

(2014) 11 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Icici Prudential Life Insurance Company Ltd.

APPELLANT

Vs

VEENA SHARMA

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : 2014 4 CPJ 580

Hon'ble Judges : VINAY KUMAR J.

Final Decision : Petition dismissed

Judgement

1. MRS . Veena Sharma had filed three separate consumer complaints in relation to three insurance policies taken by her late husband. In all three cases, her complaint was allowed by District Consumer Disputes Redressal Forum, Panipat. Appeals against the same have been rejected by Haryana State Consumer Disputes Redressal Commission. Therefore, ICICI Prudential Life Insurance Co. Ltd., (hereinafter referred to as the Insurance Co.) has challenged the same in these three separate revision petitions.

2. WHILE allowing the complaint, the District Forum held that the Opposite Party had totally failed to prove its case with any cogent and credible evidence to show that the insured had knowingly suppressed the fact that he had suffering from Diabetes Mellitus prior to submission of the proposal form. It observed that: - "In the present case only question is to be determined whether the insured has knowingly suppressed the material facts at the time of submitting the proposal form. Onus to prove contention of suppression was on the insurance company. In order to prove his case opposite parties filed the affidavit of Senior Manager Ex. RW1/A in her affidavit she only deposed that statement made in all the paragraphs of the reply are true and correct. Nothing else has been deposed with regard to ailment of deceased. Opposite party only relied on medical treatment record Ex. R3. Counsel of the opposite party argued that in Ex. R3 in patient history it is written "A known patient of Diabetes Mellitus Type -2 was admitted." Patient Deepak was admitted on 13.4.2010 and he was discharged on 24.4.2010 according to Ex. R3. Except this document opposite party did not produce any

other record of treatment of insured."

The appeal challenging the above order was dismissed by the State Commission. The State Commission has held that repudiation of the claim was sought to be justified on the basis of contents of the Discharge Card of G.C. Gupta Hospital, which showed that the insured was hospitalized there from 12th to 24th April, 2010. In this document (Ext. R -3), Diabetes Mellitus is mentioned as part of patient's history. The State Commission, relying upon the decision in Tarlok Chand Khanna Vs. United India Insurance Company, Ltd. I : (2012) CPJ 84 (NC), observed that mere production of Discharge Card was not enough. OP/Insurance Company was also required to prove with credible evidence that the Complainant was suffering from the pre -existing disease and had knowingly failed to disclose the same.

3. WE have perused the records and heard the two sides. The main ground raised in the revision petition is that in an insurance proposal of July 2009, the deceased/insured had "disclosed to the Medical Examiner that he was suffering from Diabetes Mellitus since 8 years and taking treatment for the same. Hence the proposal was declined and was informed to the Deceased Life Assured vide letter dated 11.7.2009 and the amount paid towards the first premium was refunded back vide cheque No. 243320 dated 11.7.2009 drawn on ICICI Bank which has been duly encashed by the Deceased Life Assured on 23.7.2009."

4. SIGNIFICANTLY, the very next para in the revision petitions refers to the three policies of which two had issued prior to the letter of 11.7.2009. There is no explanation why the RP/OP took no action to review/cancel the two earlier policies of 2008 and 2009, on the basis of the above information allegedly gathered in July 2009. Equally, there is no explanation why, despite action to decline the insurance proposal of 2009, yet another policy was issued to the deceased in 2010. More importantly, in the three letters of 28th October 2011 repudiating the insurance claims, RP/OP makes no mention of the information allegedly gathered by its doctor in the medical examination of 2009. This, together with failure to tender evidence of the examining doctor, destroys the credibility of the case of the revision petitioner/ICICI Prudential Life Insurance Co. During the course of arguments before us learned counsel for the RP/OP admitted that the notings in the Medical Examination Report of 4.7.2009 in front of columns 9,10 and 11 are made by Dr. K.S. Anand and not by the deceased proposer. On the specific query from the Bench the counsel admitted that the affidavit of Dr. Anand had not been filed before the fora below.

5. IT was also pointed out on behalf of the respondent/complainant that one of the letters of repudiation seeks to rely on hospitalisation of the deceased in April, 2010, but no evidence was led before the fora below. The OP had merely produced the Discharge Card of the Gupta hospital which was not proved. Nor was the evidence of the treating doctor led.

6. THE law on this subject has been very clearly enunciated by Hon''ble Supreme

Court in a decision pronounced on 13.9.2010. Fact in this case (Balwinder Kaur Vs. Life Insurance Corporation of India, Civil Appeal No. 7969 of 2010) were very similar to those in the revision petition before us. The claim under the policy had been repudiated on the ground that the insured had given incorrect answers to the queries in the proposal form. The District Forum held that the repudiation was not legally tenable as there was no evidence led in support of the certificate of the doctor who had treated the deceased. The certificate had noted that the insured had a chronic illness for the last many years. The order of the District Forum was set aside by the State Commission. The National Commission had agreed with the decision of the State Commission. Hon"ble Apex Court reversed the orders of the National Commission and the State Commission, holding that: - "The onus to prove that the deceased had obtained policy by suppressing facts relating to his illness was on the Corporation, but no tangible evidence was produced on its behalf to prove that the deceased was suffering from serious liver ailment at the time of taking policy and he deliberately suppressed this fact. Undisputedly, the policy was issued on 29.3.1998. The deceased must have filled the proforma some time prior to that date. Therefore, the Corporation ought to have produced evidence to prove that as on the date of filing the proforma, the deceased was suffering from any identified ailment and he had intentionally written "no" against item Nos. (a) to (d) of clause 11. This the Corporation had failed to do."

7. WE therefore, find ourselves in complete agreement with the view taken by the fora below. The Revision petitions are held to be devoid of any merit and are dismissed for the same reason. No costs.