(2004) 07 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

KUMARI BAI SAHU — APPELLANT

Vs

Branch Manager, L.I.C. of India — RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:

Citation : 2004 4 CPJ 496

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS Appeal under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 2.3.2001 in Complaint No. 39/2000 by the District Consumer Disputes Redressal Forum, Rajnandgaon (hereinafter called the ''District Forum'' for short) dismissing the appellant''s complaint.

2. UNDISPUTABLY, the complainant/appellant is the wife of deceased Lomeshwar Prasad Sahu. It is also not in dispute that the insured Lomeshwar Prasad Sahu had obtained a life insurance policy from the respondent covering the risk on his life from 28.3.1998 to 28.3.2013. The proposal form was submitted by the deceased on 30.3.1998. The deceased insured died on 13.8.1998. The complainant/appellant being the nominee under the policy submitted the claim form immediately after the death of the insured Lomeshwar Prasad Sahu. However, the claim was repudiated by the respondent. Insurer on the ground that the insured deceased Lomeshwar Prasad Sahu had suppressed material facts in his proposal form. Feeling aggrieved by the repudiation as above of the claim under the policy, the complainant filed the complaint before District Forum claiming the assured sum of Rs. 50,000/- under the policy with interest etc. The complaint was resisted by the respondent/insurer mainly on the ground that there was suppression of material facts by the insured. The District Forum felt convinced by the defence as above of the respondent/insurer and, accordingly dismissed the complaint. The learned Counsel of the parties were heard and the record of the District Forum was perused.

Undisputably, the deceased had obtained a policy for the period from 28.3.1998

to 28.3.2013 and died on 13.8.1998, that is, within 5 months after obtaining the policy. The question to be considered is as to whether the deceased insured has suppressed material facts in the declaration form regarding his health in which he reported that he did not suffer from any ailment requiring treatment and that his health was good?

3. IT appears from the certificate dated 23.12.1999 issued by Dr. S.K. Chelani that the deceased insured died on 13.8.1998 and that original cause of death was anaemia and immediate cause was Haemetermesis. IT is also stated in the said certificate that the deceased came to know about the said symptoms on 13.8.1998, that is, on the date of death itself. IT is further stated in the said certificate that there was a history of 6 months'' illness. However, the nature of illness and the basis and source of history recorded as above has not been disclosed, in the said certificate issued by Dr. S.K. Chelani. There is yet another document, captioned-certificate of treatment copy of which is placed on the record of District Forum. According to the said documents his ailment was disclosed by the deceased patient, as would appear from the Column 5(A) of the said certificate. However, what was the nature of ailment as disclosed by the patient is not clearly decipherable from the said certificate. It is further stated in the Column 5(B) of the said certificate that the history was given by the attendant Yashwant. Though the question in Column 5(B) (C) is to the effect that if the history was not reported by the patient himself, the name and relationship of the person who has reported and was the patient present at that time. The questions as above have not been answered by the doctor issuing the said certificate and only name of attendant Yashwant has been mentioned in the said column. Who the said Yashwant was and what his relationship with patient insured is not disclosed. There is no material to find out as to what was the source of information of the said person Yashwant, regarding the history of patient also cannot be ascertained from the said certificate or any other material on record. Thus, the above document ''certificate of treatment'', cannot be of any help and cannot be relied upon for ascertaining the previous ailment, if any suffered by the insured.

4. IT is, therefore, clear that the two certificates, one captioned as certificate of treatment and other as medical certificate do not satisfactorily disclose as to what was the ailment and for what period the deceased suffered from it and as to who and how this history of ailment was recorded by the doctor. There is no material on record, such as record of previous treatment etc. of the deceased insured indicating that he suffered from any ailment before submitting the proposal form. IT was obligatory and burden of the insurer to satisfactorily establish that the insured suffered from the disease resulting in his death, before furnishing the declaration form and that he knew about such a disease and did not deliberately disclose the same, and was thus guilty of suppression of material facts. In the present case the copies of the certificates mentioned above, do not meet the above requirements and would not render any assistance to the stand of the respondent insurer that the insured was guilty of suppression of material

facts. In the circumstances, it cannot be said that there was suppression of material facts by the deceased insurer. Therefore, the repudiation of the claim by the respondent/insurer could not be said to be in due exercise of discretion and after due application of mind. Accordingly the repudiation of respondent is held to be improper and unjust. Clearly, therefore, complainant/appellant is entitled to get the assured amount under the insurance policy of her husband. Accordingly, the appeal is allowed. The impugned order is set aside. The complaint is allowed and it is directed that respondent/insurer shall pay to the complainant/appellant a sum of Rs. 50,000/- (Rupees fifty thousand) with interest at the rate of 10% per annum thereon from the date of complaint. The amount as above shall be paid within 2 months from the date of this order, failing which interest shall be payable at the rate of 12% per annum from the date of default. Cost of this appeal shall also be payable by the respondent/insurer which is quantified at Rs. 1,000/- (Rupees one thousand) only. Appeal allowed.

