 Plan/New Jeevan Suraksha Plan1". After some time, 11 post dated cheques of Rs. 19,673/- and one cheque of Rs. 14,596/- were issued in the name of the insured. He encashed three cheques. The remaining cheques could not be encashed because the insured died on 10.9.2003. After the death of her husband, the Appellant returned the unrealized 9 cheques to the Respondent and lodged claim for refund of the balance amount. The Respondent declined her request and offered to pay the annuity of Rs. 19,673/- per month for the remaining guaranteed period in accordance with New Jeevan Akshay1 policy.

5. Feeling dissatisfied with the reply of the Respondent, the Appellant filed a complaint under Section 17 of the Consumer Protection Act, 1986 (for short, "the Act") and prayed for issue of a direction to the Respondent to pay the amount of Rs. 26 lakhs deposited by the insured with interest amounting to Rs. 1,45,800/- and compensation of Rs. 1,00,000/- lakh for mental and physical agony. In the written statement filed on behalf of the Respondent, it was pleaded that Kamal Singh Ranawat had submitted proposal for getting annuity policy under New Jeevan Akshay1 Plan, but by mistake New Jeevan Dhara1 Plan/New Jeevan Suraksha Plan1 (with profit) was issued. According to the Respondent, in terms of New Jeevan Akshay1 (Table 146-01) Plan, monthly pension was payable to the insured for the guaranteed period of five years. It was further pleaded that upon receipt of notice, the mistake committed in issuing policy under New Jeevan Dhara Plan was rectified and fresh policy under New Jeevan Akshay1 Plan, as proposed by late Shri Kamal Singh Ranawat, was made available to the complainant along with letter dated 17.1.2004.

6. After considering the pleadings and documents produced by the parties and taking note of the relevant statutory provisions, the State Commission ruled that the Appellant is entitled to receive a sum of Rs. 25,46,058/- along with interest at the rate of 9 per cent per annum from the date of complaint i.e. 20.3.2004. The State Commission noted that pursuant to the proposal form Annexure 1, policy Annexure 2 was issued under the scheme known as "New Jeevan Dhara1 Plan/New Jeevan Suraksha1 (with profit) Table No. 146-01 but after receipt of notice, the earlier policy was cancelled and a new policy known as "New Jeevan Akshay Plan1" was issued and held that this was legally impermissible. In the opinion of the State Commission, the terms of policy issued by the Respondent were binding on the parties and the same could not have been unilaterally changed by the Respondent after the death of the insured. This is evinced from paragraph 38 of the State Commission's order, which is extracted below:

38. In our considered opinion, the novation, alteration or rescission of the original contract requires the assent of both the parties, namely, the insurers and the insured and that completely puts an end to the original contract which need not then be performed. Furthermore, unilateral mistake would not make the contract void. The Original insurance contract was between the deceased and the opposite party insurance company in the manner that after taking a sum of Rs. 26 lacs from the deceased, a policy Annex.2 was issued by the opposite party in favour of the deceased. The promisor was deceased and the promisee was Insurance Company. Since the deceased-proposer had died on 10.9.2003 and thereafter, after the death of deceased proposer, neither the complainant (LR of deceased) nor the insurance Company (opposite party) could get the terms of the insurance policy Annex.2 changed.

7. The State Commission then observed that the complainant had given notice Annexure 18 seeking change of the terms of the policy and on that basis, the Respondent had cancelled the policy Annexure 2 and issued revised policy but reiterated that it was not open to the parties to change the earlier policy and the Respondent was not entitled to issue new policy Annexure 20. The State Commission held that in terms of policy Annexure 2, the nominee of the deceased was entitled to Rs. 25,46,058/- and directed the Respondent to pay the amount along with interest at the rate of 6 per cent per annum from the date of complaint.

8. The Respondent challenged the order of the State Commission by filing an appeal under Section 21 of the Act. The National Commission accepted the Respondent's plea that the Appellant was not entitled to claim balance of the premium of Rs. 26 lakhs because the insured had applied for New Jeevan Akshay1 policy and not for New Jeevan Dhara policy. However, after taking note of the fact that the Appellant had deposited the amount received by her in terms of the order passed by the State Commission, the National Commission declared that she is entitled to Rs. 11,21,361/- plus compensation of Rs. 4,00,000/- besides Rs. 4,24,592/-.

9. The Appellant has assailed the impugned order by contending that the National Commission committed an error by holding that the nominee of the deceased was not entitled to lump sum amount i.e. balance of the premium deposited by the insured and that as per the terms of policy, she was entitled to get monthly annuity for the remaining 57 months only.

10. In its appeal, the Respondent has challenged the determination made by the National Commission in the penultimate and last paragraph of the impugned order regarding the amount payable to the Appellant.

11. Arguments in these cases were heard on various dates. On 14.3.2011, 1.4.2011, 25.4.2011 and 10.5.2011, the case was adjourned to enable the learned senior counsel appearing for the Appellant to seek further instructions in the matter. Today, the learned senior counsel placed before the Court a statement containing the details of the amount payable to the Appellant in terms of the orders passed by the State and National Commissions.

12. We have given serious thought to the entire matter. In our view, both the insurer and the insured do not appear to have acted with the due diligence. It is difficult to accept the assertion made on behalf of the Appellant that her husband had signed the form, which was filled by the agent of the Respondent, without going through the contents thereof. Rather, it can reasonably be presumed that he had done so with full knowledge of the nature and terms of New Jeevan Akshay1 policy. We also agree with Shri Kailash Vasdev, learned senior counsel for the Respondent that on discovery of the patent mistake committed at the time of issue of policy Annexure 2, which was contrary to the proposal submitted by the deceased, the competent authority was justified in issuing New Jeevan Akshay Plan1. However, keeping in view the peculiar facts of the case, we are inclined to accept the prayer made by learned Counsel for the Appellant that the Respondent should not be allowed to take advantage of its mistake and deprive the nominee of the deceased of the balance of Rs. 26 lakhs which he had deposited on 9.5.2003.

13. In the result, the appeals are disposed of in the following terms:

(i) The impugned order passed by the National Commission is set aside.

(ii) The action of the Respondent to cancel New Jeevan Dhara policy and to issue New Jeevan Akshay-1 policy is held to be justified.

(iii) It is declared that the Appellant is entitled to get Rs. 26,50,000/- from the Respondent. This amount represents balance of the premium deposited by the insured and lump sum compensation.

(iv) The Appellant shall encash the fixed deposit and pay the balance amount to the Senior Divisional Manager of the Life Insurance Corporation, Jaipur within a period of two months.