(2014) 10 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

ICICI BANK LTD. — APPELLANT

Vs

Pushpa Chandran — RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Citation : 2015 1 CPJ 62

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : PUNIT BHALLA , Pranav Proothi , N.M.VARGHESE , AVANISH KUMAR

Judgement

1. THESE revision petitions arise out of the common order of the State Commission; hence, decided by common order.

2. THESE revision petitions have been filed by the petitioners against the orders dated 8.6.2012 passed by learned State Commission in Appeal No. 584/2011 - ICICI Bank Ltd. Vs. Pushpa Chandran & Ors. and in Appeal No. 769/2011 - ICICI Prudential Life Ins. Co. Ltd. Vs. Pushpa Chandran & Anr. by which, while dismissing appeals, order of District Forum allowing complaint was upheld.

3. BRIEF facts of the case are that complainant ''s husband availed loan of Rs.5,15,018/ - from OP NO. 3/petitioner in July, 2008, which was to be paid in 60 monthly instalments. Complainant ''s husband expired on 27.11.2009 due to heart disease and as loan was covered under insurance from OP No. 1 & 2/ petitioner, complainant requested OPs to close loan account as per conditions of policy. OP repudiated claim on the ground that insured supressed facts relating to health condition. Alleging deficiency on the part of OPs, complainant filed complaint before District Forum. OP No. 1 & 2 resisted complaint and submitted that insured had not disclosed treatment for liver cirrhosis since July, 2005 and as insured died due to Multiple Intracranial Haemorrhage the claim was rightly repudiated and prayed for dismissal of complaint. OP No. 3 resisted complaint and submitted that insured had taken loan, but as OP No. 1 & 2 repudiated claim, complainant was defaulter and prayed for dismissal of complaint. Learned District forum after hearing both the parties allowed complaint and directed to settle the claim as per the Ext.P6(a) schedule issued by OP and further directed

that if any amount is paid by the complainant after death of her husband that amount should be returned to the complainant and further awarded Rs.2,000/ - as cost. Appeals filed by the OPs were dismissed by learned State Commission against which these revision petitions have been filed. Heard learned Counsel for the parties finally at admission stage and perused record.

4. LEARNED Counsel for the petitioner submitted that claim was rightly repudiated on account of suppression of material disease even then learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing application for taking documents on record and dismissing appeals; hence, revision petitions be allowed and documents be taken on record and complaint be dismissed. On the other hand, learned Counsel for the respondent/complainant submitted that order passed by learned State Commission is in accordance with law; hence, revision petitions be dismissed.

5. LEARNED Counsel for the petitioner submitted that learned State Commission committed mistake in dismissing application for taking additional documents on record on the ground that documents are photocopies and no explanation was given for not filing original documents as well not filing documents before District Forum. Petitioner filed application before State Commission and submitted that due to misunderstanding Counsel could not file documents before District Forum, though, these documents were referred in written statement filed before District Forum; hence, documents may be taken on record. Perusal of written statement filed by the OP No. 1 & 2 before District forum clearly reveals that OP took this plea that insured was known case of liver cirrhosis and was under treatment for the same since July, 2005 and obtained policy fraudulently and by misrepresentation. Documents filed with the application are copy of proposal form, copy of policy, copy of claim intimation, medical certificate, copy of death summary and copy of repudiation letter which all documents are not only relevant for the disposal of complaint, but documents on which complainant ''s claim is based. Though these documents should have been filed by the OP before the District Forum, but as these documents are most relevant for disposal of complaint, learned State Commission ought to have allowed application subject to cost and taken these documents on record. Learned State Commission merely observed that documents are photocopies of some documents and so not taken on record. In Consumer Fora most of the documents are filed in the form of photo copies of the documents. Some of the documents are admitted documents by the complainant and in such circumstances, rejection of application was contrary to law; hence, order dismissing application for not taking documents on record by the learned State Commission is set aside and these documents are taken on record subject to payment of Rs.10,000/ - as cost to the complainant.

6. LEARNED Counsel for the petitioner submitted that petitionerrightlyrepudiated claim on account of suppression of material disease. Personal details given in para 5 of the proposal form run as under: ''''5) Have you ever suffered or are

suffering From any of the following :

i) Diabetes/High Blood Sugar No.

ii) High/Low BP (Blood Pressure) No.

iii) Disorders of Eye, Ear, Nose, Throat Including defective sight, speech or Hearing and discharge from ears? No.

iv) Ailments relating to Liver, Reproductive System No.

Insured denied having any ailments relating to Liver Cirrhosis system whereas medical certificate issued by Nirmala Medical Centre clearly reveals that insured Mr. K.V. Chandran was on treatment from that hospital since July, 2005 for Liver Cirrhosis. It has further been mentioned in the certificate that he was brought in casualty on 24.11.2009 with head trauma and was referred to major centre. Death certificate further reveals that insured died on 27.11.2009 and cause of death was Multiple Intracranial Haemorrhage. History and physical findings in certificate have been mentioned as under: ''''57 yr old male patient k/c/o chronic liver disease,referredfrom Lissie hospital following alleged he fall at home on 23.11.2009 had brief period of Loss of consciousness lasting 5 minutes following which he regained consciousness, relatives did not notice any abnormality next day morning he was found unconscious and was taken to Holy family hospital and later to Lissie hospital where he was admitted. On evaluation was found to have multiple intracranial haemorrhage with significant ceret edema and deranged liver function test and was referred to AMRITA for further management ''''.

Thus, it becomes clear that insured was under treatment since July, 2005 for Liver Cirrhosis and died due to Multiple Intracranial Haemorrhage. PW1 son of complainant also admitted in evidence that his father was under treatment for Liver Cirrhosis since July, 2005 and in such circumstances, in the light of admission by the deceased ''s son it is well established that assured was under treatment for Liver Cirrhosis since July, 2005 and he has suppressed this fact while taking policy and denied any such treatment in proposal form. Learned State Commission wrongly observed that it was incumbent on the OP to establish that insured was under treatment and had concealed the fact from the OP by adducing cogent evidence. When son of the insured himself has admitted treatment which is well proved by the documents filed by OP before State Commission, it can be held that insured was suffering from Liver Cirrhosis since July, 2005 and he obtained policy by suppressing this disease and by making false representation in the proposal form.

7. LEARNED Counsel for the Petitioner placed reliance on (2008) I SCC 321 - P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India in which it was observed that : ''''Misstatement by itself is not material for repudiation of the policy unless the same is material in nature. But, a deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to

the policy being vitiated in law. The purpose for taking a policy of insurance is not very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered "".

Thus, it becomes clear that policy can be assailed on the ground of deliberate wrong answer on material issue.

8. AS policy was obtained by misrepresentation and fraudulent statement regarding previous ailments, OP has not committed any deficiency in repudiating claim and learned District Forum committed error in allowing complaint and directing OP No. 3 to settle the claim of complainant ''s husband ''s vehicle loan and learned State Commission further committed error in dismissing aforesaid appeals. As complainant is notentitledto get any amount under the aforesaid insurance coverage, complaint is liable to be dismissed and complainant is not entitled to get her husband ''s loan account settled by insurance coverage.

9. CONSEQUENT LY , revision petitions filed by the petitioners are allowed and impugned order dated 8.6.2012 passed by learned State Commissionin Appeal No. 584/2011 - ICICI Bank Ltd. Vs. Pushpa Chandran & Ors. and in Appeal No. 769/2011 - ICICI Prudential Life Ins. Co. Ltd. Vs. Pushpa Chandran & Anr. and order of District Forum dated 30.3.2011 in CC No. 243/2010 - Pushpachandran Vs. The Manager, ICICI Prudential Life Ins. Co. Ltd. is set aside and complaint stands dismissed with no order as to costs.

10. PETITIONER ICICI Prudential Life Insurance Co. Ltd. is directed to make payment of Rs.10,000/ - to the complainant for taking additional documents on record as ordered above within four weeks.

