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BEFORE THE CONSUMER DISPUTES REDRESSAL

COMMISSION,RAJASTHAN,JAIPUR BENCH NO.1

FIRST APPEAL NO: 474 /2017

Kotak Mahindra Old Mutual Life Insurance Ltd., Central Processing Centre, Godrej Coliseum, 7th floor, Lokmanya Pan Bazar, Behind Everard Nagar, Siogen, Trambe Rased, Sion (East) Mumbai & ors.

Vs.

Jagdish Prakas Lada s/o Late Kalyan Mal Lada R/o Kesar Kunj M-33, Anasagar Link Road, Ajmer & ors.

Date of Order 30.1.2018

Before:

Hon'ble Mrs. Justice Nisha Gupta- President

Mr. Rakesh Rajwania counsel for the appellant

Mr.Prashant Mantri counsel for the respondent

REPORTABLE

BY THE STATE COMMISSION (PER HON'BLE MRS. JUSTICE NISHA GUPTA,PRESIDENT):

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This appeal has been filed against the order passed by the District Forum, Ajmer dated 10.3.2017 whereby the claim is allowed against the appellant.

The contention of the appellant is that policy document was not provided to the appellant. He could not file the reply effectively. The policy was issued in 2009 hence, the complaint was time barred. The other policy was issued in the name of Anil Kumar hence, the respondent has no cause of action or locus standi to file the complaint. The consumer was having free look period of 15 days but in the above period no objection was raised hence, the claim should have been dismissed.

Per contra the contention of the respondent is that the policy was issued with wrong date of birth of Jatan Kanwar. She has submitted school certificate whereas age was entered as per ration card which is not the authentic document to ensure date of birth. On 24.9.2009 he informed the insurance company that date of birth is entered wrongly. On the assurance of Gaurav the representative of the insurance company he sent a cheque of Rs. 21,000/- on 17.9.2012

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alongwith forwarding letter which was misused by the insurance company and another policy was issued in the name of Anil Kumar whose documents were furnished for nomination, as the money of the respondent is misused for issuing the policy in the name of Anil Kumar, he is consumer. Inspite of repeated reminders various complaints are being registered by the insurance company but nothing has been done and the Forum below has rightly allowed the claim. No interference is needed.

Heard the counsel for the parties and perused the impugned judgment as well as original record of the case.

There is no dispute about the fact that insurance policy was issued for the benefit of Jatan Kanwar in which date of birth was wrongly been mentioned as 2.3.1951. The respondent has wrote a letter dated 24.9.2009 for rectification of the date of birth but it was never done inspite of the fact that various complaints are being registered by the insurance company. Letter dated 17.9.2012 also speaks that cheque of Rs.21,000/- was sent to the insurance company dated 17.9.2012 on the assurance of Mr.Gaurav. Photo copy of the cheque could be

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seen on the back of the communication but this cheque was used for another policy issued in the name of Anil Kumar proposal of which has been shown to be prepared on 29.9.2012. It may also be noted that affidavit of Mr.Gaurav has not been submitted to controvert the contentions raised by the respondent and further this could not be explained by the counsel for the appellant that when alleged proposal form was filled on 29.9.2012 why the cheque was issued on 17.9.2012 and further more when respondents were not satisfied with the services of the insurance company in regard to the previous policy why they will purchase another policy. The first proposal form was filled in Ajmer whereas the second proposal form was filled in Jaipur which is also a anomaly in the transaction whereas the respondents are resident of Ajmer. After receipt of the policy it was immediately objected by the respondent but nothing has been done by the insurance company. Hence, the Forum below has rightly held the appellant deficient.

The contention of the appellant is that the policy was issued in 2009 hence the claim is time barred and reliance has been placed on (2009) 2 CCR (SC) 1276 Kandimala

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Raghavaiah & Co. Vs. National Insurance Co. There is no dispute about this preposition that the complaint should be filed under the period of limitation but here in the present case the first policy was issued in 2009 thereafter cheque was sent for rectification of the policy which was misused and second policy was issued on 4.10.2012. Hence, cause of action was continuous one and when second policy was issued without instruction of the respondent the claim has rightly been submitted within two years of the accrual of the cause of action.

The other contention of the appellant is that the respondents were free to object in the free period of 15 days but they have not opted for the same. This contention has no force as on 24.9.2009 the respondent has objected for the change of date of birth but instead of rectification of the policy the appellant has misused the money handed over by the respondent and issued other policy.

The contention of the appellant is that terms of the contract should be interpreted strictly and reliance has been placed on the judgment passed by the National Commission in

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Revision Petition No. 211/2009 Reliance Life Insurance Co. Vs. Madhavacharya. There is no dispute about this preposition but here in the present case the events between the parties clearly speaks that it is a clear case of deficiency on the part of the insurance company.

The other contention of the appellant is that when question of fraud and cheating are involved the Consumer Forum cannot adjudicate upon the matter and reliance has been placed on the judgment passed by the National Commission in Revision Petition No. 4535/2013 Rakesh Kumar Sharma Vs. ICICI Prudential Life Insurance.

Per contra the respondent has relied upon III (2002) CPJ 8 (SC) Dr.J.J.Merchant Vs. Shrinath Chaturvedi where the apex court has categorically held that Consumer Forums are competent to decide complicated issues of law and fact and despite allegation of fraud, forgery, cheating the complaint could be filed within the jurisdiction of Fora.

Further reliance has been placed on I (2010) CPJ 312 (NC) Sutlej Textile Vs. Punjab National Bank, judgment of

West Bengal State Commission in FA/217/2010 Sri Parimal Kanti Ray Vs. Central Bank of India. Hence, on the ground that there is allegation of fraud or forgery the complaint could be entertained by the Consumer Forum and it is not proper to hold that the same should approach the civil court. Hence, in view of the above the Forum below has rightly held the appellant deficient.

The other contention of the appellant that policy document was not provided to them and they could not file effective reply is not worth consideration when both the parties entered in pleading and evidence too.

The other contention of the appellant is that in original complaint only Rs. 50,000/- were asked for mental agony and discomfort whereas the Forum below has allowed Rs. 1 lakh for mental agony which is without jurisdiction. The contention of the respondent is that the Consumer Forums are being entitled to assess the compensation and not bound by the relief claimed.

There is no dispute about the fact that the complaint

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respondent has himself as assessed the mental agony and discomfort at the tune of Rs.50,000/- only and the Forum below has not came to the conclusion that in view of the facts of the case higher compensation should have been awarded. Hence, the claim of Rs. 1 lakh for mental agony is not justified and it should have been reduced to Rs. 50,000/- only.

In view of the above the appeal is partly allowed while maintaining the order the compensation for mental agony is reduced from Rs. 1 lakh to Rs.50,000/-. Rest order of the Forum below needs no interference.

(Nisha Gupta)

President

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