(1993) 12 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

K. AMINA APPELLANT

Vs

Senior Divisional Manager, L.I.C. RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Citation : 1995 1 CPJ 353 : 1995 1 CPR 146

Hon'ble Judges : P.K.Shamsuddin , C.G.Sethu Lakshmi , K.Balakrishnan Nair J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant in O.P. No. 283/91 on the file of the District Forum, Kozhikode is the appellant.

2. THE complainant''s husband Usman was a Life Insurance Policy holder with Policy No. 7901846 for an amount of Rs. 1,00,000/-Policy was taken on 20.8.87 and it lapsed on 20.6.1988 for non-payment of premium. On the request of Usman the policy was revived on 30.6.89. Usman died on 1.11.89. THE claim preferred by the complainant was repudiated on the ground that there was suppression of material facts, in the statement furnished by the policy holder at the time of revival. THE complainant sent a registered notice through a lawyer claiming insurance amount. But the opposite party sent a reply raising the same ground and repudiating the claim. It is in those circumstances this complaint was filed. The opposite party filed version. It is stated therein that the policy in favour of the complainant''s husband was revived under special revival scheme on the basis of personal statement regarding health submitted by the life assured in Form No. 680. It was also stated that a declaration was given by the life assured in the form that his personal statement regarding his health is correct. It is further averred that on enquiry, the opposite party came to know that Usman was suffering from Carcinoma Oropharynx and was taking treatment for the same at the time he submitted personal statement regarding the state of his health, but he declared that he was not suffering from any major diseases and was not taking any treatment for such diseases. It was contended that in the circumstances the repudiation of the contract was for valid reason and the

complainant in not entitled to any relief.

The District Forum considered the evidence especially Xerox copies of the office records at the Kasturba Medical College Hospital, Manipal where the complainant''s husband underwent treatment. The opposite party also served some interrogatories on the "complainant to elicit the required facts and in answer to the interrogatories, the complainant has stated that Usman was under treatment at Kasturba Hospital, Manipal from 24.1.89 to 10.3.89 as inpatient, that from 14.4.89 to 20.4.89 he underwent chemo therappy and that from 11.5.89 to 15.5.89 he was again admitted in the Hospital. The District Forum also examined the nature of revival and pointed out that there is ordinary revival scheme and special revival scheme. In the ordinary scheme the entire arrears of premium are collected and the policy is revived without mere being any change in the age, date of commencement, premium, date of maturity and date of last payment of premium. The special revival stands on a different footing, and was generally meant for those who are not in a position to pay the entire arrears of premium. LIC treats the applicant in such a case on a part with a person applying for a new policy and accordingly takes his age on the date of revival and revises the premium for the same term and sum assured in the original policy. Interest on the difference in tine premium also will be charged. The Forum also noticed that in the instant case the date of commencement of policy was 28.7.88 and not the original date of commencement of the policy. In the circumstances the District Forum came to the conclusion that the revival is not valid by reason of suppression of material fact and therefore the claim for the Insurance amount was validly repudiated.

3. IN this appeal, Learned Counsel for the appellant heavily relied on Section 45 of the INsurance Act. Learned Counsel also relied on a decision of the Kerala High Court reported in A.I.R. 1991 Kerala 230 which was rendered by one of us (Shamsuddin, J.) IN order to appreciation the contention it is profitable to quote the relevant portion of Section 45 which reads as follows : "No policy of life insurance effected before the commencement of this 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 the proposal for insurance or in any report of a medical officer or referee, or friend of the insured or in any other document leading to the issue of the policy was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to dispose and that it was fraudulently made by the policyholder 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."

The Supreme Court had occasion to consider the scope of this Section and its applicability to a revived policy in Mithoolal Nevak v. The life Insurance Corporation of India (AIR 1962 SC 814) and it made the following observation at page 818: "Whether the revival of a lapsed policy constitutes a new contract or not for other purposes, it is clear from the wording of the operative part of Sec. 45 that the period of two years for the purpose of the Section has to be calculated from the date on which the policy was originally effected; in the present case this can only mean the date on which the policy (Ex. P2) was effected. From the date a period of two years had clearly expired when the respondent company repudiated the claim. As we think that Sec. 45 of the Insurance Act applies in the present case we are relieved of the task of examining the legal position that would follow as a result of inaccurate statements made by the insured in the proposal from or the personal statement etc. in a case where Sec. 45 does not apply and where the averments made in the proposal form and in the personal statement are made the basis of the contract."

4. THIS decision is followed by the Kerala High Court in Life Insurance Corporation of India v. Susamma Punnan (AIR 1991 Ker. 230). The Kerala High Court held: "It is not possible to accept the first submission of Learned Counsel for appellant that since revival is within two years, the case will not fall under Section 45 of the Act and that it would be open to the insurer to call the policy in question on the ground that the statement made in the proposal for insurance or in any report of a medical officer or reference or friend of the insured or any document leading to the issue of policy was inaccurate in view of the authoritative pronouncement of the Supreme Court in Mithoolal Naik v. Life Insurance Corporation, 1962 SC 814. In that decision the Supreme Court held that it is clear from wording of Section 45 that period of two years had to be calculated from the date on which the policy was originally effected. It follow that in regard to the first policy, defendant can succeed only if it is shown that all the three conditions mentioned in the second part of Sec. 45 are satisfied."

Thus it can be seen that when an insurance is revived, normally the revival effected dates back to the original date of commencement of policy. But unfortunately in the instance case it is not an ordinary revival, but a special revival. The documents produced clearly shows that it was a revival under the special scheme and the insurance does not take effect from the original date of commencement of the policy, but only from 28.7.88. That being the position, period of 2 years has to be calculated only from 28.7.88. So calculated it would be seen that the claim was made within 2 years from the date of commencement of the policy. In this case, it has been proved beyond doubt, that there was suppression of material facts viz., that the complainant''s husband was suffering from carcinoma and was undergoing treatment for long period from the Kasthurba Medical College, Manipur. Therefore the decisions of the Kerala High Court and the Supreme Court referred to above have no application to the facts of this case. In the circumstances we do not find any ground to interfere with the order passed by the District Forum. The appeal is devoid of any merit and it is accordingly dismissed. However we direct the parties to bear their respective costs. Appeal dismissed.

