(2006) 08 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Laxman Prasad Pandey APPELLANT

Vs

LIC of India RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Citation : 2006 4 CPJ 139

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition allowed

Judgement

1. THE issue involved in this case falls in a narrow matrix. Whether the Life Insurance Corporation was right in repudiating the claim of the complainant for a paltry amount of Rs. 50,000 on the basis of alleged suppression of facts by the insured.

2. THE complainant being the nominee of the LIC policy of his wife filed a complaint on 13.8.1999 before the District Consumer Forum - I, Lucknow stating that his wife Smt. Kusum Lata Pandey had taken a LIC policy for Rs.50,000 on 12.12.1995 and the same was issued to her after medical examination by the authorised medical examiner of the LIC. Unfortunately, the policy holder died on 3.9.1997 at K G. Medical College, Lucknow. According to the complainant, the LIC repudiated the claim illegally and arbitrarily with baseless allegations that the insured concealed material facts about her health in reply to the questions asked from her by the examining doctor. The District Forum directed as under: Health related medical certificate was also given by the medical examiner on the proposal form. If the health related questions, answers were found false during the course of medical examination then the medical examiner definitely would have endorsed such remarks on her medical report and if this has not been done there is no fault of proposer. It was the responsibility of the medical examiner that in the light of health related questions, her prima facie duty was to know the truth after taking her medical check-up. On the basis of health related questions the examiner had certified the health and the opposite party''s authorised medical examiner had not discharged her duty and responsibility which is a

deficiency on the part of doctor by which an assumption of health related critical facts are known to the proposer.

The District Forum after analysing the facts and evidence before it directed the LIC to pay Rs. 60,060 along with interest @ 9% till the date of payment together with cost of Rs. 2,000.

3. DISSATISFIED with the order of the District Forum, the LIC filed an appeal before the State Commission. The State Commission held that Smt. Kusum Lata Pandey had concealed material facts being a patient of hypertension for six years and hence, allowed the appeal directing the parties to bear their own costs. Aggrieved by the judgment and order of the State Commission, the complainant has filed this revision petition.

4. SUBMISSIONS of the learned Counsel for the Revision Petitioner : (a) He drew our attention to the District Forum''s order: wherein it is alleged that the deceased was suffering from''hypertension for six years prior to her death. No records have been filed before the District Forum indicating the treatment taken by the insured either as an out patient or an in patient in any hospital/ dispensary for hypertension;

(b) In the proposal form of the LIC there is a statement recorded by the examining doctor. It was the responsibility of the examining doctor to examine the insured and to find out whether she was suffering from any problem like hypertension, etc. After accepting the proposal form and counter signing the proposal form by the examining doctor authorised by the LIC, surprisingly the LIC has repudiated the claim after 1 years.

He also drew our attention to the prescribed column No. 7 of the certificate of treatment issued by the doctor, wherein the root cause of the disease mentioned as ''Cardio Respiratory Failure'' and original cause as ''Bilateral Pneumonia with Ischaemic Heart Disease'': Hypertension is not a disease but it is only a symptom. Many people suffer from hypertension off and on. The opposite party - respondent did not produce any document signed by the insured or the complainant stating that she has been suffering from hypertension. When she was taken to the hospital for bilateral pneumonia she was already weak and unstable and she stated that she had tension which cannot be construed as hypertension. In support of his case he quoted an extract of the judgment of LIC of India v. Smt. Chandra Baghrecha of the National Commission, IV (2003) CPJ 16 (NC): Submissions of the learned Counsel for the respondent (LIC):

5. THE learned Counsel drew our attention to the death book extracts dated 3.9.1997 issued by Gandhi Memorial and Associated Hospital, Lucknow. He drew our attention to the following columns : "Duration of illness : Eight years Disease : Adult Respiratory Distress Syndrome cause Bilateral Pneumonia with Ischaemic Heart Disease with Hypertension. Cause of Death : Cardio Respiratory Failure"

From this book it is very clear that the insured was suffering from hypertension which has resulted in her death and that fact of hypertension was suppressed by the deceased in the proposal form. He also drew our attention to the questionnaire sent by LIC to the Hospital and the statement given by the KG Medical College, Lucknow against column No. 7 : "(a) Case history of the patient : Hypertension for six years (b) When was this disease first known : Six years back (c) Who had treated the patient earlier : Not applicable (d) Who had informed about this disease : By the patient." He also invited our attention to the proposal form :

"(a) Whether you are suffering from Diabetes, TB, High or Low Blood Pressure, etc. - reply was given as ''No''."

6. HENCE the State Commission has rightly held that the insured had suppressed the material facts, accordingly allowed the appeal, therefore, the revision petition deserves to be dismissed. Learned Counsel quoted in extenso an extract from the judgment of this Commission in Smt. Vidya Devi, etc. v. Life Insurance Corporation of India, II (2003) CPJ 106 (NC). "In this case Shri Jagdish Kumar Chawla (since deceased) obtained one policy of his life on 22.3.1996 for an amount of Rs. 50,000 with double benefits and his wife was the nominee. He took the second policy for the same amount on 27.5.1996 in which his mother was the nominee. He died on 15.6.1996 in less than one month of having taken the second policy. He took these two policies within three month of each other. LIC repudiated the claim on 17.3.1997 on the ground that Chawla had suppressed the material facts pertaining to his state of his health and illness. The extract of the certificate of the hospital reads as follows:

6. What was the diagnosis arrived at in the hospital? Cirrhosis of liver, Alcoholic liver disease, Hepato Reneal Syndrome Hepato Encephalopathy Pericarditis These illnesses are as such which Chawla would not have started suffering only from the date of his first policy. He was suffering from much early period. Admittedly, Chawla did not disclose these illnesses when he took the two policies. LIC in our opinion, rightly repudiated these policies. We uphold the order of the State Commission and dismiss these revision petitions."

Learned Counsel for the LIC also quoted another decision i.e. II (2003) CPJ 108 (NC) wherein the complainant''s late husband had a LIC policy from September 1997 but had lapsed due to non-payment of premium in 1991 and was revived in January, 1992 after making due payment. The insured died in April 1992 due to Tuberculosis. The LIC repudiated the claim on the ground that the deceased concealed information about his suffering from Tuberculosis at the time of renewal of the policy. The deceased replied negative to the questions ''have you suffered from/or are you suffering from (1) Asthma, Tuberculosis or any other disease of lungs''. The National Commission had allowed the revision petition of the LIC in this case. Findings:

7. THE policy was taken on 12.12.1995 and the policy holder died on 3.9.1997.

This is after one year and nine months from the date of the policy. THE amount involved is Rs. 50,000. . (i) THE Insurance Company has repudiated the claim on the ground that she has suppressed the material facts relating to her illness namely High Blood Pressure. No records have been produced from any doctor or the hospital having treated her for High BP for a period of six months. LIC is all pervasive in India and they had no difficulty in producing the statement of the treating doctor, if any, if the patient was treated for High BP. This has been analysed in succinct detail by the learned District Forum.

(ii) It is alleged by the LIC that the insured had answered in negative in the proposal form against the question whether she was suffering from diabetics, TB or High or Low BP at the time of taking the policy.

In this connection it is relevant to look into the next page of the proposal form which is signed by the examining doctor. The column meant to be filled up which is applicable where the insured had to be medically examined, wherein the examining doctor has stated that ''I hereby declare that I have solemnly affirm this proposal form wherein ten questions have been answered correctly as stated by the insured''. As he is the examining doctor his role is distinct from that of an Oath Commissioner or the Notary Public wherein an affidavit is sworn. He has examined the insured and it was not difficult for him to find out that the insured was suffering from Low or High B P as it takes only five minutes.

8. THE document of the hospital wherein a certificate of the treating doctor has been obtained by the LIC clearly indicates the original/ root cause as ''Bilateral Pneumonia'' and immediate cause of death is "Cardio Respiratory Failure''. THEre is no document which is signed either by the patient or by her relatives to indicate that the patient was suffering from Hypertension for six years. The judgment of this Commission quoted by the learned Counsel for the LIC : II (2003) CPJ 106 (NC) is distinguishable from the present case. In the present case the death had taken place one year and nine months after the insurance policy was issued whereas in the case the death took place in less than a month of having taken the second LIC policy and within three months of taking the first LIC policy. There is no mention that the insured was examined by the doctor. Accordingly, in this case the State Commission had recorded that it appeared that there was some complicity between the insured and the agent of the LIC. Hence, this case does not provide any assistance to the petitioner. In the next case quoted by the learned Counsel for the LIC - II (2003) CPJ 108 (NC), the lapsed policy was revived in January 1992 after making due payment and insured dies in April 1992 due to Tuberculosis. LIC repudiated the claim on the ground that the deceased concealed information about his suffering from TB at the time of renewal of the policy. At the time of the renewal the deceased replied in negative to the questions - Are you suffering from Asthma, Tuberculosis or any other disease of lungs. The National Commission allowed the appeal of the LIC as this was a wilful concealment of information while filling the form on 16.11.1991. Again this case is distinguishable from the case in hand for obvious reasons. The

death had taken place shortly after the policy was renewed. It is a common knowledge that TB does not become a full blown disease over night.

9. THE ratio of the judgment quoted by the learned Counsel for the Revision Petitioner i.e. IV (2003) CPJ 16 (NC) squarely covers this case. An extract of the decision of the National Commission is reproduced below : "Petitioner was the opposite party before the District Forum on a complaint filed by the respondent, widow of the insured. Her claim under insurance policy was repudiated on the ground that the insured had concealed her illness before taking the policy. However, it had been recorded by the State Commission that insurance was accepted only after insured was thoroughly examined by the Doctor of the Insurance Company itself and moreover reliance by the Insurance Company has been placed on the report of Dr Praveen Nehar, it is recorded by the State Commission that neither there is any affidavit of Dr. Parveen Nehar nor any prescription slip has been produced for any treatment even by Dr. Parveen Nehar, State Commission, therefore, did not rely on the report that the insured, husband of the respondent, was suffering from any illness which is stated to be concealed. In the circumstances, we do not find any merit in the revision petition. It is dismissed."

10. IN view of the aforesaid reasons, we hereby allow the revision petition and set aside the order of the State Commission and confirm the order of the District Forum. The respondent shall pay Rs. 5,000 as costs to the revision petitioner. Revision Petition allowed.

