**(1999) 05 NCDRC CK 0071**

**In the National Consumer Disputes Redressal Commission**

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

Vs

ALKA GUPTA — RESPONDENT

**Date of Decision :** 17-05-1999

**Acts Referred:**

**Citation :** 1999 2 CPJ 493 : 2000 1 CPR 269

**Hon'ble Judges :** K.C.Bhargava , D.D.Bahuguna J.

**Final Decision :** Appeal allowed

## Judgement

1. THIS is an appeal against the judgment and order dated 25.7.1997 passed by the District Forum, Shahjahanpur in Complaint Case No. 508/1994.

2. THE facts of the case stated in brief are that on 26.2.1989, Ganesh Kumar Gupta, husband of the complainant, took a policy on his life for Rs. 50,000/-. He paid the premium regularly and on 4.11.1992 he died. Information of the death was conveyed to the opposite party-appellant on 20.3.1993 and other formalities were also completed. THE appellant has not made payment of the policy amount and repudiated the claim on 7.7.1994. It was alleged that till the time of the death, the husband of the complainant was hale and hearty and was doing the work of selling stamps. He had not suppressed any material facts. On behalf of the opposite party, in the written statement, it was alleged that the policy was started from 28.2.1989 but for non-payment of premium it lapsed on 28.2.1990. It was revived on 26.12.1990. According to opposite party-appellant, there was material suppression of facts. The husband of the complainant was ill prior to revival of the policy and had got done CT Scan of the whole body on 28.7.1990. The complainant''s husband was suffering from brain tumour for last about three years from the date of taking of policy. Hence the claim was repudiated.

The learned District Forum, after considering the evidence on record, came to the conclusion that the appellant is liable to pay Rs. 50,000/- as amount of the policy alongwith other benefits as there is deficiency in service.

3. AGGRIEVED against this order, appellant has come in appeal and has

challenged the correctness of the order of the District Forum. According to the Counsel for the appellant, the policy lapsed on 28.2.1990 on account of non-payment of premium and it was revived on 26,12.1990. According to him before the revival of the policy a declaration form was taken in which the deceased had mentioned that he did not suffer from any disease. According to learned Counsel, the deceased had brain tumour and he had knowledge of this disease much before the revival of the policy.

4. FROM the perusal of the file, we find that the policy which lapsed on 28.2.1990 was revived on 26.12.1990 after a lapse of about 10 months. Before the revival of the policy the deceased had given a declaration form in which he had mentioned that he was not suffering from any disease and had not undergone any treatment with the doctor during this period. On 20.11.1990, a declaration form was given by the deceased to the Insurance Corporation before the revival of the policy. A perusal of this form goes to show that he was not suffering from any disease and had not undergone any examination etc. but this fact is proved wrong in view of other papers which have been filed by the appellant, Medical Attendant Certificate dated 4.11.1992 will go to show that the deceased was suffering from headache etc. since last three years. The report of CT Scan dated 28.7.1990, which was done before the revival of the policy, goes to show that large low density mass was present in the right temporal extending to sylvan supra sylvan posterior frontal. Right lateral ventricle compressed with septum in midline. Left lateral ventricle is dilated. Third ventricle in midline. Cortical sulci on right side obliterated. In the opinion column it is written "Large low density with mass effect in right temporal cystic astrocytoma". Thereafter there is a report of Department of Pathology, G.B. Pant Hospital, New Delhi which shows that "Sections from both the tumour tissue shows fibrillary astrocytoma Grade II". Another report of 29th August, 1992 of Delhi Neurological Research Institute is on file, where the whole body scan was done in which it is mentioned that the CT Scan shows recurrence of tumour. On 8th May, 1991 it has been mentioned in an O.P.D. slip of G.B. Pant Hospital, New Delhi that "Operated Rt. fronto-temporal.... This shows that an operation had also taken place in May, 1991 of the tumour which showed its presence in CT Scan. The patient was, therefore, discharged on 16.4.1991. Thus all these facts go to show that before revival of the policy, the deceased got his whole body Scan done and thereafter. he was operated upon for after the revival of the policy. That was a material suppression of a disease by the complainant''s husband and if this disease would have been disclosed to the appellant, it is just possible that the appellant would not have revived the policy. This fact has direct consequence about the death of the deceased. It can be safely held that the deceased died on account of tumour growth in the brain for which he was operated upon. But this fact was not disclosed in the renewal form by the deceased. It was the duty of the deceased to have disclosed this fact and leave the appellant to arrive at an independent conclusion as to whether the policy would be revived or not.

Thus we find that the learned District Forum has not considered this aspect of the case. The complainant was not entitled to any relief on account of non-disclosure of material fact relating to the illness of the deceased. However, before parting with this appeal, we consider it necessary to mention that the appellant should consider sympathetically the case of the complainant for grant of some ex-gratia payment based on paid amount of premium. ORDER The appeal is allowed and the judgment and order dated 25.7.1997 of learned District Forum are set aside. The parties shall bear their own cost for the litigation. Let copy of this order be made available to the parties as per rules. Appeal allowed.

 