

(2016) 11 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Case No : 139 of 2016

IDBI FEDERAL LIFE INSURANCE CO. LTD. & ANR.

APPELLANT

Vs

RAMESHWAR PRASAD JAIN

RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2016 4 CPR 400

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : NAGARAJ V. HOSEKERI

Final Decision : Petition Dismissed

Judgement

1. Revision Petition no. 139 of 2016 has been filed against the judgment dated 07.10.2015 of the Rajasthan State Consumer Disputes Redresal Commission, Jaipur ("the State Commission") in Appeal no. 674 of 2014.

2. The facts of the case as per the respondent/ complainant are that the respondent had secured a policy worth Rs.5 lakh in the name of his sister Shanta Bai. Respondent's sister Shanta Bai expired on 04.02.2012 and her claim was repudiated on the ground that the insured had not declared in the proposal form the earlier policies secured. According to the insurance company, before securing the policy, the insured already had seven other effective insurance policies out of which two were secured from HDFC Life Insurance Company, two from Reliance Insurance Company, another two from SBI Life Insurance Company and one was secured from Aviva Insurance Company. The total sum insured on these policies were Rs.26,74,767/- and on this ground the death claim was repudiated.

3. The insurance company has taken an objection that suppression of the fact is a material suppression.

4. The District Consumer Disputes Redressal Forum, Ajmer ("the District Forum") vide its order dated 11 th March 2014 while allowing the complaint observed as

under:

"The income of the insured was not appropriate to deposit the premium of the policy has also not been found in the matter, as also that the insured was suffering from some disease at the time of policy has also not been contended by the insurance company. Therefore, in view of discussion had, it is our view that the insurance company has failed to prove the grounds of repudiation of the claim. Apart from this the factum that the insured was read over and explained the contents of the proposal form, which was in English has also not been established. Consequently the non-applicant insurance company has failed to prove the point that the claim was rejected on proper grounds and the insurance company is found liable to pay the claim amount, payable on death of the insured but as the facts on record and the investigation conducted by the insurance company it is found that the only living child of the insured is her daughter Smt Mamta Agarwal resident of Bundi. The insured has expired at the home of her daughter. The applicant (nominee) in the complaint has not made this daughter a party whereas she is the only living daughter of the insured. The nominee has a right to bring such a suit but if the insured has a legal representative his rights because of the nomination cannot be nullified. Consequently, looking to the facts of the case we find it appropriate that before the insured amount is given to the insurance company to the applicant (nominee) in the interest of justice, Smt Mamta Agarwal wife of Manoj Agarwal, Chainramji Ka Katla Bundi should be heard.

ORDER

i. Non applicant insurance company shall within a span of two months from the date of order shall deposit an FDR of the insured amount of Rs.5,00,000/- under the policy no. 4000322060 before this Forum;

ii. The notices shall be issued to the daughter of the insured Smt Mamta Agarwal for hearing after the FDR is deposited and the amount shall only be disbursed after conducting hearing on the aspect;

iii. If the non-applicant does not deposit the FDR within two month of the order an interest @ 9% from the passing of the order till the payment made shall also be payable;

i. The applicant shall also be liable to receive Rs.2000/- from the non-applicant on account of Mental Agony and Litigation cost. The non-applicant insurance company shall pay the amount in two months or the amount shall be sent in the form of a demand draft at the address of the applicant".

5. Aggrieved by the order of the District Forum, the petitioner/ opposite party filed an appeal before the State Commission. The State Commission while dismissing the appeal observed as under:

"The National Commission in its latest judgment - III (2014) CPJ 582 (NC) Sahara India Life Insurance Corporation Ltd., vs Rayani Ramanjani Yulu has

clearly held that non-declaration of previous policies is not a material fact and is not a ground which could justify repudiation of claim. It was also held that insured and his legal representatives cannot be left to suffer on account of fault on part of agent. In the judgment of *Satwant Kaur Sandhu vs New India Insurance Company Ltd., Life Insurance Corporation vs Vigha Devi and Ors - III* (2012) CPJ 288 (NC), *Komal Sharma, Deepak Kumar Sharma etc., vs Life Insurance Corporation and Ors - I* (2013) CPJ 606 (NC) have been relied upon. On the basis of principals enunciated in the aforesaid judgment it is our view that non-disclosure of previous policies is not suppression of material facts and on this basis the claim cannot be repudiated.

Consequently, on the basis of the above discussion the appeal of insurance company is not capable of being accepted and the appeal is dismissed and the impugned order dated 11.03.2014 passed by the District Forum is confirmed".

6. Hence, the present revision petition.

7. We have heard the learned counsel for the petitioner and have carefully gone through the record. Learned counsel for the petitioner has contended that the State Commission and the District Forum has failed to appreciate that insurance is a contract of utmost good faith (*uberrimae fidei*) and the complainant cannot seek benefit under the contract when assured/ deceased himself has breached the basis of provisions of contract by concealing the facts that the deceased had seven other insurance policies and by claiming that she had an annual income of Rs.1,75,000/- which the investigator appointed by the insurance company could not confirm.

8. In the complaint, the respondent/ complainant has stated that:

"That the non-applicant insurance company has dismissed the claim illegally and without basis. By non-disclosure of previous policy the insured had not concealed any material fact and has not committed any breach of policy justifying the repudiation of the death claim.

Non-applicant at the time of filing of the policy did not put any question to Smt Shanti Bai Jain regarding any pre-existing policy. The proposal form was filed by the agent and the sister of the applicant merely signed it. The statement is also clear from the fact that the sister of the applicant signed in Hindi whereas the proposal form was in English".

9. The Counsel for the petitioner is not able to confirm whether the agent had in fact asked for the information relating to previous policies from Smt Shanta Bai at the time of filing up the proposal form and that she had denied the same. The investigator in his report, which is placed on record, has also not mentioned that Smt Shanta Bai had any previous insurance policies. Further, we have gone through the proposal form, nowhere in the proposal form had Smt Shanta Bai stated that she was gainfully employed and she had an annual income of Rs.1,75,000/- from her said employment. The insurance company is not able to

place any evidence on record to substantiate their claim that she did not have an annual income of Rs.1,75,000/-. The income need not be necessarily from gainful employment but could be from other sources. The only finding of the investigator as per the report is that in the present case, there is a misrepresentation of income by Smt Shanta Bai and during investigation it had come to the notice that she was not gainfully employed.

10. In the case of Satwant Kaur Sandhu vs New India Assurance Company Ltd. , (Civil Appeal no. 2776 of 2002) decided on 10.07.2009 the Apex Court has held as under:

" The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is a material for the purpose of entering into a Contract of Insurance ".

11. In the case of Smt Komal Sharma and Ors vs LIC of India and Ors decided on 11th February 2013, this Commission has held as under:

"The term material fact is not defined in the Act and, therefore, it has been understood and explained by the courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the Contract of Insurance and has a bearing on the risk involved would be material".

12. To ascertain and confirm whether non-disclosure of insurance policy was a material fact, we enquired from the counsel whether the fact that she has seven insurance policies would have influenced the decision of the petitioner with regard to the policy in question and if so, in which way. He had no answer to the question. Hence, this leads us to believe that in this particular case non-disclosure of earlier insurance policies was not a suppression of material fact which would have influenced the mind of the insured in deciding whether to accept the proposal and take the risk of the insurance and also whether it would have any bearing on the amount of premium charged.

13. Thus, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for our interference under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is dismissed.