(2004) 06 NCDRC CK 0099

In the National Consumer Disputes Redressal Commission

BRANCH MANAGER, L.I.C. OF INDIA — APPELLANT

Vs

A. LALITHA — RESPONDENT

Date of Decision : 02-06-2004

Acts Referred:

Citation : 2004 3 CPR 624 : 2004 4 CPJ 232

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeals dismissed

Judgement

1. THESE two appeals arise out of the order passed by the lower Forum on 12.4.1999 in O.P. No. 130/98 and O.P. No. 135/98. The complainant''s case in these two O.Ps. is that the complainant''s husband Amaranathan had insured his life for two sums of Rs. 1 lakh each under two policies, one commencing from 28.3.1993 and 28.10.1993. The first premium was paid on 28.3.1993 and 28.10.1993. Amaranathan developed severe headache and after consulting his family Doctor V. Gopal, he was taken to Madras and admitted at Apollo Hospital on 17.6.1994 where Dr. Kalyanaraman conducted an operation upon him. After the operation, he was improving and, therefore, came down to Thanjavur on 3.8.1994 and was attending to his normal work. But all of a sudden, he had a massive heart attack and expired on 9.8.1994. Therefore the complainant made a claim to the opposite parties for payment of the amounts due under the policies. The opposite parties rejected and repudiated the claim on the ground that the insured had suppressed that he was suffering from diabetes. Such a repudiation is bad in law. Hence these two complaints were filed.

2. THE opposite parties contended that in the proposal form, the insured had stated that his health was good and that he was not suffering from any disease whereas he was suffering from diabetes for 10 years prior to his death, and thus has suppressed the material information at the time of taking the policies. since the death was within two years from the date of commencement of the policies, the opposite parties made an investigation. THEy obtained a certificate of treatment from Dr. Kalyanaraman. In the said certificate, it has been mentioned

that the deceased was suffering from diabetes for about 10 years and, therefore, as there has been material suppression, the opposite parties were justified in repudiating the claim. The lower Forum accepted both the complaints and directed the opposite parties to pay the insurance amounts of Rs. 1 lakh with interest at 12% from the date of the complaints and a sum of Rs. 2,000/- as compensation along with Rs. 500/- as costs in both the cases. Hence the present appeals were filed by the opposite parties.

The common point that arises for consideration in these two appeals are: (1) whether the repudiation by the opposite parties is justified? (2) Whether it amounts to deficiency in service on the part of the opposite parties? (3) To what amount the complainant is entitled?

3. SINCE the complainant is the same in both these O.Ps. and the appeals and the opposite parties are the same and the common questions of facts and laws arise, both these appeals were taken together and disposed of by a common order as under: The only ground of repudiation is that there has been suppression of material facts regarding the health of the insured/deceased and, therefore, it amounted to wilful suppression and the contract of insurance being one based upon good faith, such suppression is fatal and would render the entire contract void and, therefore, the opposite parties are not at all liable to make any payment. The two policies in question are each for Rs. 1 lakh. The policy which is the subject matter in dispute in A.P. No. 891/99 is for the period from 28.3.1993 to 28.9.2012. The policy which is the subject matter of A.P. No. 894/99 is for the period from 28.10.1993 to 28.7.2008. The insured underwent a surgery for tumour in the brain at the Apollo Hospital on 18.6.1994 and he was discharged from the Hospital on 30.7.1994 and returned to his native place viz., Thanjavur on 3.8.1994. He died on 9.8.1994. The immediate cause of death was massive heart attack. These facts are not disputed. It is also not in dispute that in proposal form, the insured has answered all the questions under the column "Personal History" stating "No" and has also stated that he has been having good state of health. This proposal form was signed by him on 16.3.1993 and 30.10.1993. The opposite parties relied upon Ex. B-4 certificate of treatment issued by Dr. Kalyanaraman. In this certificate of treatment, it is mentioned under Col. 7 as follows: 7.Whether any other disease or illness which on preceded or co-existed Yes-Diabetes with the ailment at the time of his consultation with you? If so, what was it? Please give history of such disease or illness. (a)Date, when it was first observed by the patient (a) 10 years (b)By whom treated (b) At Thanjavur (c)By whom history reported to you (c) Relatives

Therefore, basing their arguments upon the notings made by the Doctor under Column 7, the opposite parties would contend that the insured had been suffering from diabetes for more than a period of 10 years, but yet he has suppressed the same when he signed his proposal and, therefore, there is material suppression of facts and hence the entire contract of insurance is vitiated. What has been noted by the Doctor in the certificate of medical

treatment for which only a Xerox copy is filed, cannot be accepted as providing infallible proof of the case of the opposite parties. The complainant has specifically stated that one Dr. V. Gopal was their family doctor. It is not established that what has been recorded in Ex. B-4 was an information furnished by the patient himself. The certificate in Ex. B-4 was one furnished by Dr. Kalyanaraman who did the operation at Apollo Hospital. But the case sheet and other registers maintained by Apollo Hospitals are not produced. We can come to the conclusion only from the notings made on the admission of the patient with reference to the history of the patient. The burden lies heavily upon the opposite parties to establish that there has been a wilful suppression. It is also to be pointed out that there is no separate certificate or affidavit produced from Dr. Kalyanaraman to say that at the time when he examined the insured, the patient told him that he was suffering from diabetes for the past about 10 years. The certificate produced is on a printed form. It is only a Xerox copy. Therefore, when the burden is very heavy upon the opposite parties, by merely relying upon some notings made by a doctor who has issued the certificate to them, they cannot hope to discharge the burden satisfactorily. No doubt, the Doctor would not know the ailment unless it is visible to him. When a person is admitted in a hospital for a major surgery, all the tests would have been carried out. Therefore, all those documents, viz., the case history, test report, would all be of significance. But they have not been produced for scrutiny by the opposite parties. At the time of admission, some other doctor - either Dr. Kalyanaraman or somebody else - would have examined him and noted the information concerning his personal history. Therefore, that would be the most relevant and important piece of evidence. Neither the Doctor who admitted him is examined nor the case sheet has been summoned or produced. Therefore, in such circumstances, we cannot give any importance to what is noted in Ex. B-4 Medical Certificate when the repudiation is made solely on the ground of suppression of fact and since the burden is upon them to establish the same. Therefore, when the best evidence available is not produced and when attempts are not made by the opposite parties either to examine Dr. V. Gopal, the family Doctor or obtain any affidavit from him, one cannot say that the repudiation is justified. Unless it is shown that the assured was suffering from diabetes as alleged for about 10 years, the repudiation cannot be upheld. For, excepting the stray notings made in the medical certificate, there is no material worth enough to support such a contention. Therefore, in such circumstances, the orders of the lower Forum cannot be faulted with since the repudiation cannot, in the circumstances, be held to be justified. Therefore, we find that there is deficiency in service and that the repudiation was not justified and hence the order passed by the lower Forum has to be upheld.

4. CONSEQUENTLY, these two appeals are dismissed confirming the order passed by the lower Forum, with cost of Rs. 250/- each. Time : two months. Appeals dismissed.

