(1997) 10 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

C.P. KACHEEBI — APPELLANT

Vs

MANAGER (CLAIMS) L.I.C. OF INDIA — RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:

Citation : 1998 1 CPR 37 : 1999 1 CPJ 320

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Appeal allowed with costs

Judgement

1. THIS appeal is directed against the order passed by the District Forum, Kozhikkode in O.P. No. 36/1994. The complainant is the appellant.

2. THE complainant''s husband took a policy of LIC of India on 21.9.1987. In 1991 the policy lapsed for default in payment of premium. In January, 1992 the policy was renewed on payment of sum of Rs. 3,714.50 paise towards premia together with interest. THE complainant''s husband died on 14th April, 1992, due to Tuberculosis. THE complainant made a claim for the insurance amount, but that was repudiated by the opposite parties stating that there is suppression of material facts. Hence the complaint seeking direction to pay the instalment amount. The opposite party filed a version saying that the complainant while applying for revival of policy has suppressed material facts relating to the state of health in the application for revival on 12th November, 1991, and the policy was revived on the basis of statement of health and full medical report both dated 16.11.1991. The life assured had pulmonary tuberculosis. The the query whether he had suffered from Asthma, TB or any other disease of lung the answers given by the insured were negative and he stated that he was in sound health. The opposite party had evidence to say that he was suffering from pulmonary tuberculosis and he had consulted medical men even one month before the personal statement. He was an impatient at the Government Bench Hospital, Calicut from 12th October, 1991 to 18th October, 1991.

The District Forum observed that in the evidence of the complainant she admitted that on 12th October, 1991 to 18th October, 1991, her husband was an

impatient in Government Hospital, Kozhikkode, and he was suffering from pulmonary tuberculosis. Exbts. Bl and B2 were certificates issued by the doctor who attended on the complainant. The District Forum also observed that the complainant stated that she did not remember whether she had produced Bl and B2 before the second opposite party and that Exbt. Bl shows that he was suffering from pulmonary tuberculosis. The District Forum on the basis of materials produced held that there is suppression of material facts and in that view passed an order dismissing the complaint holding that no deficiency was committed by the opposite party.

3. AGGRIEVED by the said order this appeal has been preferred. In this appeal, learned Counsel appearing for the appellant submitted that there is no evidence that policy holder knew at the time of making it that the statement was false. He further submitted that in this context the District Forum has not adverted to Section 45 of Insurance Act. It provides that no policy of Life Insurance effected after coming into the force shall, after the expiry of two years from the date on which it was effected, be called in question of the ground that the statement made in the proposal for insurance or in any report of a medical officer or referee or friend of the insured or any other document leading to the issue of the policy was inaccurate or false unless the insurer shows such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

4. IT is not disputed that the policy in this case was called in question after two years from the date on which it was affected. Though the policy was lapsed in February, 1991, it was renewed in January, 1992 with effect from the date of original policy. In the circumstances, Section 45 would apply to this case and the burden is heavily on insurer to prove that there is suppression of material facts and that the policy holder knew at the time of making the statement that it was false. This aspect has been considered by Kerala High Court in Life Insurance Corporation v. Rosamma Punnus, AIR 1991 Kerala 230, where it was held that unless there is a special contract revival of a policy dates back to the date of original policy and that in such cases Section 45 would apply and that burden is on the insurer to prove that not only the statement is false or inaccurate but also that the policy holder knew the time of making it that the statement was false. This question has been considered by this Commission also in Annamma lssac v. Senior Divisional Manager, II (1995) CPJ 286, and we have followed the above decision. In this case the documents relied on by the opposite parties are Exbits. Bl and B2. Exbt Bl is a certificate given by Dr. C.R. Menon. That shows that the insured was admitted to the Hospital on 14.4.1992 at 12.30 p.m. and he expired on the same date. IT has been stated therein that it was a proved case of Tuberculosis (TSP). This certificate was issued only on 26.12.1992. This does not show that the policy holder was suffering from Tuberculosis or any other disease on 14.4.1992, much less he knew that he was suffering from Tuberculosis or

other disease on the date of proposal for revival. Exbt. B2 is another certificate issued by Dr. C.R. Menon. That was issued on 23rd June, 1992. That certificate also does not indicate that the policy holder either was suffering from tuberculosis on the date of revival or that he knew that he was suffering from Tuberculosis or any other disease. Thus we find that there is absolutely no evidence in this case to show that policy holder was suffering from Tuberculosis or any other disease and that he knew he was suffering from any other disease. The opposite party has not been able to discharge the burden that is cast on it under Section 45 of Insurance Act to call in question the validity of policy after the expiry of two years from the date on which the policy was affected. In the circumstances, we are unable to sustain the order of the District Forum. We allow the appeal, set aside the order of the District Forum and direct the opposite party to pay the insurance amount to the complainant within a period of one month. We feel that a period of two months will be a reasonable period to settle the claim. The policy holder died on 14.4.1992. Complainant, therefore, will be entitled to get interest at the rate of 12% from 14.6.1992. She is also entitled to her cost which we fix at Rs. 1,000/-. These amounts will be paid within one month. Appeal allowed with costs.

