
(2002) 05 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

DIVISIONAL MANAGER, L.I.C. OF INDIA

APPELLANT

Vs

GANGAMA

RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Citation : 2002 2 CPC 593 : 2002 3 CLT 116 : 2002 3 CPJ 56 : 2002 3 CPR 24

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , B.K.Taimni J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal has been filed by the appellant, L.I.C. of India against the order of the State Commission allowing the complaint filed by the complainant.

2. BRIEFLY, the facts of the case are that one Dhananjaya got two life policies in his favour commencing from 28.1.1990 for Rs. 25,000/- making the complainant, Smt. Gangama the nominee and again on 12.3.1990 for Rs. 1 lakh making one Smt. Sarojamma, the nominee. The insured died on 30.3.1990 on account of myocardiac infarction. On a claim preferred by the nominee, the claim was repudiated by the appellant-L.I.C. on the ground of suppression of information about his pre-existing cancer, which was not revealed in the proposal form for taking the policy. It is in these circumstances that the nominees/complainants filed a complaint before the State Commission alleging deficiency on the part of the appellant L.I.C. by not paying them the insured amount without sufficient ground. The State Commission after hearing both the parties allowed the complaint with cost of Rs. 2,500/- on the ground that the appellants have not been able to prove that the deceased was suffering from cancer and especially when he died of heart failure. The appeal emanates from this order of the State Commission. It is argued by the learned Counsel for the appellant that it is important to note that the deceased - a young man - died within 62 days of the commencement of the first policy and within 18 days of the commencement of the second policy. There is documentary material on record to show that the deceased had cancer for which he underwent surgery. The Surgeon who did the surgery in November, 1988 was also examined, his testimony is on record. The

record also bears the factum of the deceased having undergone chemotherapy and radio-therapy. All these facts were within the knowledge of the deceased but were knowingly concealed by the deceased insured at the time of filing the proposal form wherein he gave the replies in negative to any disease including cancer in both the proposal forms. The insurance policy is a contract of good faith which the deceased insured clearly violated which makes the contract void. The State Commission erred in not relying upon the clear evidence - both documentary and oral-and arriving at a different finding purely on conjectures without any foundation. Hence, it needs to be set aside with costs. On the other hand, it was argued by the learned Counsel for the complainant that the deceased was hale and healthy and had no ailments. Before taking the policy the deceased had undergone medical check-up at the hands of the doctor of L.I.C. and he was satisfied about the good health of the deceased. It is only after this certificate the L.I.C. issued the policy. The contract was completed the moment policy was accepted. The deceased insured died on 30.3.1990 due to myo-cardinal infraction one of the complainants, Gangama, the mother of the deceased was examined who stated that the deceased was hale and hearty and died on account of heart attack. Dr. Dharma Kumar's evidence on whose the L.I.C. relies is not sustainable as there is no biopsy report in the medical record to show that the final diagnosis was malignant "Neuroniloma". The second witness produced by L.I.C. is the Medical Record Officer from Kidwai Hospital, Bangalore; he admits that these entries were not made by him and the file relating to the deceased is missing. On top of everything the appellant, L.I.C. has failed to examine their own doctor on whose certificate L.I.C. issued the policy. There is no evidence to support that the deceased was suffering from cancer and he knew it. State Commission has passed a reasoned order after going through all the material on record, hence need to be sustained and appeal need to be dismissed.

We have heard the arguments and perused the material on record. Basic facts are not disputed. What is under challenge is whether the deceased had cancer before taking the policy, which he concealed at the time of making proposal for getting life policies. To begin with we have seen the proposal forms in respect of the two policies obtained by the deceased on the question : 18. Have you ever suffered from or are you suffering from : (g) Cancer leprosy, rheulimism, gout, etc. Answer is No.

3. AS per record of Nanjappa Hospital, the deceased went to that Hospital on 11.2.1988 for the first time. This record bears his signature. Again he goes to the same hospital on 14.11.1988. The case sheet has his name, father's name and the residential address, they are the same as found in proposal forms. The case sheet reveals his diagnosis as suffering from "malignant neurolimoma". He is operated upon, consent for this is given/signed by one, Nagrajappa - relationship brother. Certificate also is on record "issued" by the Doctor dated 19.7.1990 obtained by L.I.C. on the health status of the deceased from Dr. Dhanajakumar of Nanjappa Hospital. Then there is hospital record of Kidwai Memorial Hospital,

which gives the name of the deceased, his full address and goes on to show that he was given radiation treatment for 25 sittings from 15.12.1988 to 19.1.1989 and again from 27.2.1989 to 2.3.1990. Then there is record from Kasturba Medical Centre where as per details given by the deceased, it is recorded that the deceased had undergone excision of soft tissue at Nanjappa Hospital at Shimoga, had also undergone radio-threpy and chemotherapy at Kidwai Hospital in 1988. All these records were produced by the functionaries of these hospitals and were examined and cross-examined. Except Dr. Dhanajakumar who actually carried out the surgery and diagnosed the patient with having malignant neurolimoma and was advised further management at Kidwai Institute, all other witnesses were present with record. AS per record, the deceased, whose name, father's name and address are the same at all places, was found to be suffering from malignancy and for which he underwent radiation and chemotherapy. Record speaks for itself. The doctors, who carried out tests or recorded, may have come and gone. Record is what matters and its veracity has not been challenged. Much has also been made of non-examination of the L.I.C. Doctor who examined the deceased before getting the life policy. It is on record that all attempts were made to trace him including approaching the Medical Council - but no forwarding address could be found to contact him. In our view, there is enough material on record to show that the deceased had malignancy which was detected in late 1988 for which he obtained treatment in the form of radio/chemotherapy. This was within his knowledge which he concealed/suppressed at the time of giving replies in the proposal form on the specific question relating to the subject. In our view the State Commission erred in its appreciation of the evidence. Sufficient evidence is on record to show the true picture and supression of information by the deceased. The very fact that he obtained two policies in quick succession in January and March, 1990 and then succumbing in March, 1990 itself raises the doubt about the intent of the deceased. We are quite conscious of the fact that he died of heart failure - myocardiac infraction - whereas he was a patient of cancer. Suppression of information itself violates the terms of the contract - uttermost good faith is a tenet of insurance policy which was not observed by the deceased in the instant case. The order of the State Commission is set aside and the appeal is allowed. No order on costs. Appeal allowed.