
(2015) 01 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Amzad Khan S/O Shamidkhan

APPELLANT

Vs

Manager, Aviva Life Insuranceco Ltd

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : 2015 1 CPJ 705

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Final Decision : Petition dismissed

Judgement

1. REVISION Petition No. 3114 of 2014 has been filed by the petitioner/complainant against the order dated 30.4.2014, passed by Karnataka State Consumer Disputes Redressal Commission, Bangalore (short, "State Commission") in First Appeal No.552 of 2014.

2. BRIEF facts of the case as per the petitioner/complainant are that the petitioner's mother Munera Begum w/o Shri Haminsab during her lifetime had taken a life insurance policy from the respondent/opposite party. The name of the policy holder was Munera Begum, w/o Shri Hamisab vide policy No.ACA31166118 sum assured for Rs.10,00,000/ - with yearly premium of Rs.17,917/ - w.e.f. 29.9.2012 for fifteen years.

3. AT the time of taking of the policy, the mother of the petitioner enjoyed good health. He was his mother's nominee. On 25.11.2012, the mother of the petitioner died of a heart attack at Vivekananda Hospital at Gangavathi. The policy taken by mother came to the knowledge of the petitioner later and he filled up a claim form which was submitted to the respondent's branch alongwith all relevant documents. The insurance branch (personnel) said that the money would be paid after one month and sent him back.

4. THE respondent on 29.4.2013 sent a letter through post stating that the policy money cannot be paid as prior to issuing the policy his mother suffered from Glaucoma and in March, 2011 she had taken treatment for it. Therefore, the petitioner had no option but to file a consumer complaint.

5. THE petitioner's mother died during the time of continuation of the policy and hence by repudiating the claim there was deficiency in service. He prayed that the respondent should be made to pay compensation in the following manner : -
1. Policy amount - Rs.10,00,000/ - 2. Mental and Physical suffering - Rs. 1,00,000/ - 3. Deficiency in service - Rs. 1,00,000/ - 4. Litigation and Other - Rs. 10,000/ - Rs.12,10,000/ -

6. RESPONDENT in their reply before the District Consumer Disputes Redressal Forum, Koppal (short, "District Forum") stated that ; "At the very outset, it is submitted that after the perusal of investigation report and the documents procured during the investigation, opposite party came to know through treatment documents issued obtained from SDM Hospital, Dharwad that DLA was suffering from Anxiety neurosis and Neurovascular Glaucoma since 2011 i.e. prior to signing the proposal form. It is pertinent to mention here that DLA was taking treatment for said disease from March, 2011 and the questions asked related to health conditions of DLA on proposal form was replied as "No" and said policies were issued to the DLA on 29.9.2012. Hence, it is crystal clear that DLA was under treatment much prior to signing of the proposal form or issuance of said policy and the said facts malafidely concealed by DLA at the time of issuance of the said policy. It is also relevant to note that the complainant in para six of the complaint has also admitted that his deceased mother was suffering from eye disease. Hence, the claim deserves to be dismissed on this point alone.

The opposite party at the very beginning states that there has been no negligence or deficiency in services whatsoever, on the part of the opposite party in dealing with the concerned policy as the claim was rightly repudiated on the ground of suppression of material fact as stated in the repudiation letter, thus, the present complaint is liable to be dismissed by the Learned Forum on this ground along. It is submitted that the contract of insurance including the contract of life assurance are contracts uberrima fides and every material fact must be disclosed otherwise there is good ground for rescission of the contract. The Apex Court judgment of Satwant Kaur Sandhu Vs. New India Assurance Co.Ltd., 2009 4 CPJ 8 has referred the term "Proposal Form" as defined under the Insurance Regulatory and Development Authority, 2002 as a "Form" to be filled in by the proposer for insurance, for furnishing all material information required by the insurer to decide whether to accept or decline, to undertake the risk and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted and observed that in a contract of Insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. It is submitted that the complainant has no "locus standi" to claim any alleged sum assured, as the insurance policy was obtained by the DLI by mis-representation of material facts in order to defraud the opposite party. The contract of insurance is void, and not tenable in the eyes of law as it is entered by DLI to defraud the opposite party. In these circumstances, the complaint is

liable to be dismissed in limine.

Further, in LIC of India Vs. Sampat Devi, 2006 3 CPJ 32, the Court observed as follows : "In our concerned opinion, there are certain diseases such as kidney, heart and brain and they are connected with the life span of a person and if any mis -statement is made in respect of such type of diseases by the person seeking insurance, in such case, it can be believed that knowingly the person taking out the insurance has made mis -statement."

Similar in case of V. Nalini Vs. LIC of India & Anr., 2008 1 CPJ 144, wherein the State Commission of Tamil Nadu, held that the suppression of a serious ailment pertaining to heart, brain or kidney make the repudiation of claim justified. Further in Sapna Arora vs. LIC of India and Ors., 2009 1 CPJ 588, the claim was repudiated on the ground of suppression of information on prior existence of Deabetes Mellitus, it has been held by Hon"ble Punjab State Consumer Disputes Redressal Commission that a person being treated by a doctor is bound to give correct information about his health condition in order to receive appropriate treatment. Therefore, documents such as discharge certificate or bed -head ticket have been held to be valid basis for repudiation. Thus, the complaint is liable to be dismissed.

7. DISTRICT Forum vide order dated 4.4.2014 dismissed the complaint and gave the following order : - "19. In the instant case, the proposal form was signed on 25.9.2012 and the woman died on 25.11.2012. Therefore, provision of Section 45 of the Insurance Act, 1938 attracts when on the basis of inaccurate or false statement fraudulently made by the policy holder knowing that the statement was false. Here is a case of the life assured making inaccurate or false statement about her health and activity status.

20. In the light of the above facts, we have no hesitation to conclude that there has been a willful concealment of vital information at the time of filling up the proposal form by deceased life assured knowing past medical history at the proposal state and therefore, rejection of the claim is not unjustified. Hence, we dismiss this meritless complaint."

8. BEING aggrieved by the order of the District Forum, petitioner filed an appeal before the State Commission. State Commission while dismissing the appeal of the petitioner observed that : - "After considering the evidence placed on record by both the parties, the DF has made an observation in para 13 of the order that the investigation report discloses that, the insured was suffering from Anxiety Neurosis and she has undergone treatment since from 2011 in SDM Hospital, Dharwad and she has been advised some tablets for her ailment. Considering the answers given by her in the proposal form as "NO" stating that, she was not suffering from any disease or ailment, the provisions of Section 45 of the Insurance Act, 1938 and considering the various decisions as referred in para 3 and 4 by both the parties and also by considering the gravity of Neurovascular Glaucoma (NVG), the DF has rightly passed the order under challenge. The

insured has taken treatment to her ailment prior to taking of the policy and died within a span of two months from the date of taking the policy. The DF has rightly not accepted the averments of the complaint as well as the documents produced by the appellant/complainant and rightly accepted the report of the investigator. Therefore, we are of the opinion that the decision referred to by the learned counsel for the appellant in the case of Smt.Kamma Bajpai Vs. Life Insurance Corporation of India,2012 3 CPR , wherein it has been held that the life assured died because of head injuries following an accident while fixing a bulb in his house. since, the LIC of India has not placed any evidence to disbelieve the version of the insured and, therefore, the appeal filed by the complainant was allowed. The facts and circumstances involved in the case of Smt.Kamna Bajpai referred above is not at all made applicable to the facts of the case on hand to admit this appeal. Therefore, the DF has rightly held that the appellant has not proved the deficiency of service on the part of respondent/OP. Hence, viewed from any angle, we don't see any prima -facie case to admit this appeal. Accordingly, we pass the following order : - Appeal is dismissed at the stage of admission. The order dated 4.4.2014 passed by the DF, Koppal in complaint No.59 of 2013 is confirmed."

9. HENCE , the revision petition.

10. WE have heard learned counsels for the parties and have gone through the record of the case.

11. LEARNED counsel for the petitioner has not denied that Late Smt.Munera Begam suffered from Neurovascular Glaucoma and Anxiety Neurosis. He has argued that it is not material and has no nexus with the cause of death as she has died of a heart attack. Learned counsel for the respondent, on the other hand stated that she had concealed the fact that she did suffer from pre -existing disease at the time of filing of the proposal form and taking insurance policy. The investigator in his report has dealt with this in detail. As per investigation report, Late Munera Begam died on 25.11.2012 due to acute MI secondary to irreversible shock as per MCOD Certificate issued by the doctor. She was suffering from pre -existent condition, Anxiety Neurosis and Neurovascular Glaucoma since 2011 or earlier as per the OPD treatment details obtained from SDM Hospital, Dharwad. As per this report, she had visited the hospital on 22.3.2011 and diagnosed with Neurovascular Glaucoma for which she had been prescribed medication and also advised MRI.

12. IN the revision petition, the petitioner has not denied that his mother was suffering from Neurovascular Glaucoma but stated that "Neurovascular Glaucoma" a medical condition affects the eye and that the maximum damage that can be caused is blindness in eye. The deceased died due to a heart attack and this was in no way connected to the medical condition mentioned in the OPD card. Further, he stated that the medical condition relating to the eye does not form part of the specific questionnaire under section 6.2. It was neither material nor necessary to be stated in the form. He has also not denied that she suffered

from Anxiety neurosis but stated that the District Forum had clearly misled itself in considering "neuro anxiety" as an additional reason for repudiation.

13. WE went through the proposal form carefully. We note that Clause 6.2 A and B quite specific while asking for about the medical condition of the applicant. It asks for information under various heads such as Clause (i) "High Blood pressure, angina, heart attack, stroke or any other disorder of heart or circulation" ; (vii) "Mental or nervous illness (including depression) lasting for more than 3 months and/or requiring more than 10 consecutive days off work - and clause (xiv) "Any other illness, surgery or injury". Late Munera Begam could have disclosed her ailments against any one of these columns as admittedly, she had circulation problem in the form Neurovascular Glaucoma and a nervous illness in the form of Anxiety neurosis. Even if she could not mention them strictly under these two heads, it could have been mentioned under Clause (xiv) "Any other illness, surgery or injury."

14. HON "ble Supreme Court in the case of Satwant Kaur Sandhu Vs. New India Assurance Co.Ltd., 2009 8 SCC 316, wherein, it has been observed that : - "18. A mediclaim policy is a non -life insurance policy meant to assure the policy holder in respect of certain expenses pertaining to injury, accidents or hospitalizations. Nonetheless, it is a contract of insurance falling in the category of contract uberrimae fidei, meaning a contract of utmost good faith on the part of the assured. Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment.

20. MacGillivray on Insurance Law (Tenth Edition) has summarised the assured's duty to disclose as under: "...the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non -disclosure induced the making of the contract on the relevant terms."

21. Over three centuries ago, in Carter Vs. Boehm, Lord Mansfield had succinctly summarised the principles necessitating a duty of disclosure by the assured, in the following words: - "Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does

not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement...The policy (2000) 2 SCC 734 (1766) 3 Burr. 1905 would be equally void against the underwriter if he concealed...Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary. Having said so, as noted above, the next question for consideration would be as to whether factum of the said illness was a "material" fact for the purpose of a mediclaim policy and its non-disclosure was tantamount to suppression of material facts enabling the Insurance Company to repudiate its liability under the policy."

22. The term "material fact" is not defined in the Act and, therefore, it has been understood and explained by the Courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the Contract of Insurance and has a bearing on the risk involved would be "material".

23. As stated in Pollock and Mulla's Indian Contract and Specific Relief Acts - any fact the knowledge or ignorance of which would materially influence an insurer in making the contract or in estimating the degree and character of risks in fixing the rate of premium is a material fact."

24. In this regard, it would be apposite to make a reference to Regulation 2(1) (d) of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002, which explains the meaning of term "material". The Regulation reads thus: "2. Definitions. - -In these regulations, unless the context otherwise requires, - - (a) xxx xxx xxx (b) xxx xxx xxx (c) xxx xxx xxx (d) "Proposal Form" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted. Explanation: "Material" for the purpose of these regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer." Thus, the Regulation also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the context of guiding the insurer to decide whether to undertake the risk or not.

20. The upshot of the entire discussion is that in a Contract of Insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering

questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a Contract of Insurance."

15. DISTRICT Forum as well as State Commission have rightly dismissed the complaint while giving well -reasoned order in detail. This in view of law laid down in the case of Satwant Kaur respondent/opposite party was justified in repudiating the claim.

16. HON "ble Supreme Court in Mrs.Rubi Chandra Dutta Vs. M/s United India Insurance Co. Ltd., 2011 3 Scale 654has observed ; "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."

17. IN view of the above, order of both the fora below cannot be faulted. No jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of Act. Since, the State Commission as well as District Forum have given detailed and well -reasoned order which do not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby dismissed with no order as to cost.