(1994) 11 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

GANGAMMA APPELLANT

Vs

Senior Divisional Manager, LIC of India RESPONDENT

Date of Decision : 22-11-1994

Acts Referred:

Citation : 1995 1 CLT 715 : 1995 1 CPJ 388 : 1995 1 CPR 313

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju J.

Judgement

1. IN this complaint, Complainant No.l, mother of the deceased G. Dhananjaya, has claimed amounts in respect of Life INsurance Policies for a sum of Rs. 25,000/- and Rs. 1,00,000/-, Exts. R.15 and R.14, obtained by the late Dhananjaya from the Opp. Party - Life INsurance Corporation of INdia.

2. COMPLAINANT No.l is the mother of late Dhananjaya, who is the nominee in the Life Insurance Policy, Ex. R.15 obtained by late Dhananjaya for a sum of Rs. 25,000/-. COMPLAINANT No. 2 is the sister-in-law of late Dhananjaya, who is the nominee in the Life Insurance Policy, Ex. R.14, obtained by late Dhananjaya, for a sum of Rs. 1,00,000/-. The opposite party in its version averred that No. 2 was not an heir of the life assured under the Hindu Succession Act and so she was not a Consumer and was not entitled for the amount under the Life Insurance Policy, Ex. R. 14. The opposite party also averred that the Insurance Corporation had repudiated the claim on due investigation and so the claim of the complainants was untenable.

This Commission heard the parties on these two points and on 12-11-1991 held as under: "Affidavit filed by the Complainant No. 2, stating that she has no objection to give amount of the Policy No. 610717237 to the Complainant No. 1 who is the mother of the deceased. In view of the said affidavit the objection of the Respondent that Complainant No. 2 is not a consumer does not survive, because Complainant No. 1 is alone entitled to prosecute the complaint. In view of the decision of the National Commission in LIC. of India, A.P. v. Shri Bhavanam Srinivas Reddy II (1991) CPJ 189 (NC) August 1989, in which it has held that any unilateral repudiation of the contract by the Insurance Company on the allegation that there had been a suppression of relevant material by the insurer at the time of taking the policy of insurance will not disentitle the policy holder from approaching the Redressal Forums constituted under the Act, we hold that the Commission has jurisdiction to entertain this complaint although the Insurance Company has repudiated the contract on the allegation that there has been suppression of relevant material by the insured. Hence, preliminary point regarding the jurisdiction raised by the insurer is answered accordingly."

3. THE undisputed facts of the case are that late Dhananjaya obtained Life Insurance Policy, Ex. R.15 for a sum of Rs. 25,000/- on 281-1990 and another life Insurance Policy, Ex. R.14 for a sum of Rs. 1,00,000/- on 12-3-1990. Dhananjaya expired on 30-3-1990. According to the complainant, her son Dhananjaya expired due to ''My o Cardial Infraction'' on 30-3-1990 at her house in the village. Subsequent to the death of Dhananjaya, both the Complainants made claims with the opposite party Life Insurance Corporation in respect of both the Life Insurance Policies Exts. R. 15 and R. 14. The opp. party-Life Insurance Corporation on investigation repudiated the claim of both the complainants on the ground that late Dhananjaya had suppressed the material information regarding his health and had made false statement in the proposal forms and personal statements and so declined to pay the claims.

4. THE complainant averred that her son was not suffering with any disease prior to the death but he died suddenly with chest pain. THE complainant sought payment of the amounts under the policies Exs. R.15 and R. 14 stating that the repudiation of claim was unilateral and arbitrary. The opp. party filed its version admitting the fact of obtaining the Life Insurance Policies Exts. R.15 and R.14 by late Dhananjaya, as averred by the complainant. It is also not disputed that Complainant No.l is the mother of late Dhananjaya. It is the case of the opp. party that late Dhananjaya was suffering from MULTIPLE LUNG SECONDARIES and also from SOFT TISSUE SARCOMA right from 1987 and had also undergone surgery for the same at Nanjappa Hospital, Shimoga followed by Radio Theraphy treatment at Kidwai Memorial Institute of Oncology at Bangalore. Late Dhananjaya while obtaining the policies Exts. R.15 and R.14 suppressed these material facts and it was deliberate suppression of material information by the life assured at the time of taking both the policies and so the complainant was not entitled for the sums assured under the policies. The Opp. party, on the basis of these averments, sought the complaint to be dismissed.

5. DURING enquiry Complainant No.1 the mother of late Dhananjaya examined herself as C.W. 1 and got Exs. C.l to C.19 marked in evidence. The Opp. Party examined R.W.I Dr. Dhanyakumar, Surgeon, Nanjappa Hospital, Shimoga, R.W.I Jayakar Shelvaraj, Medical Record Officer in Kidwai Memorial Institute of Oncology, Bangalore, R.W.3 Dr. Adithya Shenoy, Lecturer in Radiation Oncology, Kasturba Medical Hospital, Manipal, R.W.4 T.V. Gopinath and R.W.5 K.V. Pai, officials working in the office of the opp. party Corporation. The opp. party got Exs. R.1 to R. 15 marked in evidence.

6. WE have heard the learned Counsel for the parties. WE have on perused the material on record. As per the submissions of the parties, the points that arise for consideration are: (a) Whether late Dhananjaya, the life assured, did suppress the material facts and did make false representations regarding his health at the time of obtaining Life Insurance Policies Exs. R. 15 and R. 147 (b) To what relief complainant No.l is entitled to ?

Regarding Point (a): The allegations of insured being guilty of making false representations and suppressing material facts has to be proved by the Life Insurance Corporation of India. The burden of proving this fact is on the Corporation.

The Supreme Court in Life Insurance Corporation of India v. Smt. CM. Channabasemma (AIR 1991 SC 392) has held as under: "It is well settled that a contract of insurance is contract uberrimaefides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material fact which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted. The burden of proving that the assured had made false representations and suppressed material facts is undoubtedly on the Corporation.

7. THE policy gets vitiated in case it were to be held that the life-assured was guilty of a fraudulent suppression of material facts when he made his statements, the Supreme Court in Mithoolal Nayak v. Life Insurance Corporation of India, (AIR 1962 SC 814) held as under: "Where the policy holder, who had been treated, a few months before he submitted a proposal for the insurance of his life with the Insurance Company by a physician of repute for certain serious ailments as anaemia, shortness of breath and asthama, not only failed to disclose in his answers to the questions put to him by the Insurance Company that he suffered from those ailments but he made a false statement to the effect that he had not been treated by any Doctor for any such serious ailment: Held : (i) that judged by the standard laid down in Sec. 17, Contract Act, the policy holder was clearly guilty ''of a fraudulent suppression of material facts when he made his statements, which he must have known were deliberately false and hence, the policy issued to him relying on those statements was vitiated."

The Insurance Corporation to prove the fact that the insured had fraudulently suppressed the material facts when he made his statement while obtaining the insurance policies has examined R.W.I Dr. Dhanyakumar of Nanjappa Hospital, Shimoga, R.W.2 a Medical Record Officer in Kidwai Memorial Institute of Oncology, Bangalore and R.W.3 Dr. Adithya Shenoy, Medical Officer working in Kasturba Medical Hospital, Manipal.

8. R.W.I Dr. Dhanyakumar is stated to have examined one Dhananjaya, alleged to be the insured, for the first time on 11-2-1988. He has stated that he found

the tumour necrotic and fleshy with areas of cystic changes, suspicious of Sarcoma. He has further stated thus: "... I sent it for biopsy. The report of biopsy was tumour benign (not malignant). So I discharge the patient on 12.2.1988."

R.W. 1 has further stated that Dhananjaya came to him again on 14-11-1988. He operated on him on 15.11.1988. With regard to the operation R.W.1 has stated thus: "...The tissue was again subjected to histopathelogical examination. It was reported as malignant neurilimoma (It means malignancy of nerve sheeth). The case sheeth shows that Dhananjaya came to me for the 2nd time with a fine needle biopsy suggestive of spindle cell carcinoma. The patient was discharged on 21.11.1988 with an advice to go to Kidwai Institute for further management. ..."

R.W.1 has further stated thus: "...The second admission sheet was recorded by duty doctor. The second operative notes are in the handwriting of Dr. Maheswarappa who assisted me in the operation. 2nd time discharge summary is signed by me. It is Ex. R.l(d)."

That Doctor Maheswarappa has not been examined. R.W.1 has admitted in the cross examination that he has no biopsy report to show that the final diagnosis was as Malignant Neurolimoma. R.W.1 has in this regard stated thus: "...I have no biopsy report to show that the final diagnosis was as malignantneurolimoma. I have made the final diagnosis as per Ex. R.1 (d) on the basis of biopsy report. That biopsy report is not in the file of the case sheet. There is no material on the case sheet as who has done the histopa-thology."

He has further stated thus: "...The biopsy report referred to at Ex.R.l(d) is not available on record. The last sheet as per Ex. R.l(c) is torn off."

On the basis of this evidence on record, would be very difficult to conclude that late Dhananjaya was suffering with any Malignant Sarooma particularly having regard to this fact that no biopsy report is available on record. R.W.1 has diagnised it to be a Malignant Sarcoma only on the basis of the biopsy report. There is no material on record to show who actually held the biopsy and what that biopsy report was. R.W.2 is the Medical Record Officer in Kidwai Memorial Institute of Oncology, Bangalore. He has produced copies of New Registration Register as per Ex. R.2 and copy of the Teletherapy Treatment Register as per Ex. R.3. R.W.2 with regard to the entries in these documents has stated thus:" The entries in Ex. R 2 and R.3 were not made by me. In respect of each patient we maintain a separate file. The file relating to Mr. Dhananjaya is missing in the hospital. It was noticed only in the last month when the officers of LIC. came to make enquiries. In Ex. R. 2 there is no diagnosis off malignancy in respect of Mr. Dhananjaya. The entries in Ex. R. 3 are not made by Doctor. They are made by the concerned technicians."

9. EX. R.2 is dated 12-10-1988. R.W.2 has specifically stated that the entries in EX.R.2 do not show diagnosis of any Malignancy in respect of Dhananjaya.

10. R.W.1 Dr. Dhanyakumar has stated that Dhananjaya had come to him on 14-11-1988 and he had operated on him on 15-11-1988. According to R.W.2 and Register Ex. R.2 Dhanarjaya was already before Kidwai Memorial Institute of Oncology, Bangalore on 12-101988 itself. Ex. R.3 is the Teletheraphy Register. That shows that one Dhananjaya of Shimoga had taken Teletheraphy treatment from 15-121988 to 2-3-1989.

On the basis of the evidence of this witness as well, it is very difficult to say that the life assured Dhananjaya was suffering with Malignant Sarcoma. R.W.2 has specifically stated that the file relating to Mr. Dhananjaya was missing and the entries in Ex.R. 2 did not show diagnosis of Malignancy in respect of Mr. Dhananjaya. In Ex. R.2 there is a specific column for the report of provisional and final diagnosis. In respect of Dhananjaya there was no diagnosis of Malignancy Sarcoma.

11. ANOTHER witness is R.W.3 Dr. Aditya Shenoy. He has produced a case sheeth as per Ex.R.4 maintained in Kasturba Medical Hospital, Manipal. He has stated that one Dhananjaya had come to him during 1989 and he had, on the basis of previous records produced by the said Dhananjaya and also on the basis of his discussion with him he has recorded the case sheet Ex. R.4. R.W.3 has in this regard stated thus: "I examined about 50 cases every day. The patient had brought the previous records of his treatment on the basis of which the entire in Ex.R.4 are made by me. Ex.R.4 does not show that I had seen the previous records and the details of records which I had seen are also not mentioned in the relevant columns of Ex.R.4. I have not recorded the details of the progonosis which I discussed with the patient and his relatives."

It is clear from this evidence that R.W.3 has neither examined the patient Dhananjaya nor had given any treatment. He has stated that what all that he had recorded in Ex.R.4 was on the basis of discussion with the patient and the records produced by the patient which he does not know what were those records. Having regard to the evidence of this witness as well it is difficult to say that the life-assured Dhananjaya was suffering with any Malignant Sarcoma at the time of obtaining policies the material facts of which he failed to disclose and fraudulently suppressed them.

12. EX. R.7 is the Medical report given by the Medical Officer of the Corporation Dr. Prasanna, who had certified the life assured to beofgood health. This medical report was given by the Medical Officer of the Corporation on examining the life assured. This Doctor Prasanna who had examined the life assured and given the report EX. R.7 has not been examined The learned Counsel for the opposite party submitted that the opposite party made all efforts to secure the presence of this Doctor to examine him but they were not able to find out the where about of the said Doctor. It is very difficult to accept this submission of the opp. party that Dr.Prasanna who examined the life assured and given the medical report was not available and his whereabouts were not known. R.W.4 T.V. Gopinath, Senior Branch Manager of the Corporation has stated that Doctor who prepared Ex.R.7

was very much alive.

13. EX. R.8 and EX. R.12 are the Agent''s Confidential reports regarding the two policies EXs. R.15 and R.14. Those reports show that the life assured Dhananjaya had a good health. Both the agents who had given those confidential reports EXs. R.8 and R.12 have not been examined.

14. HAVING regard to these facts and in the circumstances of the case, we hold and record that the opp. party Life Insurance Corporation of India has failed to prove that the life assured Dhanahnaya suppressed the material facts and made false representations regarding his health at the time of obtaining Life Insurance Policies Exs. R.15 and R.14. Accordingly, we record our finding on Point (a) against the opp. party-Life Insurance Corporation of India. Regarding Point (b): In the present case, Complainant No.l admittedly is the mother of the deceased and a nominee in one of the Life Insurance Policy i.e., in Ex. R.15. The other nominee in Ex. R.14, complainant No. 2 has filed an affidavit stating that she has no objection to give the amount of the policy Ex. R.14 to Complainant No.1. In view of this fact, it is only Complainant No.1 who is entitled to the amounts under policies Exs. R.15 and R.14. Point (b) is answered accordingly.

In the result, therefore, this complaint is allowed. Opp. Party The Life Insurance Corporation of India is directed to pay a sum of Rs. 1,25,000/- the amounts under both the policies, Exs. R.15 and R.14 to Complainant No. 1, the mother of late Dhananjaya with interest at 15% per annum from 30.3.1990 till the date of its payment.

15. THE Opp.party shall also pay a sum of Rs. 2,500/- towards costs of this proceeding to Complainant No. 1. THE opp. party shall pay the sums so awarded within a period of 60 days from this date. Complaint allowed with costs.