

(2005) 02 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

GURRAM VARALAKSHMI

APPELLANT

Vs

LIC of India

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Citation : 2006 2 CPC 422 : 2006 3 CPJ 304

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Revision Petition allowed

Judgement

1. PETITIONER, Smt. Gurram Varalakshmi, filed complaint C.D. No. 414 of 1994 before the District Forum, Khammam, praying for a direction to the Insurance Company for payment of dues under endowment assurance policy with profit for a sum of Rs. 2 lakh taken by her husband during his life-time. The policy was for 20 years with profits and accidental benefits commencing from 28.1.1991 having maturity date on 28.1.2011. However, her husband expired due to cardiac arrest on 27.7.1991 at Vandana Nursing Home. The claim made by the petitioner was repudiated by the L.I.C. by their letter dated 31.3.1994 on the ground that the insured had withheld material information about his health.

2. THE District Forum by judgment and order dated 27.9.1997 allowed the complaint and directed the L.I.C. to pay Rs. 2 lakh with interest at the rate of 9% p.a. and costs of Rs. 5,000. Against that judgment and order the L.I.C. preferred First Appeal No. 159 of 1998, before the State Commission, Andhra Pradesh. The State Commission relied upon the affidavit of Dr. C.S. Raman, Eye Specialist, who was earlier working with the Apollo Hospital as Consultant in Ophthalmology. He has stated that on 14.9.1990 the deceased came to him for eye treatment, while examining him he learnt that he was suffering from diabetes and defective vision. This affidavit was filed on the basis of case sheet dated 14.9.1990 of Apollo Hospital. The State Commission further observed that the death certificate of Vandana Nursing Home only reveals that the deceased died on 27.7.1991 and does not give any other information. Further, the complainant herself filed the details of the previous six policies taken by the insured from 28.12.1996 to

28.3.1997 for the sums varying from Rs. 3,000 to Rs. 40,000. Therefore, going for a policy of Rs. 2 lakh and suppressing several diseases for which treatment was taken raises doubts about the genuineness of the claim. Hence, the appeal was allowed and the order passed by the District Forum was set aside.

Learned Counsel for the petitioner submitted that the impugned order passed by the State Commission, on the face of it, is illegal and erroneous in view of the principles laid down by the Apex Court and by the National Commission. For this purpose, he referred to a decision rendered by the Apex Court in *L.I.C. of India v. Smt. G.M. Channabasemma*, AIR 1991 SC 392. In the aforesaid case also the LIC repudiated the claim on the plea that the deceased while filling up the proposal form for the policies was guilty of fraudulent misrepresentation and suppression of material facts with regard to his health. According to the L.I.C. the deceased was suffering from acute diabetes and diseases of lungs of which he was fully aware at the time of taking out four policies within a span of two years. The claimant, wife of the deceased, denied and contended that it was true that her husband died of tuberculosis but, he or any member of the family had no knowledge of his illness at the time of taking out the policies, as the deceased was keeping good health and taking part in his business. The discovery of the disease which accounted for his early demise was made very late. Therefore, the allegations of fraudulent misrepresentation and suppression were denied, in background of the said facts the Court rejected the plea of the Insurance Company and agreed with the finding recorded by the High Court that LIC has not discharged its burden by examining doctors to establish that insured was at the time of taking out the policies was suffering from diabetes and other diseases. The Court referred to the evidence of Corporation's Doctor who had certified the good health of the insured at the time of taking the insurance policies and who have been examined as defence witnesses. The Court observed that the said evidence disproves the case of the Corporation and that it was the duty of the Administrative Officers of the Corporation who were incharge of the investigation of the death claims to make a thorough inquiry in the circumstances.

3. THE learned Counsel for the petitioner submitted that the facts in the present case are also similar. The learned Counsel also referred to the decision of *LIC and Others v. Asha Goel*, I (2001) SLT 89=(2001) 2 SCC 160, wherein the Court held that on a fair reading of Section 45, it was clear that it is restrictive in nature. The relevant discussion is as under: "The section provides, inter alia, that no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that 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..... It lays down three conditions for applicability of the second part of the section namely: (a) the statement must be on a material matter or must suppress facts which it was material to disclose; (b) the suppression must be fraudulently made by the policy-holder; and (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. Mere inaccuracy or falsity in respect of some recitals or items in the proposal is not sufficient. The burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so there is no question of the policy being avoided on ground of mis-statement of facts..... For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable inquiry by a prudent person."

The Court cautioned that the approach of the Corporation in the matter of repudiation of the policy should be one of extreme care and caution. It held that: "Life Insurance Corporation was created by the Life Insurance Corporation Act, 1956 with a view to provide for nationalization of life insurance business in India by transferring all such business to a corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policy-holders in particular, look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner.

4. LEARNED Counsel also referred to the decision rendered by the Commission in *L.I.C. of India v. Mohinder Kaur*, II (2003) CPJ 30 (NC) wherein in similar set of circumstances the Commission observed that after expiry of two years from the date of the insurance policy the insurance being effective, the Corporation has to prove fraud on the part of the insured. One document merely signed by the Doctor containing reference to the insured having the ailment cannot be held to be sufficient discharge of burden. Similar view was taken in *L.I.C. of India v. Smt. Promila Malhotra*, I (2004) CPJ 91 (NC). In the present case, admittedly, the deceased was having other six policies. It is not the case of the Insurance Company that the deceased has suppressed any material facts while taking those policies. On the contrary, the amount due on those policies was paid to the complainant. Thereafter, for the present policy, the Insurance Company relying upon the statement made in the reply to interrogatories submitted by Dr. V.

Venkateswarlu of Vandana Hospital, wherein it was sought to be stated that the deceased was taken to the hospital on 21.1.1991 and he complained of fit and breathlessness at the time of his first consultation, repudiated the claim. He was brought by car driver. In the replies to the interrogatories he has stated that the deceased had not taken earlier treatment in his hospital nor he was usual medical attendant of the deceased. The certificate is signed on 29.1.1994. Learned Counsel for the complainant pointed out that there is an obvious error in the replies to interrogatories as the correct date is 27.7.1991 and not 27.1.1991" as mentioned in the column 4(b) of the interrogatories, because the deceased expired in the said hospital on 27.7.1991 that is on the same day when he was taken to the hospital by the car driver.

5. HE contended that it cannot be disputed that the deceased expired on 27.7.1991. HE has also produced on record an affidavit of Doctor V. Venkateswarlu wherein he has stated that the deceased died under his care for treatment of fits and breathlessness on 27.7.1991. The said symptoms were due to developing severe cardiac arrest resulting in his death. In the statement given on 29.1.1994 to the L.I.C. authorities he has erroneously mentioned that the deceased died on 27.1.1991 instead of 27.7.1991. For this purpose, he has stated that reference be made to the death certificate issued by the, (a) municipal authorities; (b) L.I.C. certificate issued under his own handwriting on 8.9.1992 revealing the date of death as 27.7.1991.

6. FURTHER, learned Counsel for the petitioner rightly referred to medical attendant certificate given to the L.I.C. by Dr. V. Venkateswarlu who is Physician in Cardiology Department at Vandana Nursing Home wherein it is stated that the deceased was first observed on 27.7.1991 at 7:30 p.m. The primary cause of the death was cardio-respiratory and the secondary cause was heart attack. Same thing is stated with regard to other information and that it was a sudden death probably due to heart attack. This certificate is signed on 8.9.1992. In our view, there is no reason to disbelieve the affidavit of the cardiologist in whose nursing home the deceased was brought on 27.7.1991. There is also no reason to disbelieve his affidavit that there was an error in mentioning the date in reply to the interrogatories given by the L.I.C.

The learned Counsel for the Insurance Company further referred to out patient record maintained by Apollo Hospital wherein it is mentioned that the deceased consulted Dr. C.S. Raman, Eye Specialist who has noted that he had previously worked in the Apollo Hospital and that the deceased consulted him on 14.9.1990 complaining about his defective vision. During his examination he came to know that he was suffering from diabetes and defective vision. For this purpose, he has only referred to the case paper dated 14.9.1990. On the basis of the aforesaid certificate learned Counsel for the L.I.C. submitted that the L.I.C. has rightly repudiated the claim.

7. FOR this, the learned Counsel for the complainant submitted that the said certificate cannot be relied upon because the Ophthalmologist had never verified

whether the deceased was suffering from diabetes. He further submitted that the insurance policy was taken w.e.f. 28.1.1991 and the claim was repudiated by letter dated 31.3.1994. Claim cannot be repudiated after a lapse of two years from the date of policy unless there is material suppression on the part of the deceased. He submitted that there is no evidence on record to establish that the deceased was suffering from diabetes and that has led to cardiac arrest. In our view, as the burden of proof is on the insurer to establish that there was suppression of material facts on the part of the insured and unless the insurer is able to do so, there is no question of the policy being avoided on the ground of mis-statement of facts. There is no evidence on record establishing that the deceased has suppressed the material disease at the time of taking the insurance policy. The Insurance Company has failed to produce on record the certificate given by the Doctor who examined the insured at the time of proposal, (b) the Insurance Company has failed to bring on record any documentary evidence to indicate that the insured had taken the treatment for diabetes and that diabetes finally led to his cardiac arrest.

8. IN this view of the matter, this revision petition is allowed. The impugned order of the State Commission is set aside. The order passed by the District Forum is confirmed. There shall be no order as to costs. Revision Petition allowed.