

A HEMIBEN LADHABHAI BHANDERI

v.

SAURASHTA GRAMIN BANK & ANR

(Civil Appeal No. 979 of 2020)

B FEBRUARY 03, 2020

**[DR. DHANANJAYA Y CHANDRACHUD
AND HEMANT GUPTA, JJ.]**

Consumer Protection Act, 1986: Deficiency of service –

- C *Spouse of the appellant was account holder with the first respondent bank – A scheme was launched by an insurance company for the account holders of the respondent-bank – Under the terms of the agreement between the insurer and the bank, the account holder was required to submit a Form to the concerned officer of the bank in order to avail insurance cover – Bank was to deduct Rs. 100 as premium from the account holder and forward it to the insurer – Insurance cover of Rs. 5 lakhs was offered – Appellant's case was that on 21 July 2008, her husband obtained an insurance form from the Bank and submitted it to its Manager – He met with an accident on 1 August 2008 while travelling on his motorcycle and succumbed to injuries on 11 August 2008 – Based on a case of accidental death, the appellant claimed compensation of Rs.5 lakhs under the insurance claim – The insurer repudiated the claim on the ground that the premium was not forwarded by the Bank together with the Form – The Bank took objection that the Form had not been submitted in time by the deceased and that after submitting it initially on 28 July 2008, he had taken it back to discuss the matter with his relatives – District Forum held that the Bank had been negligent in not forwarding the form submitted by the deceased to the insurer within time after completion of all the formalities and there being no insurance cover, the insured was not liable and Bank was directed to pay appellant Rs. 5 lakhs – State Commission upheld the order of District Forum – In a revision filed by the Bank, the NCDRC reiterated the finding that the insurer could not be held liable in the absence of an insurance cover – However, the Bank was held guilty of a deficiency of service and was directed to pay an amount of Rs. 2 lakhs (instead of Rs. 5 lakhs as awarded) – On*

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appeal, held: Evidently, there was a deficiency of service on the part of the Bank in failing to forward the application form to the insurer and in deducting the insurance premium on time – Insofar as the deficiency of service on the part of the Bank is concerned, there were concurrent findings – There was specific finding of fact that it was failure of the Bank to deduct the premium and to pay it over the insurer which resulted in the insurer repudiating the claim on the ground that no insurance cover existed – No insurance cover came into existence – There were concurrent findings of fact by the three fora – There was no reason to take a different view, particularly, when the Bank did not challenge the judgment of the NCDRC – There was an evident deficiency of service on its part – There was no justification for the NCDRC to reduce the award of compensation against the Bank from Rs. 5 lakhs to Rs. 2 lakhs – Amount of compensation is enhanced from Rs. 2 lakhs to Rs. 5 lakhs.

Allowing the appeal, the Court

HELD: Insofar as the deficiency of service on the part of the Bank is concerned, there are concurrent findings. The NCDRC confirmed that there was a deficiency of service on the part of the Bank. Before it, the Bank admitted that no receipt was given by it to anyone depositing the application form. As a matter of fact, it has also emerged from the record that three persons including appellant's husband had submitted forms on the same day which had Serial Nos 351, 352 and 353. The defence of the Bank that the deceased had withdrawn the form and that it was eventually submitted on 9 August 2008, when a fresh Serial No 358 was allotted has been rejected by the District Forum and by the SCDRC. The NCDRC has observed that the Bank has not explained the details of the application form mentioned at Serial No 352. There is a specific finding of fact that it was the failure of the Bank to deduct the premium and to pay it over the insurer which resulted in the insurer repudiating the claim on the ground that no insurance cover existed. No insurance cover came into existence. There are concurrent findings of fact by the three fora. There are no reason to take a different view, particularly, when the Bank has not challenged the judgment of the NCDRC. The Bank's explanations are an eye-wash and a thinly disguised attempt to defeat a legitimate grievance. There

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- A was an evident deficiency of service on its part. Evidently, there was a deficiency of service on the part of the Bank in failing to forward the application form to the insurer and in deducting the insurance premium on time. Had the Bank not been deficient in the performance of its services, the deceased would have been entitled to an insurance cover in the same terms as was provided by the insurer to all other account holders desirous of obtaining insurance. There was no justification for the NCDRC to reduce the award of compensation against the Bank from Rs 5 lakhs to Rs 2 lakhs. The ends of justice would be met if the amount of compensation is enhanced from Rs 2 lakhs to Rs 5 lakhs. [Paras 8, 9][822 C-H; 823 A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 979 of 2020.

- D From the Judgment and Order dated 25.10.2018 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 3346 of 2013.

Rajinder Singh Rana, Praveen Swarup, Ameet Singh, Ms. Archana Sharma, Madan Mohan, Lokendra Kumar, Suvesh Kumar, Advs. for the Appellant.

- E Ms. Khushboo Kapur, Rajiv Kapur, Sanjay Kapur, Ms. Megha Karnwal, Ajay Singh, Debasish Mukherjee, Jasdeep Singh, Vivek Narayan Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

- F 1. Leave granted.
- G 2. This appeal arises from a judgment of the National Consumer Disputes Redressal Commission¹ dated 25 October 2018 in a revision from an order of the State Consumer Disputes Redressal Commission, Gujarat².
- G 3. The spouse of the appellant, Ladhabhai Thakarsibhai Bhanderi, was an account holder with the first respondent at its Dhutarpur Branch in the District of Jamnagar in Gujarat. Oriental Insurance Company

¹ NCDRC

² SCDRC

Limited had launched a ‘group individual accident policy’ for the account holders of the Bank. Under the terms of the agreement between the insurer and the Bank, the account holder was required to submit a form to the concerned officer of the Bank in order to avail of an insurance cover. The Bank would deduct an amount of Rs 100 as premium from the account holder and forward it to the insurer. An insurance cover of Rs 5 lakhs was offered. The case of the appellant is that on 21 July 2008, her spouse obtained an insurance form from the Bank and submitted it to its Manager. He met with an accident on 1 August 2008 while travelling on his motorcycle and succumbed to his injuries on 11 August 2008. Based on a case of accidental death, the appellant claimed an entitlement to receive a compensation of Rs 5 lakhs under the insurance claim. The insurer repudiated the claim on the ground that the premium had not been forwarded by the Bank together with the form. The Bank took the objection that the form had not been submitted in time by the deceased and that after submitting it initially on 28 July 2008, he had taken it back to discuss the matter with his relatives.

4. The District Consumer Disputes Redressal Forum³ allowed the complaint on 28 January 2013 and came to the conclusion that the Bank had been negligent in not forwarding the form submitted by the deceased to the insurer within time after completion of all the formalities. There being no insurance cover, the insured was held not to be liable. The Bank was directed to pay the appellant an amount of Rs 5 lakhs with interest at the rate of 6 per cent per annum from 20 August 2009 together with an additional amount of Rs 2,000 towards mental agony ad Rs 1,500 towards costs.

5. The order was confirmed in appeal by the SCDRC on 28 June 2013. In a revision filed by the Bank, the NCDRC reiterated the finding that the insurer could not be held liable in the absence of an insurance cover. However, the Bank was held guilty of a deficiency of service and was directed to pay an amount of Rs 2 lakhs (instead of Rs 5 lakhs as awarded by the consumer fora) within a period of 45 days.

6. The appellant, as the legal heir of the deceased, is hence in appeal.

7. The submission which has been urged on behalf of the appellant is that the NCDRC has accepted the position that the Bank was guilty of a deficiency of service. However, it was urged that the amount of

³ District Forum

- A compensation has been reduced from Rs 5 lakhs to Rs 2 lakhs without any justification. On the other hand, it has been urged on behalf of the first respondent that the Bank had all along taken the defence that the form, though initially filled up on 28 July 2008, had been taken back by the deceased and that it was resubmitted only after office hours on 9 August 2008. In the meantime, as a result of the accident which took place on 1 August 2008, the account holder died on 10 August 2008 of which the Bank was intimated on the next day. In these circumstances, it was urged that there was no deficiency of service on the part of the Bank. The Bank has complied with the order of the NCDRC by handing over a cheque in an amount of Rs 2 lakhs to the appellant. The appellant
- B has declined to encash the cheque of Rs 2 lakhs paid towards compensation on the ground that she is entitled to the full compensation of Rs 5 lakhs as awarded by the District Forum.

8. Insofar as the deficiency of service on the part of the Bank is concerned, there are concurrent findings. The NCDRC confirmed that
- D there was a deficiency of service on the part of the Bank. Before it, the Bank admitted that no receipt was given by it to anyone depositing the application form. As a matter of fact, it has also emerged from the record that three persons Rasik Gordhanbhai Dobariya, Harjibhai Bhanderi and the spouse of the appellant had submitted forms on the same day which had Serial Nos 351, 352 and 353. The defence of the Bank that the deceased had withdrawn the form and that it was eventually submitted on 9 August 2008, when a fresh Serial No 358 was allotted has been rejected by the District Forum and by the SCDRC. The NCDRC has observed that the Bank has not explained the details of the application form mentioned at Serial No 352. There is a specific finding of fact that
 - E it was the failure of the Bank to deduct the premium and to pay it over the insurer which resulted in the insurer repudiating the claim on the ground that no insurance cover existed. No insurance cover came into existence. There are concurrent findings of fact by the three fora. We have no reason to take a different view, particularly, when the Bank has not challenged the judgment of the NCDRC. The Bank's explanations are an eye-wash and a thinly disguised attempt to defeat a legitimate grievance. There was an evident deficiency of service on its part. Evidently, there was a deficiency of service on the part of the Bank in failing to forward the application form to the insurer and in deducting the insurance premium on time. Had the Bank not been deficient in the
 - G performance of its services, the deceased would have been entitled to

an insurance cover in the same terms as was provided by the insurer to A
all other account holders desirous of obtaining insurance.

9. We are accordingly of the view that there was no justification B
for the NCDRC to reduce the award of compensation against the Bank
from Rs 5 lakhs to Rs 2 lakhs. The ends of justice would be met if the
amount of compensation is enhanced from Rs 2 lakhs to Rs 5 lakhs
which shall be paid over to the appellant within a period of 60 days from
the date of receipt of a certified copy of this order.

10. The appeal is allowed to the above extent.

11. No order as to costs.

Devika Gujral

Appeal allowed.