(2006) 01 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

Hemlata — APPELLANT

Vs

Life Insurance Corporation of India — RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Citation : 2006 3 CPJ 240

Hon'ble Judges : Sunil Kumar Garg , Sushma Tanwar , T.P.Gupta J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") has been filed by the appellant-complainant against that part of the order dated 29.5.2003 passed by the learned District Forum, Dholpur in Case No. 192/2000 by which the claim of the complainant appellant in respect of policy No. 190719068 of deceased Narendra Kumar Sharma for Rs. 50,000 was rejected.

2. IT may be stated here that on 14.11.2000, the complainant-appellant had filed a complaint under Section 12 of the Act of 1986 before the District Forum, Dholpur stating inter alia that her husband Narendra Kumar Sharma (hereinafter referred to as "the deceased") was employee of the Public Health Engineering Department, Dholpur and during his lifetime, deceased had taken two insurance policies from the respondent. The first policy bearing No. 190719068 for Rs. 50,000 came into force with effect from 28.12.1993 and its premium was to be paid to the respondent Insurance Company by the deceased himself directly. The second policy bearing No. 192275725 for Rs. one lac came into force with effect from 28.10.1994 and its premium was to be sent to the respondent-Insurance Company by the employer of deceased after making deduction from the salary of deceased. Since the premium of the policy for Rs. 50,000 was not made by the deceased, therefore, it was lapsed and, thereafter, after making due payment and after furnishing a fresh declaration form on 23.4.1996, the deceased got the said policy for Rs. 50,000 revived. IT was further stated in the complaint that on 12.10.1996, deceased had died. Thereafter, the appellant-complainant preferred

a claim in respect of both insurance policies of deceased before the respondent, but the claim of the appellant-complainant in respect of policy No. 190719068 for Rs. 50,000 was repudiated by the respondent through letter dated 12.3.1998 stating inter alia that at the time of furnishing fresh declaration form on 23.4.1996 seeking revival of the said policy, the deceased was suffering from partial paralysis for which he took medical treatment, but he did not disclose these facts in the fresh declaration form dated 23.4.1996 and, thus, deceased had given false statement and on the ground of withholding correct information at the time of seeking revival of policy on 23.4.1996, the claim of the complainant-appellant was repudiated. Thereafter, the present complaint was filed by the complainant-appellant. A reply was filed by the respondent and the respondent took the same stand, which was taken by it in repudiation letter dated 12.3.1998 and it was further submitted by the respondent that since the deceased has concealed and suppressed material facts about health at the time of seeking revival of policy No. 190719068 for Rs. 50,000 on 23.4.1996, therefore, no illegality or irregularity has been committed by the respondent in repudiating the claim of the complainant-appellant in respect of policy No. 190719068 for Rs. 50,000 through letter dated 12.3.1998 and, thus, the present complaint deserves to be dismissed.

It may be stated here that so far as the policy No. 192275725 for Rs. one lac is concerned, the respondent has made the payment of the said policy to the complainant appellant on 7.2.2002.

3. AFTER hearing both the parties, the learned District Forum, Dholpur through impugned order dated 29.5.2003 disposed of the complaint of the complainant-appellant in the following manner: (i) That so far as the claim of the appellant-complainant in respect of policy No. 192275725 for Rs. one lac is concerned, the payment of that policy has been made by the respondent to the appellant-complainant on 7.2.2002 with an inordinate delay and for that, the learned District Forum directed the respondent to pay to the complainant-appellant interest on Rs. one lakh at the rate of 12% p.a. with effect from 1.1.1997 to 7.2.2002 and also Rs. 250 as cost of litigation.

(ii) That so far as the claim of the appellant-complainant in respect of policy No. 190719068 for Rs. 50,000 is concerned, since that policy was got revived by the deceased by concealing material facts and information about health in the declaration form dated 23.4.1996, therefore, no illegality or irregularity has been committed by the respondent in repudiating the claim of the appellant complainant in respect of the said policy on the ground of suppression of material facts about health by deceased.

Aggrieved from the said order dated 29.5.2003 passed by the learned District Forum, Dholpur rejecting the claim of the complainant-appellant in respect of policy No. 190719068 for Rs. 50,000, this appeal has been filed by the appellant-complainant.

4. IN this appeal, the main contention of the learned Counsel for the appellant-complainant is that repudiation of claim of the complainant-appellant by the respondent on the ground of suppression of disease ''partial paralysis'' by deceased cannot be justified as there is nothing on record to show that at the time of filling in up the fresh declaration form dated 23.4.1996 seeking revival of policy, the deceased was suffering from partial paralysis and in view of this, the findings of the learned District Forum rejecting the claim of the appellant-complainant, cannot be sustained as they suffer from basic infirmity, illegality and perversity. Hence, it was prayed that this appeal be allowed and the impugned order of the learned District Forum rejecting the claim of the appellant-complainant in respect of policy No. 190719068 for Rs. 50,000 be quashed and set aside and the claim of the appellant complainant in respect of the said policy be decreed. On the other hand, the learned Counsel for the respondent has supported the impugned order. We have heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondent and gone through the entire materials available on record.

5. FROM the materials available on record, it appears: (i) That deceased had taken two insurance policies from the respondent. The first policy bearing No. 190719068 for Rs. 50,000 came into force with effect from 28.12.1993 and its premium was to be paid to the respondent Insurance Company by the deceased by himself directly. The second policy bearing No. 192275725 for Rs. one lac came into force with effect from 28.10.1994 and its premium was to be sent to the respondent-Insurance Company by the employer of deceased after making deduction from the salary of deceased.

(ii) That since the premium of the policy for Rs. 50,000 was not made by the deceased, therefore, it was lapsed and, thereafter, after making due payment and after furnishing a fresh declaration form, the deceased got the said policy for Rs. 50,000 revived on 23.4.1996. (iii) That in the fresh declaration form dated 23.4.1996 seeking revival of the policy for Rs. 50,000, deceased had not stated that he was suffering from any disease. (iv) That death of the deceased had taken place on 12.10.1996. (v) That so far as the claim of the appellant complainant in respect of policy No. 192275721 for Rs. one lac is concerned, the payment of the said policy was made by the respondent to the complainant appellant on 7.2.2002.

(vi) That so far as the claim of the appellant-complainant in respect of policy No. 190719068 for Rs. 50,000 is concerned, the same was repudiated by the respondent on the ground that the said policy was got revived by the deceased by concealing material facts about health.

(vii) That before the policy for Rs. 50,000 was revived on 23.4.1996, there is no documentary proof to prove the fact that the deceased had been in hospital for treatment of disease "partial paralysis".

(viii) That as per medical papers of G.R. Medical College and J.A.H. Group of

Hospital, Gwalior (MP), the deceased was admitted on 9.10.1996 and he was discharged on 12.10.1996. (ix) That learned District Forum rejected the claim of the appellant-complainant on the ground that in the report of the Gwalior Medical College, there was mention of the fact that deceased was suffering from partial paralysis before two years and that fact was not disclosed by deceased in his fresh declaration form dated 23.4.1996 seeking revival of policy.

6. THUS, the question for consideration is whether in the facts and circumstances just narrated above, the respondent Insurance Company was right in repudiating the claim of the appellant-complainant in respect of policy No. 190719068 for Rs. 50,000 or not or whether the findings of the learned District Forum rejecting the claim of the appellant complainant can be sustained or not. Before proceeding further, it may be stated here that it is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the Insurance Company and its agents to disclose all material facts in their knowledge since obligation of good faith applies to both equally and in this respect, the decision of the Hon''ble Supreme Court in M/s. Modern Insulators Ltd. v. Oriental Insurance Company, I (2000) CPJ 1 (SC)=II (2000) SLT 323=AIR 2000 SC 1014, may be referred to.

The onus probandi, in cases of fraudulent suppression of material facts rests heavily on party alleging fraud namely the insurer. Furthermore, mere concealment of some facts will not amount to concealment of material facts.

7. APART from this, Section 45 of the Insurance Act is the fundamental provision governing the repudiation of a claim on the ground of suppression. For convenience and reference, Section 45 is extracted as follows: "No policy of life insurance effected before the commencement of the Act shall after the expiry of two years from the date of commencement of this Act and 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 proposal for insurance or in any report of a medical officer or referee or friend or the insured or in any other document leading to issue of the policy was inaccurate or false unless the insurer shows that such statement (was on 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):

Provided nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

Thus, information given by insured in proposal form regarding state of health and age is the basis of contract of insurance. Contracts of insurance are of utmost good faith. Accordingly, where the insured takes out a policy by suppressing the material fact that he suffered from cancer, the contract is vitiated and no claim is admissible under the policy. However, in terms of Section 45 of the Insurance Act, repudiation of such claim after two years of the date of effecting insurance, is prohibited. But, for that, it must be proved by the insurer that at the time of making contract, the insured had knowingly or deliberately made false statement or suppressed material facts, which were within his knowledge.

8. SUPPRESSION of fact must be a conscious operation of the giver of the answer which he knowingly did not disclose. In the above background, we may notice that there are following three conditions for the applicability of the second part of Section 45 of the Insurance Act- (i) the statement must be on a material matter or must suppress facts which it was material to disclose. (ii) the suppression must be fraudulently made by the policy holder; and (iii) 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.

In this respect, the latest judgment of the Hon''ble National Commission in National Insurance Co. Ltd. v. Bipul Kunda, II (2005) CPJ 12 (NC)=(2005) CTJ 377 (CP) (NCDRC) may be referred to where it was held that for repudiating a claim of an insured, it is for the insurer to show that a statement on a fact, which was material for the policy, had been suppressed by the insured and that statement was fraudulently made by him/her with the knowledge of the falsity of that statement.

9. KEEPING in mind the above position of law, the facts of the present case are being examined.

10. IN our considered opinion, since there is no documentary proof or evidence available on record to show that the deceased was admitted in the hospital for treatment of disease "partial paralysis" prior to submitting the declaration form on 23.4.1996 seeking revival of policy, therefore, it cannot be said that the deceased was guilty of suppressing material facts about health. No doubt slight mention is found in the report of the Gwalior Medical College that the deceased was suffering from partial paralysis, but since there is no documentary proof on record showing that deceased had earlier taken treatment for partial paralysis, therefore, in these circumstances, it cannot be said that it was a case of suppression of material facts on the part of the deceased. For the reasons stated above, the respondent was not justified in repudiating the claim of the complainant-appellant on the ground of suppression of material facts by deceased and the respondent has repudiated the claim of the complainant-appellant without any basis and on wrong assumption and in an arbitrary manner and in view of this, the findings of the learned District Forum rejecting the claim of the complainant-appellant cannot be sustained as they suffer from basic infirmity, illegality and perversity. Hence, this appeal deserves to be allowed and

the impugned order rejecting the claim of the appellant-complainant in respect of policy No. 190719068 for Rs. 50,000 is liable to be quashed and set aside and the appellant-complainant is entitled to get claim amount of Rs. 50,000 under the policy No. 190719068 of deceased along with interest @ 9% p.a. with effect from the date of filing of complaint i.e., 14.11.2000 till realization. Accordingly, this appeal filed by the appellant-complainant is allowed and the impugned order dated 29.5.2003 passed by the learned District Forum, Dholpur rejecting the claim of the appellant-complainant in respect of policy No. 190719068 for Rs. 50,000 is quashed and set aside and the respondent is directed to pay to the complainant-appellant claim amount of Rs. 50,000 under the policy No. 190719068 of deceased along with interest @ 9% p.a. with effect from the date of filing of complaint i.e., 14.11.2000 effect from the date of filing complaint i.e., 14.11.2000 till realization, within a period of two months from today. Appeal allowed.

