(2004) 03 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

L.I.C. Of India — APPELLANT

Vs

DEVI KAMAKSHI — RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Citation : 2004 3 CPR 372 : 2004 4 CPJ 683

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

Final Decision : Appeal allowed

Judgement

1. THE opposite parties-Life Insurance Corporation of India are the appellants. THE complainant''s husband had insured himself for a sum of Rs. 3,00,000/- on 26.6.1995. He died on 5.11.1997. THErefore, the complainant made a claim to the Insurance Company which repudiated the claim on the ground that there was suppression of material facts and hence they cannot accept the claim. Aggrieved by the same, the complainant has preferred the complaint.

2. THE opposite parties contended that the complainant''s husand was suffering from brain tumour and suppressing the said fact he had taken up the insurance policy and in the declaration form he has stated that he was not suffering from any disease and that he was keeping good health which was contrary to the facts and since there has been a wilful suppression of material facts, it was rightly repudiated by the Corporation and, therefore, the complainant is not entitled to any amount. The lower Forum, however, rejected the opposite parties'' defence and ordered for payment of the amount due under the policy with a compensation of Rs. 5,000/- towards mental agony and cost of Rs. 500/-. Hence the present appeal.

The contract of insurance is one firmly based upon good faith. If there has been any wilful or fraudulent suppression of material facts concerning one''s health, then, the above suppression would affect the very root of the contract and render it nugatory. According to the opposite parties, the complainant''s husband was suffering from brain tumour and he has suppressed the same and had obtained the policy and, therefore, the contract is void. The complainant''s

husband, as the proposer, has signed Ex. B-3, where at the relevant columns under the head personal history, he has answered the questions (a) to (i) in the negative and has further stated that he has been keeping good health. One of the questions raised is as follows: "Are you suffering from or have you ever suffered from ailments pertaining to liver, stomach, heart, lungs, kidney, brain or nervous system?" The other question in the personal history is "During the last 5 years did you consult a Medical Practitioner for any ailment requiring treatment for more than a week?" "Have you ever been admitted to any Hospital or Nursing Home for general checkup, observation, treatment or operation?" Both were answered in the negative. He has also signed a declaration to the effect that the statements and answers given to the questions have been given by him after reading the questions carefully and that they are true. The date of commencement of the policy is 26.6.1995. The date of its acceptance is 31.8.1995. The policy is for a sum of Rs. 3 lakhs. The death of the insured was on 5.11.1997. Ex. A-4 is the certificate issued by Dr. R. Sundarajan, Neuro-Surgeon of Trichy wherein he has stated as follows: "...I had asked him to take CT Scan of the brain as I had suspected brain tumour. ..... The scan showed features of Left more than Right Cerebellar Tumour with obstructive hydrocephalus. I had explained the nature of illness that he had brain tumour which may need surgery. I had advised him to get MRI Scan Brain at Vijaya Health Centre, Madras, as a pre-operative procedure. He did not consult me subsequently. This information provided above has been taken out of the out-patient records maintained by me, his out-patient reference No. being N/7804. This is dated 28.5.1998. This document is produced by the complainant herself. Ex. A-6 is the certificate of the employer issued in the printed form of LIC wherein it is found under Column 2(b)(ii) as "Symptoms complained of: (b) (ii) Brain Tumour". Again, it is stated that "from 14.8.1995 to 15.10.1997" he was on "Extraordinary Leave on Loss of Pay" "due to tumour on medical grounds" and "the doctors opinion given to us". This is countersigned by one Mr. R. Venkatesh, Company Secretary of M/s. Cethar Vessels Ltd., in which the complainant''s husband was employed. In Ex. A-6 another such form is which says that the complainant''s husband was on leave from 14.8.1995 to 15.10.1997 when he was on "Extraordinary leave on Loss of Pay" "Due to Tumour on Medical Grounds", "From 2.5.1995 to 5.5.1995 Sick Leave", "from 16.6.1995 to 23.6.1995 Sick Leave". Exs. A-7 is the receipt for payment of Rs. 1,800/- for the CT Scan. Ex. A-8 is the medical history sheet issued by Prof. S. Kalyanaraman. It is dated 1.12.1995. It refers to "Frequent attacks of occipital headache 3 months ago with vomiting, slurring of speech and blurred vision. Seen by Prof. Rajagopal, MCh. (Neuro). CT Scan revealed possibility of? Low grade gliuma and? Medulloblastoma. Under GA right V.P. shunt done on Aug 15th, 1995. Feels better now. Has pain in occipital region during sneezing, coughing and laughing." "Mild enhancing catcified mask lesion involving the cerebellum more on the midline with fourth ventricle impression and obstructive hydrocephalus and suprateatorial hesitation suggest (a) Low grade gliuma (b) Medulloblastoma. 11/95 Repeat Scan?. Ex. A-9 is the report dated 20th July, 1996 where it refers

to previous studies dated 25.7.1995, 2.11.1995 and 25.12.1995 mentioning that the "previous study showed features of posterior fossa tumour (Vermian Glioma, operated and with suspected residual lesion in the last scan)". It further mentions that the "study confirms presence of heterogeneous, non-calcified, predominantly cystic lesion with solid enhancing areas and measuring about 5.7 x 5.2. cms. There is mild surrounding oedema. The coronal scans show extension of the tumour uptil the tentorial edge. The fourth ventricle is compressed. The ventricular shunt tube is in position and is seen to be functioning well. The lateral and third ventricles appear collapsed. There is no midline displacement. The sylvian fissures are fairly visualized. There is no extradural, subdural or intracerebral haematoma or collection". "The Presence of Probable Recurrent Tumour in the Vermian Region Extending Superiorly up to the Tentorium." Ex. A-10 is the prescription given by Dr. S. Vanchilingam, Head of Department of Neurology, T.M.C. Hospital, Thanjavur where he has diagnosed as "Posters fuses lesion". Ex. A-11 is the medical report from voluntary health services. It also says that "CT Scan brain plain and contrast done shows a heterogeneous irregularly enhancing vermain lesion causing compression of the fourth ventricle. Shunt tube in situ." Ex. A-14 series is the scan report taken on 25.7.1995. The complainant has also produced other documents from K.R.A Hospital, Thanjavur which shows that the diagnosis as "Glioma cerebellum". Ex. A14 is a certificate issued by Dr. V.K. Rajagopal of Thanjavur stating that the deceased "was referred to me as a case of Brain Tumour. C.T. Scan showed Rt. cerebellar tumour with hydrocephalus. Preliminary V.T. Shunt was done. He was advised definitive surgery in posterior fossa. Subsequently he did not turn up for definitive surgery.

3. THE complainant thus has produced documents which show that her husband was suffering from brain disorder even on the date when he submitted his proposal on 26.6.1995. Suppressing the above facts the complainant''s husband has gone ahead to insure his life for a sum of Rs. 3 lakhs. He had been having the attack of occupital headache, slurring of speech and blurred vision. It was diagnosed as brain tumour and as hunt was fixed. THErefore, on the date when he submitted his proposal, definitely he ought to have been suffering from brain disorder. THE nature of diagnosis and symptoms noted would all go to show that it is not a disease that would have set in suddenly or after the submitting of the proposal form. He must have been suffering from such a disease even on the date when he submitted the proposal form. THErefore, it is clear that there has been a wilful suppression of material facts. THE insurability of a person is the basis. If being a case of brain disorder, it will not be possible for one to come to know about it from a mere look at him. THErefore, the contention of the complainant''s Counsel that if he had brain tumour, the complainant would not have married, is not a valid contention. Suppressing the illness, the deceased has chosen to marry the complainant. THE marriage had taken place on 8.6.1995. On that date definitely he had brain disorder. Unfortunately, suppressing the same, he has married the complainant and has wrecked her life as well. Thus this is a case where there has been a suppression of material facts

by the complainant''s husband. This material fact concerns the health condition and the insurability of the insured. By suppressing the truth and giving false answers, he has persuaded the opposite party to accept his proposal and, therefore, the contract of insurance entered into in this case is founded not upon good faith but upon fraudulent suppression of truth. THErefore, it is a contract which is void ab initio and has no binding effect upon the opposite party. THErefore, the opposite parties were justified in repudiating the claim. In the circumstances, the order of the lower Forum cannot be accepted or upheld. THErefore, we are of the view that the order passed by the lower Forum deserves to be set aside. In the result, this appeal is allowed but in the circumstances, without costs, setting aside the order of the lower Forum. The complaint will stand dismissed without costs. Appeal allowed.

