(1998) 07 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : C. I. A. No. 399 Of 1997

India Unit 1st Srinagar Division, Zero Bridge, through — APPELLANT

Vs

Abdul Aziz Bhat — RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:
Jammu and Kashmir Consumer Protection Act, 1987 — Section 17

Citation : (1999) KashLJ 521

Hon'ble Judges : Bhawani Singh, J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : H.S.Oberoi, Advocates appearing for the Parties

Judgement

1. Mst. Azi Begum, Respondent's mother was insured by appellant, LIC, under policy issued on 3061994 and the basic sum assured was Rs. One

lakh. The first instalment was paid on 1541994. The policy was to last from 1861994 to 1862011. Azi Begum died on 15101994. Her son,

nominee under the policy, respondent filed claim on 26121994 with Life Insurance Corporation of India and the latter asked the nominee to file

documents in respect of age of the insured and cause of her death. The respondent alleges, that all the documents were before the appellants,

therefore, he was not required to file the documents. The L. I. C got the claim investigated after it noted that the date of birth of the assured was

wrongly stated, and further as the assured died within two years of issuing the policy, an inquiry was conducted as per provisions of law and rules.

The investig ations and other inquiries revealed that the assured had made wrong statement of her age. The LIC, concluded that there was

intentional suppression of material fact as to assurerd's age. It repudiated the claim and informed the nominee of the repudiation of the claim on

2081996 the nomineerespondent, approached the State Consumers Protection Commission, Srinagar, (hereafter for short, The Commission) and

filed a complaint for recovery of the basic assured sum and for compensation.

2. The Commission on receiving objections and evidence, on inquiry, ordered opposite party to pay the assured amount of Rs. One Lakh with

18% interest within specified period of six weeks from the date of order with observation that the Merest allowed at the rate of 18% would also

take care of compensating the complainant for toss and injury suffered by him. This order of 14.10.97 of the Commission is impugned in this

appeal.

3. The counsel for the appellant submits that the material fact of true age of the assured Mst. Azi Begum was suppressed. There was under

statement of her age. Respondenther son nominee is insured with the L. I. C. The nominee and the assured in league have shown the date of birth

of Mst Azi Begum as 2.4.1946, thereby, indicating her age on the date of proposal about 48 years and further Mst. Azi Begum was shown to have

read upto 5th Primary, when in reality she was illiterate. As on 15.4.94, the nominee in the policy covering his own life has shown his age as 49

years and given his date of birth as 15.4.1945 and shown age of his mother as 73 years. Thus, seen the age of assured, cannot be less than 80

years in October 1994. She died just 317 2 morrths after taking the policy for her life.

4. In suppression of the material facts and on manipulative age entry, assured and her nominee made corporation to believe state of facts and to act

in * manner which the Corp oration would not have otherwise believed and acted upon. Therefore, in terms of Section 45 of the Insurance Act of

1938, read with policy holders servicing Mannual No. II (Claims) page.44 under Sub Head 2.1, the L I. C repudiated the claim. The commission

despite triable issues being raised before it did not upheld the contention of the appellants regarding repudiation of the claim. Due to concealment

of age factor, the nominee or for that matter the hefts of the deceased policy holder are not entitled to any claim against the said policy.

5. RespondentAbdul Aziz Bhat, mail submissions in person after opting not to avail, service of an advocate. He submits that the proposal for

assurance on the life of Mst. Azi his mother, as made on 02041994, was accepted by LIC on 30.6.94. L.IC accepted premium on 150494 and

issued receipt. The policy on the life of the assured was issued at least after about three months. The time period was consumed by the LIC to

process and in verification of the case. After processing and verifying the contents and other required particulars, it accepted the proposal and

issued the policy. The correct age of the assured Mst. Azi was disclosed to LIC. Even, the fact that Mst. Azi was illiterate was also disclosed. At

no point of time either Mst. Azi or his nominee ever represented before the LIC that Mst. Azi had read upto 5th Primary or that she was in a

position to sign any paper. The prescribed forms (proposal, medical report and age memo) produced by LIC have not been executed by her. The

signatures of Mst. Azizi Begum in the relevant columns are not of his mother who was illiterate, but of some other Azizi Begum. Intact, the real

proposal and other prescribed forms which Mst Azizi has filled and presented before L I. C. have not been placed on record. The above referred

proposal and other prescribed forms produced in the case are not the very proposal and forms which Mst. Azi, his mother has got fitted arid tiled

before LIC. The forms have been manipulated and the original proposal and form is kept off record. A bare look at these forms will reveal that

they are full of cuttings and overwritings. The forms are nothing but share manipulation. The appellant after issuing the policy on acceptance of the

proposal of insurance on the fife of Mst Azii, is duty bound to ptoc0 the real, genuine and actual documents before the Commission and the Court,

which they have failed to do. All this has been done to deprive the claiment of the claim, which he has sum of rupees one lakh as nominee (and heir

successor to the heritable estate) of his mother Mst. Azi.

6. There is no dispute that Mst Azi Begum insured policy of Rs. one lakh on her life valid from 1861994to 1862011. Her proposal of April 2nd,

1994 was accepted and the first instalment of premium was deposited with the L. I. C on 15.4.1994. The proposal was accept and the policy was

issued to her on 30.6.1994. She died a natural death on 15.10.1994. The nomineerespondent filed claim on 26.12.1994 on failure to finalise the

claim and make the payment, respondentnominee approached the Commission and on 24.7.1996 filed complaint 135/96 before the Commission.

During the pendency of this complaint, the respondent repudiated the claim.

7. The appellant/opposite party before the Commission raised the plea of suppression of material fact of age and fraudulent perpetration of facts by

assured and her nominee, which made the L. I. C to issue the policy which it may not have, had it known true facts. However, this argument did

not find favour with the Commission. The Commission on noting submissions of the respondent of manipulation of the proposal and other record,

summoned the original record from the appellant Co. The Commission examined the evidence led before it and evaluated the circumstances of the

case, it came to the conclusion that the proposal and forms produced before the Commission, were not the ones filed by the assured before L. I.

C. It found that the documents were full of overwriting and erasers. The assured was shown literate having affixed her signature on the fife,

whereas, assured was actually illiterate and she did not know how to write or sign.

8. We examined the record. The appellant before us has not pointed to any evidence to show that the proposal form was in fact and reality filled in

or written by the assured or at the behest of the assured or her nominee. We find from proposal form that, Ire me column of age, there has been

cutting and overwriting without any initial. There is no explanation whatsoever to suggest who actually is responsible for these erasers, cuttings and

overwriting. The signature of Mst Azi on medical report also is found spurious since the said lady is admittedly a rustic illiterate woman. Though the

opposite party has taken the same stand before the Commission in his objections, as it is convassing in appeal before this Court, the fact remains

that the L I. C has led no evidence to show that the forms which it has placed on record are in fact the very forms which Mst. Azi, the assured,

filed and on acceptance of which the policy was issued.

9. Shri P. S. Bali (Manager Sales) and Manzoor Ahmad Khosa (A. A.O) of L I. C have in their affidavits banked on the above spurious proposal

forms which they have placed on record.

10. Mr. Bali, in his cross examination has stated that he has not seen the deceased and even proposal forms have not been received or accepted

by him. The facts are not being investigated as the insurance business is essentially based on good faith. He also admits that he was not posted in

the concerned office at the relevant time, when the proposal was accepted and policy issued. The other witness Shri Manzoor Ahmad Khosa, has

also revealed in his cross examination, that he has no personal knowledge in the matter and that he was never posted Hi Unit No.1 .which dealt

with the claim of the respondent. No other witness has been examined. Neither of the two witnesses has on closer scrutiny stated that the proposal

form, medical report and the age form, part of the commission file and allegedly basis for issuance of policy of insurance, are the very documents

on the faith of which the appellants acted in good faith and issued the policy. ""Hiss assumes importance in the face of the evidence and cross

examination of the nominee that the above documents produced by the LIC were fabricated and the original documents executed by the deceased

which in fact were the genuine documents have been withheld from the commission and not produced before it by the opposite party/appellant.

There is formidable basis for the contention of the respondent that the documents produced by the opposite party before the commission (which

are also available before this court) are not the original and genuine documents.

11. In reply to part of para 1 of the complaint providing that the proposal was made on 02041994, the opposite party in its objections by way of

reply has stated that the averment is ""materially accepted as correct."" In other words, the proposal and the form thereto is admitted to have been

made and executed on 02041994, whereas, the proposal form placed before the commission by opposite party and available before us bears the

date of execution as 21041994. it clearly shows that despite agreement of parties on the date of proposal as 02041994 and the form being

executed thereto, the proposal produced before the commission with date as 21041994 is not the proposal which was made and executed on

02041994 and which culminated in issuance of the policy. It is further seen that in the said proposal, age of Mst. Azizi Begum is shown as 48

years. There is cutting and overwriting, both as to her age and date of birth. Even, there is cutting in the name of the husband of the assured and

even to the sum of assurance propose

12. In the column of education/qualification, she is first shown as middle and then there is cutting and overwriting to show it as 5th primary. There

appears signature of someone as a witness on the proposal, but initials cannot be spell out to suggest the name of the witness. In fact the L I. C.

has not examined either this witness or any other witness to indicate that the proposal specifically relates to the deceased Mst Azizi Begum and to

explain the erasers, cutting and overwriting on material particulars and names incorporated In the proposal and other prescribed forms. This again

is a circumstances which points to spurious, nature of the documents. It is admitted by the parties that the above documents which included the

proposal form, medical report and age form of the deceased have throughout remained in possession and custody of the LIC from very inception

till the documents were produced before the commission. It is only the L. I. C, Appellant that could have offered and placed on record explanation

and reasons, thereto, if it so desired, instead of messing up of matters and making its case highly doubtful.

13. The contention of the opposite party that the matter has been got investigated through A.M.S, consultants and that this investigating agency has

on information supplied by the Chowkidar of the concerned village concluded that the age of the assured on the relevant date was 80 years and

not 48. years, cannot be accepted for the reason that whatever the investigation has taken place that has been conducted & the back & of the

claiment who has vested interest in the claim as part of deceased's heritable estate. The respondent was to be associated with the inquiry or

investigation if any in so far as it adversely effected his interest and claim, if the LIC was to escape the charge of infringing applicable principle of

natural justice to this case this apart even of the statement of the Chowkidar which the consultant says he got him from him, it cannot be concluded

that whatever the Chowkidar said necessarily related to the assured.Mareso, when the matter is to be seen in the context of the commission finding

that Mst. Azizi Begum was illiterate and had no schooling and the documents placed in this case were not documents placed in this case were not

the original and genuine document which were although in custody and possession of the LIC.

14. In these circumstances, the plea that the deceased suppressed the material fact of reporting herself as under age in the proposal and other

prescribed form is based on no evidence. The preponderance of probabilities, norms of proof for civil cases, fully substantiates the conclusions

arrived at by the commission. The award of the assured sum of Rs. one lakh to the claimant(s) is sustainable. The repudiation of the claim by the

LIC is not based on any evidence, material and documents.

15. No other contention is raised before us.

16. The result is that, in the totality of facts and circumstances of the case, the appeal merits dismissal and we accordingly order dismissal of

appeal, leaving parties to bear their own respective costs.

