

Supreme Court of India

Justice Dr Dhananjaya Y Chandrachud, Justice Surya Kant.

Anju Kalsi v. HDFC Ergo General Insurance Company Limited

Civil Appeal Nos 1544-1545 of 2022

21.02.2022

- **Insurance - Banking - Policy taken by bank for benefit of its card holders - “Cardsure Package Policy” - Non-Atm transactions - Deceased an account holder with HDFC Bank Limited and had availed of a debit card from the bank - Bank obtained an insurance cover from HDFC Ergo - Against payment of premium by the bank to the insurer, the insurer provided an insurance cover for card holders of the bank for the amount of Rs 5 lakhs - Claim repudiated on the ground that the deceased had not undertaken a “non-ATM transaction” in the period of three months immediately preceding the date of the accident - Special terms not communicated to the card holder - Insurance company liable - Consumer Protection Act, 1986.**
- **Insurance policy - Non communication of special terms of policy - Evidence - Deceased account holder of bank - Policy taken by bank - Insurance cover was governed by a policy between the bank and the insurance company - The terms of the insurance cover had to be specifically communicated to the account holder - Account holder had to be put on notice that the insurance cover would become available only after a transaction took place of the nature spelt out in the special conditions of the insurance policy - Insistence on communication to the account holder is necessary because the policy was issued to the bank by the insurer - The account holders are beneficiaries of the policy - Complainants case that only the covering letter indicating an insurance cover against personal accident was provided and that neither the insurer nor the bank had ever furnished the insurance policy, its terms and conditions - Bank did not choose to defend the proceedings at all - The insurer who also belongs to the HDFC group could well have applied for a summons to be issued to the bank for production of its records in the course of the evidence which would establish as to whether the debit card usage guide had been made available to the account holder - In the absence of such a course of action being adopted, the case of the appellant as set out in the complaint remained uncontroverted - Consequently, unless the respondents were able to establish on a cogent basis that the special conditions of the policy which was issued by the first respondent to the second respondent were drawn to the notice of the account holder for whose benefit the insurance cover extended, the claim ought not to have been rejected - Finding of NCDRC that the forwarding letter referred to the usage guide and if the guide had not been furnished, the deceased account holder would in the ordinary course of human conduct have written to the**

bank complaining that usage guide had not been made available was contrary to the specific averment in the consumer complaint - Held entitled to the award of the basic claim in the amount of Rs 5 lakhs together with interest as directed by the District Forum alongwith interest @ 9% per annum - Consumer Protection Act, 1986 - Banking .

Petitioner Counsel: N. Annapoorani, Respondent Counsel: Rajeev Maheshwaranand Roy.

JUDGEMENT

Dr Dhananjaya Y Chandrachud, J.

1. Leave granted.

2. These appeals arise from a judgment of the National Consumer Disputes Redressal Commission, "NCDRC" dated 24 March 2017 in the exercise of its revisional jurisdiction against an order of the State Consumer Disputes Redressal Commission, "SCDRC", Chandigarh.

3. On 3 September 2013, the appellant's son obtained the benefit of an insurance cover under a policy called the "Cardsure Package Policy". The appellant's son was an account holder with HDFC Bank Limited and had availed of a debit card from the bank. The bank, which is the second respondent, obtained an insurance cover on 3 September 2013 from the first respondent. The insurance cover was to commence from 25 August 2013 and was to end on 24 August 2014. Against the payment of premium by the bank to the insurer, the insurer provided an insurance cover for card holders of the bank. For 'Platinum' card holders, the base cover was in the amount of Rs 5 lakhs. In addition, the cover would stand increased by five times of every rupee spent on purchases through the debit card, extending up to an accelerated cover of Rs 5 lakhs, thus making up a total sum insured of Rs 10 lakhs. The appellant's son died in a road accident on 30 October 2013. The appellant as the mother of the deceased and nominee made a claim under the insurance cover. The claim was repudiated by the insurer on 17 December 2013 on the ground that the deceased had not undertaken a "non-ATM transaction" in the period of three months immediately preceding the date of the accident.

4. The appellant instituted a consumer complaint before the District Consumer Disputes Redressal Forum, "District Forum", Bhatinda upon the repudiation of the claim under the policy. The complaint was allowed by the District Forum on 16 July 2014 in the amount of Rs 5 lakhs together with interest at 9% per annum from 1 February 2014 and compensation and costs quantified at Rs 20,000/-. The order on the consumer complaint was challenged both by the appellant and by the first respondent. The SCDRC dismissed the appeal for enhancement of compensation and allowed the appeal by the insurer. The SCDRC held that the deceased had failed to use the debit card with a non-ATM transaction during the period of three months immediately prior to the date of the accident and hence, the condition precedent for a claim under the insurance policy had not been fulfilled. The order of the SCDRC was affirmed by the NCDRC by its judgment dated 24 March 2017.

5. We have heard Ms N Annapoorani, counsel appearing on behalf of the appellant through the Supreme Court Legal Services Committee and Mr Rajiv M Roy, counsel for the insurer.

6. The issue which arises for determination in the present case falls within a narrow compass. The SCDRC reversed the award of the claim by the District Forum on the ground that a mandatory condition of the insurance policy, namely, that there has to be a non-ATM swipe transaction within a stipulated period prior to the date of the event had not been fulfilled. The two conditions which have a bearing on this issue are respectively, conditions 5 and 9 of the 'Special Conditions' forming a part of the insurance cover. The insurance cover was provided by the first respondent to the second respondent, but the debit card holders of the bank were beneficiaries of the cover of insurance. Special Conditions 5 and 9 of the insurance policy which was issued by the first respondent to the second respondent read as follows:

"5. Non ATM swipe (transaction) is mandatory i.e. on or before 6 months from the date of loss for claims eligibility.

9. For accidental death coverage the following conditions should be fulfilled – Under Platinum card only:

Step I: Base cover – Rs 50,000 per card by doing one POS transaction in the last three months.

Step II: Accelerated cover up to Rs 5,00,000/- (Total of up to Rs 10,00,000/-) for over Rs 1 spent on purchase through the Platinum Debit Card, sum assured increases by five times the spent amount (subject to minimum spends of Rs 20,000) in the last 12 months as per the latest bank statement of the customer."

7. The genesis of the dispute lies in whether the Special Conditions of the policy which was issued by the bank to the insurer were drawn to the notice of the account holder. Before the District Forum, the appellant, in her consumer complaint made the following averments:

"That the opposite party no.1 and 2 never issued any insurance policy or its terms and condition or any document related to the insurance ever issued to the account holder or complainant till date except the said covering letter in which it is mentioned that Personal Accident insurance Cover upto Rs.10.00 lacs and also mentioned that when the account holder on every Rs.1/- spent on purchased through this card, the same increased the sum insured by 5 times. The opposite parties 'also did not disclose any Policy Number to the complainant or account holder till date."

8. The second respondent who were the bankers of the deceased did not appear in the proceedings.

9. A reply to the consumer complaint was filed by the first respondent, who is the insurer, in which it was stated that:

“That in reply to para No.4 of the complaint it is submitted that the opposite party No.2 had purchased a insurance policy from the replying opposite party named as Cardsure Package Policy bearing No.2999200570315100000 and the replying opposite party sent the entire terms and conditions along with the policy to the opposite party no.2 and it is pertinent to mention here that the said group insurance policy purchased by opposite party no.2 to protect its account holders who were interested to avail the benefits of platinum debit card, gold debit card, women advantage card, world card, business card etc. It is further pertinent to mention here that the opposite party no.2 at the time of issuing the said card as described above the opposite party no. 2 also provide a debit card usage guide with the said card and this fact is clearly mentioned in the covering letter on which the complainant herself relied upon, there is specifically mentioned i.e. “For Details and Terms and Conditions, Please Refer to the Usage Guide Enclosed” and there is further specifically mentioned that “Conditions Apply”. Rest of para is incorrect, hence denied.”

10. The contention of the appellant was that save and except for the covering letter which indicated that an insurance cover against personal accident was being provided to the account holder, neither the insurer nor the bank had ever furnished the insurance policy, its terms and conditions or any document related to the insurance cover to the account holder. The deceased was a customer of the bank and it was for the bank to establish that when it dispatched the debit card to its customer, both the covering letter as well as the debit card usage guide had been furnished to the deceased. The bank remained away from the proceedings. The insurer could not possibly have adduced any evidence in regard to whether the debit card usage guide had been actually furnished to the deceased account holder.

11. The evidence which was tendered by way of an affidavit on behalf of the insurer by its Manager (Legal), does not displace the burden which was cast on the bank, whose customer the deceased was, of establishing that the debit card usage guide containing the requisite terms and conditions had actually been furnished to the deceased account holder. The NCDRC upheld the decision of the SCDRC by holding that there was no specific averment in the complaint that the debit card usage guide was not enclosed to the forwarding letter. This finding proceeds on a misreading of the averments in the complaint. The NCDRC also held that the forwarding letter referred to the usage guide and if the guide had not been furnished, the deceased account holder would in the ordinary course of human conduct have written to the bank complaining that usage guide had not been made available. The specific averment of the appellant in the consumer complaint was that save and except for the covering letter, neither the insurance policy nor its terms and conditions were furnished to the account holder or the appellant. It was also averred that no document relating to the insurance cover was issued to the account holder or the appellant by the insurer or the banker.

12. The insurance cover was governed by a policy between the first and the second respondents. The terms of the insurance cover had to be specifically communicated to the account holder. The account holder had to be put on notice that the insurance cover would become available only after a transaction took place of the nature spelt out in the special conditions of the insurance policy. Insistence on communication to the account holder is

necessary because the policy was issued to the bank by the insurer. The account holders are beneficiaries of the policy. In the present case, the bank did not choose to defend the proceedings at all. The insurer who also belongs to the HDFC group could well have applied for a summons to be issued to the bank for production of its records in the course of the evidence which would establish as to whether the debit card usage guide had been made available to the account holder. In this backdrop, and in the absence of such a course of action being adopted, the case of the appellant as set out in the complaint remained uncontroverted. Consequently, unless the respondents were able to establish on a cogent basis that the special conditions of the policy which was issued by the first respondent to the second respondent were drawn to the notice of the account holder for whose benefit the insurance cover extended, the claim ought not to have been rejected.

13. Mr Rajiv M Roy, learned counsel appearing on behalf of the insurer made an attempt to support the findings by urging that the debit card usage guide was suppressed by the appellant. We are unable to subscribe to this contention since, as a matter of fact, the case of the appellant was that save and except for the covering letter no further documentation had been furnished to the account holder. Learned counsel for the insurer has submitted in the alternate that the deficiency of service, if any, would be on the part of the bank and that there was no deficiency on the part of the insurer. We are not inclined to go into this aspect of whether or not there was deficiency of service on the part of the bank. The deficiency of service on the part of the insurer lies in the wrongful repudiation of the claim under the policy. The insurer would however be at liberty to work out its remedy against the second respondent - bank.

14. For the reasons which we have indicated, we find that the case which was set up by the appellant has not been displaced. Hence, the appellant was validly entitled to the award of the basic claim in the amount of Rs 5 lakhs together with interest as directed by the District Forum. The appellant would not be entitled to the claim under the enhanced cover since it was linked to purchases made against the debit card.

15. For the above reasons, we allow the appeals and set aside the impugned judgment of the NCDRC dated 24 March 2017. The judgment of the District Consumer Disputes Redressal Forum, Bhatinda shall accordingly stand restored and the appellant would be entitled to compensation in the amount of Rs 5 lakhs together with interest from 1 February 2014 at 9% per annum. The appellant would also be entitled to compensation and costs quantified at Rs 20,000/- as awarded.

16. Payment in terms of the present order shall be made over to the appellant by a demand draft drawn in her name within a period of one month from the date of the present judgment.

17. Pending applications, if any, stand disposed of.