

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 4 OF 2021

(Against the Order dated 09/10/2020 in Appeal No. 57/2008 of the State Commission Orissa)

1. GTFS MULTI SERVICES LTD.Petitioner(s)

Versus

1. SMT. PRAVATI BEHERA & ANR.

W/O LATE MAYADHAR BEHERA, C/O SRI LAXMIKANTA
ROUL, VILL-BADASIMULIA, PO/PS-BALIAPAL,
DISTRICT-BALASORE.

2. THE DIVISIONAL MANAGER, NATIONAL INSURANCE
CO. LTD.,

DIVISION NO.3, NATIONAL INSURANCE BUILDING, 8,
INDIA EXCHANGE PLACE, KOLKATA-700001

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR PETITIONER : MS.KSHITIJ SINGH, PROXY COUNSEL
FOR

MR. KUNAL CHATTERJI, ADVOCATE

(WITH AUTHORITY LETTER)

FOR THE RESPONDENT :

FOR RESPONDENTS : EX-PARTE VIDE ORDER DATED
15.12.2023

Dated : 14 June 2024

ORDER

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 09.10.2020, passed by the learned State Consumer Disputes Redressal Commission, Odhisa, Cuttack, ('State Commission') in FA No.57 of 2008, wherein the Appeal filed by the Petitioner/OP2) was dismissed and affirmed the Order dated 30.11.2007, passed by the District Consumer Disputes Redressal Forum, Balasore ("District Forum") in CC No. 74 of 2005 whereby the Complaint filed by Respondent No.1/Complainant was allowed against the Petitioner/OP2 and Respondent No.2/OP1.

2. For ease of reference, the parties are referred to as stated in the original Complaint filed before the District Forum.

3. Brief facts of the case, as per the Complainant, are that she is the wife of the deceased Mayadhar Behera, who had purchased a Janata Personal Accident Insurance Policy from OP

No.1 through OP No.2, with an assured sum of Rs. 1 lakh for 15 years. The policy commenced on 08.11.2001, but Mayadhar Behera died due to an accidental fall during "Uda" festival. She reported the death and submitted a claim to OP-2 and subsequently to OP-1 due to delays. Both OPs failed to settle the claim. She filed a complaint before the District Forum seeking compensation, interest, and litigation costs.

4. In reply before the District Forum, OP-1 refuted the allegations and contended that they had not received any communication or required documents from OP-2. OP-1 attributed the inability to settle the claim to non-cooperation and non-compliance by OP-2. OP-1 argued that the relief sought against them should be disallowed due absence of necessary documentation and communication from OP-2. OP-2 acknowledged that Mayadhar Behera was covered under the Janata Personal Accident Insurance Scheme. OP-2 forwarded the claim to OP-1 on 21.06.2004 and made several attempts to follow up, but OP-1 did not respond. OP-2 claimed that their role was limited to facilitating insurance coverage and submitting documents to OP-1 and they should not be held liable.

5. The District Forum, vide its Order dated 30.11.2007 allowed the complaint against both the OPs with the following observations:

“Further, in the light of all these facts we found that the complainant though submitted the information in late and with reasonable excuse is not a legal bar to settle claim and thereby we allow the complaint petition of the complainant in part and make liable to the O.Ps being worked together as per their M.O.U. to be liable jointly and severally and to pay the complainant the sum assured money against her deceased husband's insurance policy to the tune of Rs.1,00,000/- and Rs.500/- towards cost alongwith interest @ 6% from the date of filing of his case till realization. All orders should be carried out within one month from the date of this order, failing which 9% interest shall be chargeable over and above all the amount in place of 6% till realization in case of no payment. Close the case accordingly with part merit of the complainant.”

6. Being dissatisfied, the Petitioner/OP-2 filed FA 57 of 2008 and the State Commission, vide Order dated 09.10.2020 dismissed the Appeal vide Order dated 30.11.2007 with the following observations:

“8. The main point for consideration in this case is whether the complainant has proved deficiency of service on the part of the appellant.

9. Complainant in order to prove the case has filed evidence on affidavit wherein it is clearly stated that her husband has purchased policy of insurance from OP No. 1 through OP No. 2 and paid an amount of Rs.1,500/- as premium to OP No.1 of course through OP No.2. It is also revealed from her evidence that on 12.4.2004 the deceased insured accidentally died by falling down from the platform. In spite of all efforts to get compensation, the OPs did not pay anything for which she filed the case. In support

of the case, she has filed copy of the concerned policy. It is revealed from the concerned policy that the deceased insured has purchased Janata Personal Accident Insurance Policy for Rs.1.00 lac. The death certificate shows that the insured died on 12.4.2004. It is also revealed from the copy of the claim statement that she made claim on 16.6.2004. The post-mortem report and the police report jointly show that the deceased died out of accidental fall. So the complainant has proved that the deceased husband has purchased the policy from OP No.1 through OP No.2. Written version of the OPs clearly discloses that there is some understanding between the OPs that policy purchased through OP No.2 would be settled by OP No.1. For any sort of communication gap between the two, the complainant cannot be allowed to suffer.

10. The respective OPs have not proved any document to prove their respective plea. Therefore, we are constrained to observe that there is deficiency of service on the part of the OPs for not settling the claim of the complainant. We had occasion to go through the impugned order which has discussed elaborately and we are convinced that the District Forum has gone through in detail and come to a right conclusion. There is nothing to differ from their finding. So we agree to their finding. We do not find any error in the impugned order. Hence, we confirm the impugned order and the appeal being devoid of merit stands dismissed. No cost.”

7. The Petitioner/OP-2, being dissatisfied with State Commission Order dated 09.10.2020, filed the instant Revision Petition.

8. In his arguments, the learned Counsel for the OP-2 reiterated the contentions previously presented before both for a and asserted that the learned State Commission erroneously upheld his liability to pay on facts and law, inasmuch as the Petitioner is not the insurer and had fulfilled all its limited functions promptly by passing on the premium to the insurer; handing over of certificate of insurance to the insured; and forwarding the claim form and documents to the insurer. As per the MOU between the Petitioner and OP-1 dated 01.01.2001, it is absolutely clear that the Respondent No. 2/ OP-1 is solely and absolutely liable for settlement of any claims. He forwarded the Complainant's claim vide letter dated 25.08.2004 which was received by the Insurance Company on 03.09.2004 along with all the relevant documents. The role of the Petitioner is limited as a facilitator and the claim of the Respondent No.1/Complainant along with all requisite documents sent to Respondent No.2/ Insurer which it acknowledged on 25.08.2004 and the Petitioner had done its duty and there is no deficiency. He sought to modify the impugned order of the Fora below to the extent of its liability. He has relied upon the judgment of this Commission in ***Golden Trust Financial Services Vs. Puspa Devi & Ors RP No.2064 of 2016 decided on 21.03.2017.***

9. The Respondent No.1/Complainant and the Respondent No.2/ Insurance Company did not appear before this Commission despite service and were proceeded ex-parte vide order dated 15.12.2023.

10. I have examined the pleadings and associated documents placed on record, including the Orders of both the Fora and arguments advanced by the learned Counsel for the Petitioner.

11. The primary issue in this case is to examine whether there was deficiency in service on the part of the Petitioner in not deciding the claim of the Complainant.

12. It is undisputed fact that the role of the Petitioner is limited as a facilitator forwarding the claim to the Insurance Company. It is also undisputed that the claim of the Complainant was forwarded to the Insurer vide letter dated 25.08.2004 and the Insurer received the same on 25.08.2004. Also, in the absence of any finding by the fora below that there was delay by the Petitioner in processing the claim it cannot be held that there was deficiency in service on his part relating to the instant claim. Thus, the present Revision Petition is allowed. The impugned order is set aside to the extent that it makes the Petitioner jointly liable to pay the amount awarded by the District Forum and affirmed by the State Commission. It is clarified that since the Insurance Company has accepted the order passed by the State Commission, inasmuch as it has not preferred any Revision Petition, it is obliged to comply with the directions issued in the impugned order in totality.

13. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

14. All pending Applications, if any, also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER