

HDFC BANK LIMITED V. RANI SINGH

1. HDFC BANK LIMITED
ANANDA CHOWK
HAZARI BAGH
JHARKHAND-825301

.....Petitioner(s)

Versus

1. RANI SINGH
W/O LATE RAJ KUMAR SINGH, R/O G.S. ROAD, P.S.
SADAR,
DIST.-HAZARI BAGH
JHARKHAND

.....Respondent(s)

Case No: REVISION PETITION NO. 1024 OF 2016

Date of Judgement: 04 Jan 2023

Judges:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER

For the Petitioner : Mr Devmani Bansal, Advocate

For the Respondent : Mr Paras Chaudhary, Advocate

Facts:

HDFC Bank issued a Gold Debit Card (GDC) with Rs.5 lakh personal accident insurance cover to Rani Singh's husband Raj Kumar Singh in 2009. On 05.01.2009, HDFC Bank changed terms and conditions to state that accident cover would be available only if there was one transaction in the GDC in the 6 months before death. This change was communicated through bank

statement, letter and display at branches. On 29.03.2009, Rani Singh's husband died in accident. She filed insurance claim which HDFC Bank rejected saying no transaction done in 6 months before death. Rani Singh sent legal notice and filed consumer complaint before District Forum which was allowed. HDFC Bank's appeal before State Commission was dismissed. HDFC Bank has filed this revision petition.

Arguments by HDFC Bank:

The bank statement dated 05.01.2009 and inland letter conveyed the change in terms to the deceased. These documents have been ignored by State Commission. The District Forum did not consider these documents or any other document in arriving at contrary finding. The order is factually incorrect. Insurance company liability cannot be fastened on the Bank. Impugned order should be set aside.

Arguments by Rani Singh:

HDFC Bank failed to prove communication of change in policy or information to deceased about terms. The changes were retrospective and without notice. State Commission correctly held that HDFC Bank charged annual fee for GDC to which insurance was additional benefit, not complimentary. Revision petition deserves dismissal.

Court's Opinion:

Sections:

Filed under Section 21(b) of the Consumer Protection Act 1986.

Cases Referred and Relied Upon:

Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd (2011): Revisional powers can be exercised only if there is prima facie jurisdictional error in impugned order. Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors (2016): National Commission exceeds

jurisdiction if it sets aside concurrent finding of fact by State Commission based on valid reasons. T Ramalingeswara Rao (Dead) Through LRs and Ors vs N Madhava Rao and Ors: When two courts give concurrent findings of fact based on appreciation of facts and evidence, the findings are binding in second appeal unless perverse. The revision petition challenges the State Commission order on same grounds as before District Forum and State Commission. The concurrent findings of fact are based on evidence led by parties. The present petition seeks re-assessment of evidence which cannot be done in revision jurisdiction. Counsel for petitioner failed to show perversity in findings or that lower fora did not consider contentions. The orders of lower fora are detailed and based on evidence on record. Two interpretations of evidence are possible. As per settled law, concurrent findings based on evidence have to be accepted and cannot be substituted in revision. No perversity, illegality or infirmity found in impugned order. Revision petition lacks merit and is dismissed.

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Full Text of Judgment:

1. This revision petition filed under section 21 (b) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order of the State Consumer Dispute Redressal Commission, Jharkhand, Ranchi (in short, 'State Commission') in First Appeal No. 10 of 2011 dated 30.10.2015 emerging from order in consumer complaint no. 79 of 2000 of the District Consumer Disputes Redressal Commission, Hazaribagh (in short, 'District Forum') dated 26.07.2013.

2. The brief facts of the case, as stated by the petitioner, are that it had issued a Gold Debit Card (GDC) to Mr Raj Kumar Singh, husband of the respondent in 2009. The card had an accident insurance cover for Rs.5,00,000/- included as an additional benefit. It is stated by the petitioner that on

05.01.2009 the petitioner changed the terms and conditions with respect to the personal accident cover for the card holder by incorporating the condition that the cover would be available only if there was one transaction from the debit card within a period of 6 months prior to the death of the card holder. According to the petitioner, this change was communicated to the card holder on 05.01.2009 by way of the Bank Statement and also by way of a letter. This information was also displayed in the Bank's branches.

3. On 29.03.2009 the husband of the respondent expired in an accident and she submitted an accident insurance claim under the scheme of the GDC on 24.4.2009. This claim was repudiated by the petitioner on 13.05.2009 on the ground that the deceased had not completed a transaction in the 6 months prior to his demise. The respondent issued a legal notice to the petitioner on 18.06.2009 and thereafter filed consumer complaint no. 79 of 2000 before the District Forum. This complaint was allowed without appreciating the submissions of the petitioner and it was directed to indemnify the complainant as per the insurance cover assured along with compensation of Rs.3,000/-, litigation cost of Rs.2,000/- and interest at the rate of 9%. An appeal (No. 10 of 2011) was filed before the State Commission challenging this order which was dismissed vide the impugned order dated 30.10.2015. The revision petitioner has prayed that the orders of the lower fora be set aside as they have erred in appreciating the facts and terms and conditions of the complimentary insurance cover scheme under the GDC.

4. The petition has been resisted by the respondent by way of a written statement. It is contended that the matter has been rightly adjudicated by the fora below which have considered the facts and arguments of both sides and come to the finding that the onus of proving that the change in the terms and conditions had been correctly communicated to the respondent lay on the petitioner which had not been done. It is submitted that the petitioner had relied only upon the letter of repudiation dated 13.05.2009 and another letter dated

18.06.2014 denying the claim in response to the legal notice and therefore the State Commission had rightly dismissed the appeal. The State Commission had also correctly noted, as per the respondent, that no document had been filed in support of the contention that the change in terms and conditions had been uploaded on the official website of the petitioner. Therefore, its conclusion that the respondent had not been properly communicated of the change which was retrospective in nature and therefore violative of clause 3.5.

5. We have heard the learned counsels for the petitioner and respondent no. 1 and perused the material on record carefully. Both parties were provided an opportunity to file their short synopsis of arguments which has also been done.

6. The learned counsel for the petitioner argued as per the revision petition. The main issue raised by him was whether the late husband of the respondent was informed of the changes in the terms and conditions of the complimentary insurance policy. He has urged that the bank account statement dated 05.01.2009 and an inland letter issued had conveyed the same and should be considered as satisfactory service. These documents have been ignored by the State Commission. The District Forum has also not considered these documents or considered any other document to arrive at a contrary finding. It is contended that the order is factually incorrect and that the liability of the insurance company cannot be latched on to it. It is, therefore, argued that the impugned order be set aside.

7. On behalf of the respondent it is submitted that the revision petition deserves to be dismissed since the petitioner had failed to prove that the policy holder had been communicated about the change in the policy or whether he had any information about the terms and conditions of the policy. It is contended that the change in the terms and conditions were retrospective and without notice. It has also been stated that the State Commission had correctly concluded that the petitioner was charging an annual fee for the GDC and that the insurance policy was attached to the card as an additional

benefit and not as a complimentary benefit. It has therefore been prayed that the petition be dismissed.

8. From the record and submissions made by the parties, it is evident that both the District Forum and the State Commission have arrived at concurrent findings on facts against the revision petitioner.

9. The District Forum has held as under:

In view of the aforesaid discussion, we find that the complainant is entitled to the reliefs sought in and accordingly the complaint petition is allowed. Under the circumstances mentioned above the opposite parties are directed to indemnify the complainant as per the insurance coverage and the GDC. The OPs are further directed to pay compensation of Rs.3,000/- and they are further directed to pay litigation cost of Rs.2,000/.. The OPs are further directed to pay interest @ 9% per annum on the amount of the insurance coverage under the GDC from the date of filing of the complaint till the date of payment. All the aforesaid payments must be made within three months of the order failing which the complainant will be at liberty to initiate execution proceedings.

10. The impugned order of the State Commission reads as below: It is, thus, clear that said change was not prospective in nature and against the terms and conditions of the Bank noted above. If such term would have been made prospective, the policy holders would be obliged to make at least one purchase transactions using debit card within a period of next six months to avail the insurance cover, but in the present case the policy hold had neither any knowledge of such condition nor had any opportunity to comply with the same. As noticed above, the said changes were effective from 01.03.2009, whereas the policy holder died on 29.03.2009. It may also be noted here that the complainant proved payment of the Debit Card Annual Fee for the year 2009. The comprehensive insurance cover was included in the said GDC as an additional facility. Therefore, the Bank wrongly said that Rs.500/- annually was

never charged to maintain the insurance policy. Admittedly, it was charged for additional facility of GDC. Moreover, the said judgment of Bajaj Allianz General Insurance Co. Ltd., vs Dr Pallavi Pawan (supra) supports the case of the complainant. After hearing the parties at length, in our opinion, for the reason aforesaid, no grounds are made out for interference with the impugned order. Accordingly, this appeal is dismissed.

11. This Commission has limited revisional jurisdiction under the Act. The Hon'ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., (2011) 11 SCC 269 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."

12. 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 Supreme Court Case 286 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."

13. Again, the Hon'ble Supreme Court in T Ramalingeswara Rao (Dead) Through LRs and Ors vs N Madhava Rao and Ors, 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."

14. 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 foras are based on evidences 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.

15. The foras below have pronounced orders which are detailed and have dealt with all the contentions of the petitioner. It is seen that the orders of these fora are based on evidence on record. In view of the settled proposition of law that where two interpretation 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.

16. We therefore, find no illegality or infirmity or perversity in the impugned order. The present revision petition is, therefore, found to be without merits and is accordingly dismissed.