(2015) 03 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

Case No : NO 3227 of 2013

LIC OF INDIA — APPELLANT

Vs

GULAB SINGH CHAUHAN — RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2015 3 CPJ 194

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Mohinder Singh, Satya Prakash Sharma

Judgement

1. Learned counsel for the parties present. Arguments heard.

2. The complaint was filed by Shri Gulab Singh Chauhan. His wife, Smt. Basanta Devi obtained two insurance policies of Rs. 1 lakh each. The complainant was the nominee in both the policies. For the first policy, the proposal was made on 9.6.2010 but the policy was issued w.e.f. 28.4.2010. For the second policy, the proposal was made on 18.9.2010 and the policy was issued w.e.f. 18.7.2010. Unfortunately, Smt. Basanta Devi, the insured, passed away on 7.11.2010. The claim made was rejected by the LIC on 31.12.2011 on the ground that insured was suffering from pre-existing illness of cancer on the date of proposal.

3. The District Forum allowed the complaint filed by the complainant. The District Forum directed the opposite party/insurance company to pay Rs. 1 lakh each alongwith consequential benefits to the applicant/complainant within two months from the date of order and interest @9% as damages to the complainant. The appeal filed by the opposite party/insurance company was dismissed by the State Commission.

4. The petitioner/LIC has filed pathological report from Lal Path Labs. The date of receipt is mentioned as 29.5.2010 and date of reporting is mentioned as 2.6.2010, which is reproduced as hereinunder: "SPECIMEN: Ulcer, lesser curvature of stomach below GE junction, endoscopic biopsy CLINICAL HISTORY:

GROSS: Received 4 grey brown to light brown soft tissue bits measuring 0.1-0.3 cms [Entire tissue : 86626] IMPRESSION : Ulcer, lesser curvature of stomach below GE junction, endoscopic biopsy : Positive for malignancy. Suggested possibilities include :

1. High grade Non-Hodgkin''s Lymphoma

2. Undifferentiated carcinoma ADVISED: Immunohistochemistry viz. CK & LCA for definite typing."

5. Learned counsel for the petitioner did not pick up a conflict with this document of infinite importance. He further submits that till now the insured did not have the knowledge that she was suffering from Cancer and the report did not specifically mention that she was suffering from Cancer. Again, the report mentions the name of ''Basanti'' instead of ''Basanta''

6. There is another report from Lal Path Labs dated 18.6.2010, which is reproduced as under: Interpretation: CD 45 (LCA): CD 45 designates a family of glycoproteins expressed only by hematopoietic cells. It is specific for both benign and malignant lymphoid cells. T & B cell zones of lymph nodes react with LCA. Mast cells also stain well. LCA does not stain magakaryocytes, erythroid cells, normal myeloid cells or non-hematopoietic cells. The reactivity of LCA in Lympohomas is as follows:

95% of Non Hodgkins lymphoma 80% of Lymphoblastic lymphoma 70% of Anaplastic large cell lymphoma Cytokeratin (CK) is used as a marker of epithelial differentiation showing positive granular cytoplasmic staining in all epithlical tumors. At least 20 well defined subclasses of keratins have been identified for scanning purposes, several of these antibodies are combined in the form of cocktails. Most of the tumors of endodermal, neuroectodermal, mesenchymal or germ cell derivation with epithelial differentiation stain positive with keratins. Positivity is also seen in Synoval sarcoma, Epithelioid sarcoma and Uterine smooth muscle tumors.

The impression is based on the material submitted, it is not a complete surgical pathology report.

False negative IHC results due to inadequate fixation of the material sent for evaluation cannot be excluded."

7. Learned counsel for the petitioner did not pick up a dispute with this report as well. There is report dated 22.06.2010 from Bhagwan Mahaveer Cancer Hospital & Research Centre consisting of two pages.

8. The submission made by learned counsel for the complainant/ respondent was that the complainant came to know about this fact only on 18.6.2010. This is clear that despite that, the insured had applied for insurance policy on 9.6.2010 and 18.09.2010. The learned counsel vehemently argued that the insurance company has failed to prove that at the time of 9 th June, 2010, the complainant

was aware that she is suffering from Cancer.

9. We are unable to locate substance in these arguments. It is strange that in this country when the doctor threatens the patient that he or she is suffering from very serious ailment and his/her death is imminent, he or she immediately rushes to have insurance policy. The insured has no qualms to tell the untruth before the insurance policy. First of all, it is not understood why the date of issue was written as 28.04.2010. This itself casts a flim of doubt over the bona fides of the complainant and his wife. Secondly, it was not explained as to what necessitated the insured person to get the test conducted from Lal Path Labs. A normal person does not go for a check up with the Lal Path Lab. The persons always go to Lal Path laboratory when they have the apprehensions of some ailment. However, the report was received on 2.6.2010 i.e. prior to the making proposal. In case the insured does not want to know what is the result of the report than the omission to that effect is deliberate for which her husband cannot take that plea before the Commission. Moreover, after 9 days as according to complainant it transpired that she was suffering from Cancer. Since 2.6.2010 or earlier to that, or even after that they should have informed the matter to the insurance company to prove their bona fides. Where is the good faith?

10. This view finds support from the judgment of the Apex Court in Satwant Kaur Sandhu IV (2009) CPJ 8 (SC) in Paras 12, 13, 17 & wherein it was held: "12.. .... Nonetheless, it is a contract of insurance falling in the category of contract ''uberrimae fidei'', meaning, ''a contract of utmost good faith, on the part of the assured''. Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment. (See: Joel Vs. Law Union & Crown Ins. Co. [1908] 2 K.B. 863).

13. In United India Insurance Co. Ltd. Vs. M.K.J. Corporation, III (1996) CPJ 8 (SC)=(1996) 6 SCC 428, this Court has observed that it is a fundamental principle of insurance law that utmost faith must be observed by the contracting parties. Good faith forbids either party from non-disclosure of the facts which the party privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. (Also see: Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd., II (2000) SLT 323 = I (2000) CPJ 1 (SC) = (2000) 2 SCC 734). 17. The term "material fact" is not defined in the Act and, therefore, it has been understood and explained by the courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which

goes to the root of the Contract of Insurance and has a bearing on the risk involved would be "material".

18. As stated in Pollock and Mulla''s Indian Contract and Specific Relief Acts, any fact the knowledge or ignorance of which would materially influence an insurer in making the contract or in estimating the degree and character of risks in fixing the rate of premium is a material fact".

20. The upshot of the entire discussion is that in a Contract of Insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasis that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a Contract of Insurance." In Carter v. Boehm (1558-1774) All ER Rep. 183 Lord Mansfield had succinctly summarized the principles necessitating a duty of disclosure by the assured, in the following words: "Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured policy; the underwriter trusts his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstances does not exist. The keeping back of such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is void; because the risqu? run is really different from the risque understood and intended to be run at the time of the agreement..... The policy would be equally void against the underwriter if he concealed.... Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary."

11. This view further finds support from the Supreme court authority reported in P. C. Chacko and another vs. Chairman, Life Insurance Corporation of India and Ors., civil appeal No. 5322 of 2007 decided on 20.11.2007.

12. Consequently, we hereby set aside the order passed by the fora below and dismiss the complaint filed in respect of one policy, the proposal of which was given on 9.6.2010. However, it is made clear that petitioner/insurance company has not repudiated the claim in respect of another insurance policy for which the proposal was made on 18.9.2010. No repudiation letter has been produced. The policy in this respect was issued on 18.6.2010.

13. The insurance company is given liberty to go through the claim in this respect, explain the delay and decide the matter within 30 days from the date of receipt of a copy of this order.

14. The revision petition stands disposed of.