(1993) 02 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

KANCHANBEN H. SHAH — APPELLANT

Vs

BRANCH OFFICER, L.I.C. And OTHERS — RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Citation : 1993 2 CPJ 1075

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Appeal allowed

Judgement

1. -THE appellant is the original-complainant who had filed a complaint against the present respondent - the Life Insurance Corporation of India (LIC for short) for payment of insurance money of her husband, alleging that the claim has been wrongly repudiated.

2. THIS case involves complicated questions of law and fact and, therefore, we had given ample opportunities to both the parties, have heard the arguments twice and have made certain queries also. The short facts are necessary to appreciate the submissions raised by the learned Advocate of the appellant Mr. D.M. Thakkar. There is no dispute that the husband of the complainant was earning Rs. 5,000/- per month and was taking insurance every two or three years; obviously for making provision for his family and to take the benefits of Income-tax laws to reduce the taxable income.

The husband of the complainant made a proposal for Life Insurance for an amount of Rs. 1 lakh with accident benefits. The proposal was signed on 28-3-1989 and cheque for Rs. 6885/- towards the first premium was given to the agent. Medical examination appears to have been done and the agent has sent his private confidential report to the LIC. The plan which was selected by the insured was plan 14-18. The proposal appears to have been forwarded to the Divisional Office and to the Central Office by the Divisional Office. The cheque given by the insured has been encased by the LIC immediately. It appears that the insured had already submitted the E.C.G. report on 13.4.89. Even then no acceptance was communicated to the insured for the reasons best known to the

LIC. Ultimately, the LIC demanded blood sugar test report from the insured which was sent to the LIC on 18.7.89 but no decision was conveyed till the insured died. From the death certificate it appeared that the insured died on 15.9.89 in a road accident. After the death of the insured the LIC posted a letter of acceptance of insurance under plan 14-12 claiming Rs. 5.60 Additional premium per thousand. It also appears from the record that this decision was taken by the LIC on 3.9.89 i.e. 12 days prior to the death of the insured but the same was not communicated to the insured in time to enable him make the payment. The insured never knew that he will meet with an accident all of a sudden and when the letter of acceptance by LIC demanding additional payment of Rs. 5.60 per thousand was received, unfortunately, the insured had expired.

3. AS usual, since the complainant was not in possession of the policy, which was never issued, she made a claim for Rs. 1 lakh only which was reduced to Rs. 96,808.90, probably treating the acceptance under plan 14-12. We are not concerned with the reasons as to why the claim has been reduced by Rs. 3,192/-. The complainant has also produced the post-mortem report which clearly shows and which is not disputed before us also that the insured died on account of road accident. In that case, if the insurance had been accepted, the claimant would have been entitled to Rs. 2,00,000/- because the insured has opted for accidental benefits policy. In appeal, the learned Advocate has given an application seeking permission to amend the complaint so that he can claim full amount under the insurance policy because the deceased has paid the premium for accident benefits also. At the request of both the parties we have agreed to decide this point, also in our judgment after final hearing, if it is found necessary.

4. MR. Thakkar, the learned Advocate appearing on behalf of the appellant has made the following submissions : 1. that the insured has given a signed proposal for taking insurance for Rs. 1 lakh with accident benefit and has paid the premium according to the advice of the local agent, which has been accepted by the LIC; 2. that the insured cannot get back the premium unless the proposal is rejected; 3. that the premium does not carry any interest and if the proposal is not accepted the LIC is not liable to pay any interest; 4. that me LIC has a monopoly of insurance business and there is no alternative for the complainant except to wait for the decision of the LIC is a state within the meaning of Article 12 of the Constitution; 5. that the LIC was supposed and bound to take a decision within very short time since the insured cannot be kept without insurance though he has already made a firm proposal and has paid the premium; 6. that not taking a decision urgently and keeping the deceased uninsured is clearly a deficiency in service on account of negligence of the officers of the LIC. The LIC is liable for the damages to the complainant for such deficiency in service; 7. that the proposal was accepted on 3.9.89 wherein the LIC has demanded additional premium of Rs. 5.60 per thousand and, therefore, the LIC is liable to pay the insurance amount on the basis of the amount paid by the insured which may be less than Rs. 1 lakh and the amount claimed by the complainant is much less than what she is entitled for; 8. lastly, LIC ought to

have granted at least ex-gratia amount of Rs. 96,000/- which is less than 50% of the insurance amount and by not granting such ex-gratia payment the LIC has discriminated the complainant;

Before we answer all these submissions of Mr. Thakkar, it is necessary to take into consideration the speech made by the Hon. Finance Minister on the eve of promulgamation of LIC (Emergency Provision) Ordinance, 1956 (reproduced by LIC in its Manual to the agents). The Finance Minister stated that : - "The nationalization of Life Insurance will be another milestone on the road the country has chosen in order to reach its goal of a socialistic pattern of Society. In the implementation of the Second Five Year Plan, it is bound to give material assistance. Into the lives of millions in the rural areas, it will introduce a new sense of awareness of building for the future in the spirit of claim confidence which insurance alone can give. It is a measure conceived in a genuine spirit of service to the people. It will be for the people to respond, confound the doubters and make it a resounding success."

It may also be noted that LIC is a state within the meaning of Article 12 of the Constitution of India and has a monopoly throughout the country to undertake the business of life insurance. At the same time, every citizen of this country has a right to be insured if he satisfies the necessary conditions of insurance and pays the premium. The nationalisation of the Insurance Companies is for better service to the policy holders. In the instant case the proposal was signed on 28.3.89, insured was examined by the doctor of the Insurance Company, he has paid the premium as per the advice of the local agent of the LIC, his health was good and he was found insurable. He had taken several insurance policies prior to this policy. It is not the case of anybody that he had made misstatement or suppressed any material facts. His age was known and confirmed by the LIC in previous policies. In these circumstances, when the deceased was insurable, possessing fine health and had been previously insured several times by the same Corporation, it would have been better if the Zonal Office had taken a decision. It may be remembered that a citizen of this country has a right to be insured. He may not like to take the risk even for a day because nobody knows when a person will meet with an accident and in this case, unfortunately, the apprehension of the deceased became true. He met with a road accident and died. The man who had planned for the future of his family, who had actually paid a very high premium before 5/6 months prior to his death had been sent from pillar to post only because of the indifference of the officers of the LIC and its Committee for not taking a decision immediately since they were knowing that there is no cover note like insurance of property. The man has remained uninsured and the expediency is expected for insuring the human life, particularly when the LIC is the only agency which has been given monopoly to insure human life.

5. UNFORTUNATELY, while repudiating the claim and not granting even the ex-gratia payment, the LIC has not cared to give any reasons for such drastic

decision except to say that the insured has expired. But unless the insured dies, no claim can be made and, therefore, that is not the reason for rejecting a claim made by the widow whose husband had paid huge amount for the benefit and protection of his family. A humane approach was needed at least by a Corporation which claims of public service as stated above. Even when the complaint is made, no reasons have been given by the LIC either for rejecting the claim or for not granting any ex-gratia payment though it was pointed to the Insurance Company that in many other cases the Insurance Company had given ex-gratia payment, that too three times the insured amount (as per the policy). We are, therefore, constrained to say that so far this particular claimant is concerned, there is a possibility that the claimant has been discriminated.

6. THE claimant''s Advocate has given an application on 21.4.92 for taking certain documents on record and for reply from the opponent. We had granted the application and directed the opponent to give us the available instances where LIC has paid such types of claims. According to the appellant one Kishore Savjani had given a proposal forRs. 15,000/- on 23.3.88 to the Jamnagar branch. He met with an accident and expired on 27.3.88 i.e. after 4 days of signing the proposal. Instead of refunding the deposit in such cases, according to Mr. Thakkar, the LIC had paid Rs. 45,000/- i.e. three times the amount as per proposal (he was entitled to three times the amount if the proposal has been accepted). According to Mr. Thakkar the full payment was made by way of ex-gratia payment, the second case pointed out by Mr. Thakkar is the case of Dr. M.O. Vahanvati whose policy number was 4658814, was also given ex-gratia payment. In reply to the application for production of additional documents and our order passed thereof, the LIC in answer to the queries had stated as under : Smt. Neetaben Saujani has been paid Rs. 45,000/- by respondent-Corporation on ''ex-gratia'' basis though the proposal was not accepted by the Corporation or communicated. Mr. Saujani also met with an accident after few days and before the proposal could be accepted and communicated to the proposer. THE sum was paid because the Claim Review Committee of the Corporation on examining the facts of the case, had decided to admit claim for full sum assured (basic S.A. with additional S.A. - plan 88) with D.A.B. on ex-gratia basis. To the query regarding policy followed by the LIC for making ex-gratia payment, the LIC has answered that the LIC is considering each individual case on facts and circumstances and merits. While considering each individual case, the LIC takes into account the status of the claimant, their financial position, material produced by the proposer such as medical report and other documents submitted by the proposer. THE LIC is also taking into account the age of the policy/proposal, delay (if any) caused in accepting the proposal, by whom delay is caused (either by the proposer in submitting the relevant documents, medical report and other reports required to be submitted by the proposer as per rule, or any medical or other reports, or any other documents which were asked by the LIC to be submitted by the proposer. THE LIC is also taking into account the delay caused in administration of LIC (delay caused in transit of proposal from the Branch

Office to the Divisional Office or from the Divisional Office to Head Office). To our query regarding payment even though the policy has not been accepted i.e. by way of ex-gratia payment in the year 1991-92 with respect to Gujarat, the answer that "as this is a general query not pointing out any particular case in the State of Gujarat, it is difficult to answer this query", to our opinion is as vague as possible and has been a given to avoid the figures which might be unfavorable to the Corporation. It appears that there is no prescribed guidelines to be followed by the Committee in granting the ex-gratia payment nor there are fixed norms. If we consider the facts and circumstances of Savjani''s case, we find that each and every fact/circumstances tally with the facts/circumstances of the present case. On the contrary, the facts and circumstances of the present case are much stronger than the case of Mr. Savjani''s case before the Committee. Here the proposal has been made, full premium has been deposited, the insured was examined by the panel doctor, he was found fit to be insured, the agent has also sent the private report approving the case of the insured, the insured has also sent the blood sugar report, though demanded very late. The formal decision has also been taken. We are, therefore, unable to understand as to why one case has been accepted for ex-gratia payment and another has been rejected which is much stronger than the previous one to whom the LIC has paid 3 times the amount except that the insurance amount was Rs. 15,000/- in the earlier case and Rs. 1 lakh in the instant case. In the instant case, the complainant has demanded Rs. 96,808/- i.e. half the amount she is entitled whereas in the previous case the claimant has demanded three times the amount of insurance though the proposal was not accepted. There the insured died within 4 days from the date of proposal; here the insured died after 5 months. According to our opinion, the cases are not even comparable. The present case is much stronger and batter for granting ex-gratia payment. In any view of the matter, we cannot grant any ex-gratia payment though we can point out the discriminatory policy followed by the LIC.

In the instant case, the LIC was supposed to take a decision within short time since every material was ready. The age was proved, the premium has been paid, medical examination was done, the proposer was found insurable. Therefore, no investigation was necessary. Actually, no investigation has been made except for asking the blood sugar report which was also negative. The LIC ought to have accepted the policy since it satisfied all the terms and conditions which a proposer is supposed to satisfy. To our opinion the LIC has taken a very long time in deciding the case which amounts to deficiency in service as we have pointed out in our previous judgment in the case of Pravinchandra Shantilal Pujara v. Life Insurance Corporation of India (Orig. Complaint No. 9 of 1992) wherein we have held that "the policy could not be issued on account of negligence and indifference which has resulted into deficiency in service, the complainant and his family members have suffered the damages as stated above. We shall have to estimate the damages suffered by the complainant and family of the deceased on account of the above deficiency. We estimate the

damages at Rs. 40,000/- i.e. 80% of Rs. 50,000/- since the policy has not been issued. The payment having not been made the complainant is also entitled to interest, cost and damages for pain and suffering." Similarly, in this case also we find that the LIC was indifferent and negligent in arriving at a decision and issuing the policy which has resulted into deficiency in service and, therefore, the complainant and her family members have suffered the damages. The insurance was for Rs. 1 lakh and since the insured died in a road accident, the claimant is entitled to Rs. 2 lakhs. Being ignorant of these true facts, the complainant has made a claim for Rs. 96,808/- only which to our opinion is much less than what she is entitled for. We estimate the damages at 80%. However the claimant having demanded Rs. 96,808/- we find the damages to the quite reasonable and proper. Mr. Thakkar, the learned Advocate for the appellant submits that if the original claim is awarded, he does not want to press for the amendment. We are not passing any order with regard to the amendment since we are decreeing the full claim of the complainant. According to our opinion the appellant-complainant is entitled to the amount claimed by her with interest and cost. ORDER The appeal is allowed. The order of the District Forum is set aside. The LIC is directed to pay Rs. 96,808/- to the complainant with running interest @ 15% from the date of complaint till the amount is recovered. The LIC will also pay the cost of this appeal which we quantify at Rs. 1,000/-. These amounts shall be payable by the LIC within 8 weeks from the date of receipt of this order. Appeal allowed with costs.

