(2004) 03 NCDRC CK 0130

In the National Consumer Disputes Redressal Commission

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

Vs

K. MARATHAL — RESPONDENT

Date of Decision : 30-03-2004

Acts Referred:

Citation : 2004 4 CPJ 420 : 2005 1 CLT 123

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

Final Decision : Appeal allowed

Judgement

1. THE complainant''s case is that her husband Kandasamy had taken an insurance policy for Rs. 30,000/- on 25.10.1991. THE premiums upto October, 1995 were paid. He had nominated his wife under the said policy. THE said Kandasamy died on 23.12.1995 due to heart attack. When a claim was made, the opposite party repudiated the same. Hence the complaint.

2. THE opposite party contended that it is true that Kandasamy had taken an insurance policy with the commencement of risk on and from 25.10.1991. THE policy became lapsed. It can be revived only if the policy holder submits a statement regarding his health condition and remits the arrears of premium with interest during the life-time of the insured. THE life assured submitted the statement on 12.9.1995. Again the policy lapsed on 25.10.1995. Since the claim was made within a period of one year from the date of revival of the policy, the opposite party held inquiry and came to know that the insured had suffered from cancer for which he took treatment at Christian Cancer Centre, Oddanchatram. But this fact, he did not disclose and suppressed the same wilfully. THErefore, it was rightly repudiated as there was wilful suppression and concealment of material facts. The lower Forum accepted the claim and directed the opposite party to pay a sum of Rs. 30,000/- with interest at 12% from 7.10.1997. Hence the appeal.

The policy was taken on 25.10.1991 for a sum of Rs. 30,000/-. The policy lapsed and was revived on 12.9.1995 on the basis of the statement made by the life assured. In the declaration form signed by him for the revival of the policy, he had stated that he had not been suffering from any illness or disease requiring treatment for a week or more and that he did not undergo ECG, X-ray, screening, blood, urine or stool examinations and that his present health was sound. On the strength of this declaration made by him and on the strength of his vouchsafing for his good health, the policy was revived. But within a short period of the revival of the policy, the complainant''s husband died on 23.12.1995. Ex. B-1 is the declaration form signed by the complainant. He has not only given a statement, but has also stated in the declaration form which has been signed by him in Tamil stating in Tamil that he had signed the form only after understanding the contents therein. The agent of the L.I.C. has witnessed it. Even assuming that the particulars were filled in by the agent, it can only be taken that he acted as the agent of the insured. Therefore, the fact that the declaration was witnessed by the L.I.C. agent does not advance the case of the complainant.

3. NOW what we have to see is whether there has been suppression of material facts on the date of revival of the policy. Ex. B-2 is the certificate issued by Dr. P. Krishna Kumar, MD, DMRT, Consultant Radiation Therapist and Oncologist of the Christian Cancer Centre, Ambilikkari, stating that the patient Kandasamy, son of Karuppusamy, Narikkalpatti, was treated at the Centre on 26.1.1994 and the last date of admission was 26.10.1995. He was discharged on 2.11.1995. He was suffering from cancer penis. He underwent a surgery, radiation and chemo and it was a progressive disease. The diagnosis was carcinoma with secondary infection. Thus it is clear that the complainant''s husband was suffering from cancer and was being treated for the disease in a hospital. This fact has been suppressed by him when he applied for revival of the policy. Thus there is suppression of material information regarding his health and when the material information regarding one''s health is suppressed, it follows that the contract is void ab initio. The contract of insurance being one based upon good faith, any such material suppression would vitiate the entire contract. The National Commission has held in L.I.C. of India v. M. Gowri and Others, F.A. No. 163/1993, L.I.C-Consumer Cases, that when an agent fills up the proposal form, he acts as an agent of the insured for whose benefit the insurance is applied. The National Commission has also held that when vital facts are concealed, the policy will stand vitiated by suppression of facts and L.I.C. will be justified in repudiating the same. This ruling of the National Commission is reported in 1996 I CPR 140. The National Commission has also held in the decision in 1994 (I) CPR 40, that repudiation of a claim on the ground that the deceased/life assured has given a false declaration while all along the insured was suffering from an incurable disease like carcinoma. It would amount to intentional and fraudulent concealment and the repudiation in such circumstances is justified and no deficiency in service can be inferred from the same. The National Commission has also held in its decision reported in 2002 (3) CPR 24, that where the insured had a cardiac problem within 60 days of the policy and this fact had been wilfully suppressed by him, the repudiation of the claim could not be stated to be a

deficiency in service. Therefore, in view of the above decisions, it follows that the repudiation by the opposite party is quite justified. It is of course no doubt true that the burden of establishing that there was suppression of material facts lies upon the LIC. Here in this case, the burden has been discharged satisfactorily by the opposite party by producing the certificate from the doctor attached to the institution where the complainant''s husband was taking treatment for his ailment. It can neither be stated nor it is stated that the document has been fabricated or procured for the purpose of this case. In such circumstances, we do not find any reason to overlook the said document which gives a definite clue as to the fact of concealment by the insured. Hence in such circumstances, it follows that the opposite party was justified in repudiating the claim. The learned Counsel for the respondent would say that the deceased died of heart attack and, therefore, it is not established that the death was due to cancer of which he was suffering from but the death was only due to heart attack, and thus the nexus stands not established and, therefore, the opposite party cannot repudiate the claim. This argument is without any substance. When the very basis of the contract suffers and stands eroded by wilful and fraudulent suppression of material facts relating to one''s health, then, the contract becomes enforceable since it is a contract ab initio void. Therefore, the question of nexus need not be established. Further in this case, the death had occurred within a short period of the revival of the policy. The complainant has not produced any medical authority to show that the disease of progressive cancer of carcinoma cannot bring about heart attack or cardiac problem. Therefore, in this view of the matter, this contention is not sound. Therefore, we have no hesitation in holding that the complaint ought not to have been accepted and that there is no deficiency in service and the repudiation was quite proper.

4. IN the result, the appeal is allowed, but in the circumstances without costs. The order of the lower Forum will stand set aside. The complaint will stand dismissed, but without costs. Appeal allowed.

