(2003) 12 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

K. PADMAVATHI APPELLANT

Vs

BRANCH MANAGER, LIC OF INDIA RESPONDENT

Date of Decision : 22-12-2003

Acts Referred:

Citation : 2004 1 CPJ 594 : 2004 1 CPR 433 : 2004 2 CLT 385

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal allowed

Judgement

1. THE complainant is the appellant. THE complainant''s husband M.R. Krishnamoorthy had insured his life with the opposite party Life Insurance Corporation of India [LIC] for a sum of Rs. 1,00,000/-. It is an endowment policy with accident benefits. THE policy commenced from 20.9.1988 and the premiums have been paid regularly. While so, the insured died on 10.2.1995 whereupon a claim was preferred by the widow of the deceased to the LIC. THE LIC paid the assured sum of Rs. 1 lakh with a bonus of Rs. 46,500/- and settled the claim. THE complainant''s case is that the policy being one with accident benefits, she is entitled to an equal sum by way of accident benefit.

2. THE District Forum dismissed the complaint. It erred in holding that a sum of Rs. 46,500/- paid in excess of Rs. 1 lakh must be taken as the compensation for the accident claim and, therefore, there is no deficiency in service and dismissed the complaint. Before we consider the case of the appellant and proceed with the matter, necessary it is to consider the terms and conditions of the policy. We have, to in this context, mainly consider the condition No. 10 which reads as follows : "If at any time when this Policy is in force for full sum assured, the Life Assured before the expiry of the period for which the premium is payable or before the policy anniversary on which the age nearer birthday of the Life Assured is 65, whichever is earlier, is involved in an accident resulting in either permanent disability as hereinafter defined or death and the same is proved to the satisfaction of the Corporation, the Corporation agrees in the case of : (a) xxx xxx xxx

(b) Death of the Life Assured-to pay an additional sum equal to the Sum Assured under this policy, if the Life Assured shall sustain any bodily injury resulting solely and directly from the accident caused by outward violent and visible means and such injury shall within 90 days of its occurrence solely, directly and independently of all other causes result in the death of the Life Assured. However, such additional sum payable in respect of this policy, together with any such additional sums payable under other policies on the life of the Life Assured shall not exceed Rs. 5,00,000/-. The Corporation shall not be liable to pay the additional sum referred in (a) or (b) above, if the disability or the death of the Life Assured shall- (i) be caused by intentional self-injury, attempted suicide, insanity or immorality or whilst the Life Assured is under the influence of intoxicating liquor, drug or narcotic; or (ii) take place as a result of accident while the Life Assured is engaged in aviation or aeronautics in any capacity other than that of a fare-paying, part paying or non-paying passenger in any aircraft which is authorized by the relevant regulations to carry such passengers and flying between established aerodromes, the Life Assured having at that time no duties on board the aircraft or requiring descent therefrom; or (iii) be caused by injuries resulting from riots, civil commotion, rebellion, war (whether war be declared or not), invasion, hunting, mountaineering, steeple-chasing or racing of any kind; or (iv) result from the Life Assured committing any break of law; or (v) arise from employment of the Life Asured in the armed forces or military service of any country at war (whether war be declared or not) or from being engaged in police duty in any military, naval or police organization. The extra premium for this benefit will not be required to be paid after all premiums under this Policy have been paid or on and after the Policy anniversary on which the age nearer birthday of the Life Assured is 65 years, whichever is earlier."

To appreciate the fall-out of this condition vis-a-vis the present claim, it becomes imperative to touch upon the facts leading to the death of the insured. According to the petitioner, on the early hours of 25.12.1994, there was an attempt of house-breaking by a thief and the petitioner''s husband reached the terrace to nap the thief who had come from the terrace to the ground floor and ran up to terrace from the ground floor and the petitioner''s husband chased the thief to the terrace followed by the father-in-law and the brother in-law. When they reached the terrace they did not see him even there and they heard a mild noise coming from the lane appurtenant to their house. When all of them went there to see the source of the noise, they found the petitioner''s husband lying severely injured and bleeding and in an unconscious state. The petitioner''s husband was thereafter taken to the clinic of the family Dr. B.K. Mohan and from their he was shifted to J.J. Hospital, Madurai on the next day and again moved to Meenakshi Mission Hospital, Madurai on 27.12.1994, where he expired on 10.2.1995. Thus, according to the complainant, her husband died in an accident while trying to nab the culprit and chased the culprit who had gained entry into their house to commit theft. In other words, according to them, it was an accident that took place involving the complainant''s husband and thus the death of the husband was on account of the accident in which he had sustained injury. Apparently, though it has not been spelt out in clear and specific terms, it appears to be the case of the complainant that her husband met with the accident while pursuing the thief. It may be either he slipped and fell down from the terrace or was pushed down from the terrace by the thief. All these are not clearly stated in the complaint, but in effect, it appears to be the case upon which the claim rests. The learned Counsel appearing for the opposite party LIC would say that there is nothing to show that there was a thief and that no complaint had been lodged and there is nothing to show that such an incident, as averred by the complainant, had taken place.

3. TRUE, there is no complaint given to the Police, but merely because a complaint has not been preferred to the Police, can we on that count throw out the complainant''s case ? The incident is said to have occurred in the wee hours of the morning. No theft had actually taken place, in the sense of that there was no loss of any property. The wife, the father and the brother have seen the person lying in an unconscious state with injuries on him. The natural reaction of the near ones and the dear ones will be to save the life of the injured especially when there was no loss by theft and the thief had made good his escape. The only course of action that would suggest to them is to take the injured to the hospital and save his life. The question of going to the Police Station and making a complaint would have been far away from their thoughts. Therefore, the inaction of the complainant, in our opinion, is not fatal to the complainant''s case. The complainant has produced a certificate from Mohan Nursing Home, Madurai, which has been marked as Ex. B-3. There, the Doctor has stated that Mr. M.R. Krishnamoorthy was admitted in their Nursing Home for emergency treatment for multiple fracture ribs with (L) haemothorax at 3 a.m. on 25.12.1994 and he was given emergency treatment with blood transfusions and ICD and was shifted to JJ Hospital on 26.12.1994 for further management. Ex. B6 is the medical certificate issued by Meenakshi Mission Hospital, Madurai. They have mentioned the cause of death is " Septicaemia", due to "Hypoxic Engephalopathy" and "Chest Wall Trauma". This certificate thus suggests that the death of the individual was not a natural death but it was due to the injuries sustained by him viz., fracture of ribs and the consequent chain of biological adverse consequences of the same. These injuries thus would show that the deceased must have fallen from a height. It is probable that in the course of night, in trying to nab a thief he had tripped over a parapet wall or fallen from the terrace having lost his balance thereby resulting in his injury/death. It is unthinkable that a person would have thrown himself down from the terrace in such a manner and at the dead of the night. It is not the suggestion or the case that the deceased was out of mind or insane; nor it is the case that he was having bouts of depression. Therefore, the nature and effect of the injury sustained by him would only go with the theory that the deceased must have sustained injuries from a fall. Thus, the fall was definitely not a self-propelled fall, but must have been an accidental fall. As we have already extracted the

condition No. 10(b), it would show that the Corporation (LIC) will not be liable for the additional sum if the fall is because of an intentional self-injury or an attempt to suicide. There is nothing in the version or in the reply affidavit to suggest that it was an intentional self-injury or an attempt to suicide, nor there is any suggestion of insanity. This is not a case where injuries could have been caused by any act resulting from riots, civil commotion, rebellion, war, etc.; nor it is the result of the person assured committing any breach of law. Therefore, in such circumstances, the matter is squarely governed by condition No. 10(b) whereby the Corporation is liable to pay the sum equivalent to the sum assured under this policy, since the insured sustained bodily injury resulting solely and directly from an accident and succumbing to the injuries within 90 days of the incident. With the spate of evidence on record and the materials placed by the parties, no other conclusion is possible. Therefore, in such circumstances, we are of the opinion that there is deficiency of service. Contract of insurance being a contract born out of good faith, it must be scrupulously followed by the insurer. Having put forward a case of repudiation that does not contain any specific reasons for the denial, we are of the firm view that this is a fit case which would eminently fit in which the provisions of the Consumer Protection Act. To be more precise, in their repudiation letter dated 9.7.1996, they have simply stated that they are not able to consider the benefit taking into account the circumstances of the case. What are the "circumstances", they have not expatiated.

4. THE learned Counsel appearing for the respondents would submit that the remedy of the complainant is to go before a Civil Court since the nature and the details of the accident that has taken place are all to be enquired into so that the Corporation (LIC) will have a right to cross-examine and establish that the claim is not maintainable. It is not the version that there was any negligence on the part of the insured or that there was any breach of duty or breach of any statutory provisions of any law on that matter. THErefore, when there is a simple denial there was nothing more for the claimant except to produce these documents and make a claim which they have done. THErefore, in our view, we feel that it is clear case of deficiency of service entitling the complainant to the relief asked for. Consequently, this appeal is allowed, but in the circumstances of the case, without costs. The opposite parties are directed to commute and pay the additional equal sum assured on the said policy by way of accident benefit under condition No. 10(b) of the policy to the complainant with other accrued benefits within one month from the date of receipt of this order failing which the same shall carry interest at 12% p.a. from the date of this award till the date of payment. Since the opposite parties LIC have already paid a total sum of Rs. 1,46,500/- promptly, we deem it a fit case not to make any order as to cost in this appeal. Appeal allowed.

