(1997) 05 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

ALIA BEGUM APPELLANT

Vs

L.I.C.OF INDIA RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Citation : 1997 0 NCDRC 12 : 1997 3 CPJ 106 : 1997 3 CPR 60 : 1997 5 CTJ 682 : 1998 1 CPC 3

Hon'ble Judges : C.L.CHAUDHRY , R.THAMARAJAKSHI , S.S.CHADHA J.

Advocate : S.W.BALCHANDANI , MOHINDER SINGH

Judgement

1. THIS Appeal has been filed by the unsuccessful Complainant against the Order of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal, dismissing her complaint.

2. THE Complainant is a nominee under an insurance policy taken on the life of her late son Fahim Mohd. Khan. The date of the proposal of insurance is 22.12.1989 and the policy was issued on 17.1.1990. The period of the insurance policy was upto 22.12.2019. The premium of the policy was duly paid to the Insurance Company. Fahim Mohd. Khan died of Rheumatic heart disease. A claim was lodged by the Appellant and the Insurance Company repudiated the claim on the ground that the material information about his previous illness was suppressed by the deceased while signing the proposal of insurance. The Complainant filed a complaint before the State Commission which was contested by the Insurance Company. It was contended on behalf of the Insurance Company that there was a misstatement in the proposal form by the deceased and the claim was repudiated on justifiable grounds for non-disclosure of material information. After hearing the counsel for the parties and taking into consideration the material placed on the record, the State Commission returned the finding that in the facts and circumstances of the case, the claim had been repudiated bona fide and for good reasons. Accordingly, the complaint was dismissed. Aggrieved by the Order of the State Commission, the claimant has moved this Commission by way of an appeal under Section 19 of the Consumer

Protection Act, 1986, which is under disposal.

3. WE have heard the learned counsel for the parties. It was contended on behalf of the Appellant that the State Commission wrongly held that the deceased had suppressed facts which it was material to disclose. On the other hand, the counsel for the Insurance Company contended that the order passed by the State Commission was justified in the facts and circumstances of the case and it could not be said the claim was repudiated mala fide and without any cogent reasons.

4. WE have considered the arguments of the parties and have gone through the records very carefully. Before we advert to the merits of the contention raised on behalf of the Insurance Company, it will be convenient to enunciate the relevant law on the point : "The onus probandi, in cases of fraudulent suppression of material facts rests heavily on party alleging fraud, namely, the insurer. The insurer cannot avoid consequences of insurance contract by simply showing inaccuracy or falsity of statement. Burden is cast on the insurer to show that the statement was on a material matter or facts have been suppressed which it was material for the policyholder to disclose. It is further to be proved that the statement was fraudulently made by the policy holder with the knowledge of the falsity of statement or that the suppression was of material facts which had not been disclosed. The Courts will not be satisfied with proof which falls short of showing that intentional misrepresentation was made with the knowledge of perpetrating fraud."

The Insurance Company placed on record the bed head ticket issued by the Hamidia Hospital where the deceased was admitted and gave the past history. The case history dated 23.3.1990 recorded in the Hamidia Hospital reveals as under : "Fever with Chills and Rigors-3 months intermittent-Every three to five days-Severe body aches-3 months-Joint pains and swelling in childhood."

5. IN order to discharge its onus, it was for the Insurance Company to place material on the record to show that the deceased suppressed facts which it was material to disclose. Whether a fact is material depends upon the circumstances of a particular case. The test to determine materiality is whether the fact has any bearing on the risk undertaking by the insurer. If the fact has any bearing on the risk, it is a material fact; if not, it is immaterial. From the history sheet dated 23.3.1990, it appears that the deceased was having fever with chills and rigors intermittently for about every 3 to 5 days for 3 months and there were body aches for the same period and joint pains and swelling in childhood. No evidence has been led by the Insurance Company to substantiate that the facts regarding intermittent fever and body aches were material particulars which the deceased was supposed to disclose and had bearing on the risk undertaken by the insurer. In our opinion, these were trivial ailments and the same could not be construed as fraudulent suppression of material facts so as to repudiate the contract of insurance. Regarding joint pains and swelling, it must have been noticed by the Doctors who examined the deceased on behalf of the Insurance Company before

finalisation of the insurance policy. Had it been a serious problem, it must have been mentioned in the report.

6. MOREOVER , on this aspect, the State Commission has not given any positive finding that the deceased had suppressed materials facts which had a bearing on the risk undertaken by the insurer. The matter has been dealt with in a perfunctory manner as is evident from the observations made by the State Commission which are reproduced below for the sake of convenience: "From the complaints and the history given by the deceased himself to the Doctors of Hamidia Hospital, it is clear that there was something wrong with the health of deceased even prior to giving proposal for insurance. On 23.3.1990 he was complained of fever with Chills and Rigors intermittently for three months and body ache daily for three months. This period of three months cannot be counted in exact terms. This might have been a little earlier also. The period of three months immediately preceding 23.3.1990. It is unlikely that without previous history, the deceased developed the complaints within day or two of the proposal. The history of joint pains and swelling in childhood also indicates that there was something wrong with the health of the deceased."

In our opinion, the finding of the State Commission suffers from legal infirmity and cannot be sustained. In the result, the appeal is allowed and the order of the State Commission is set aside. The complaint is allowed and the Insurance Company is directed to settle the claim of the Appellant in terms of the insurance policy within two months from the date of receipt of a copy of this Order. The appellant will be entitled to costs which are quantified at Rs. 2,000/-. The appeal is disposed of.