(2004) 09 NCDRC CK 0093

In the National Consumer Disputes Redressal Commission

LIC OF INDIA — APPELLANT

Vs

Joginder Kaur — RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Citation : 2005 1 CPC 52 : 2005 2 CLT 299 : 2005 2 CPJ 78

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Revision Petition dismissed

Judgement

1. THE grievance of the LIC in this revision is that the proposal form to get the deceased insured contained incorrect facts and the proposer was guilty of concealment of material facts to attract the forfeiture clause of the insurance policy.

2. THE facts in brief are that the deceased Sh. Bachan Singh had taken the policy for a sum of Rs. 1.00 lakh in the year 1997. He died on 23.8.1998 leaving behind the complainant his widow and other complainant Nos. 2, 3 and 4 as legal class I heirs. THE complainant widow filed a claim. It was repudiated vide letter dated 23.1.1999. As the insurance policy was subject matter as collateral security was given to LIC Housing Finance Ltd. - respondent No. 5 which had also been made a party. The LIC contested the matter, inter alia, on the ground that while submitting the proposal form for getting the policy, the insured had not correctly stated about his state of health as at that time he suffered from diabetes mellitus and he was chronic alcoholic and he had an attack of jaundice. He was suffering from ascetics, septicemia, NIDDM, Portal hypertension, etc. He had concealed the material facts regarding his health and did not disclose them in his proposal form and made fake statements deliberately and, as such, his claim was rightly rejected.

The LIC Housing Finance Ltd. claimed that Sh. Bachan Singh and his wife Smt. Joginder Kaur had taken housing loan of Rs. 2.00 lakhs against their property and Sh. Bachan Singh had also assigned the said policy as beneficiary owner and his rights, title, interest in the said policy also were in favour of the O.P. No. 2

and as such if any amount of the policy was payable. O.P. No. 2 was liable to the same as the insured had taken Rs. 1.73 lakhs out of sanctioned mortgage loan of Rs. 2.00 lakhs.

3. THE District Forum, Jalandhar after examining the evidence dismissed the complaint. However, feeling aggrieved the complainant filed an appeal. It was allowed and LIC was directed to pay the claimed amount of Rs. 1.00 lakh with interest @ 9% along with cost of Rs. 2,000/-.

4. FEELING aggrieved by the order of the State Commission, the present revision petition has been filed by the LIC. The petitioner sought to justify the repudiation on the ground that on investigation, it was found that the deceased was a chronic alcoholic for the last 15 years and was afflicted with diabetes mellitus for 13 years and had also a past history of jaundice in 1973 which were revealed from the statement of the doctor who attended the accused before his death. He, however, did not disclose these facts in the proposal form and instead had given false statements, which were in violation of the terms and conditions of the policy. That proposal was submitted on 30.8.1997 i.e., less than a year before the date of death. It was a clear case where suppression of material particulars in the form of concealment with fraudulent intent was writ large. Having heard the parties'' Counsel and having gone through the records, it appears that the revision petition is based more on observations of the District Forum than on the evidence led by the petitioner. Insofar as the date of death is concerned, this is not in dispute.

5. IT is a settled law that in case the petitioner suppresses any proof, concealment of any material, it adversely affects the policy and the onus to prove material concealment lies on the insurer (see LIC of India v. Smt. Promila Malhotra, I (2004) CPJ 91 (NC). LIC of India v. Mohinder Kumar, II (2003) CPJ 30 (NC). The concealment must relate to material matter or facts; it must be in the knowledge of the maker of such statement and further the statement was intentionally made with an idea to defraud (See New India Assurance Co. Ltd. & Ors. v. P.P. Khanna, II (1997) CPJ 1 (NC)=1997 (2) CPR 21.

6. NO affidavit of any doctor who had treated him earlier was produced nor any other material piece of evidence had been produced to support the contention of the petitioner except opinions and inferences based on surmises. Even the investigation report has not been produced though the matter was not investigaed. It is contended that record of Dayanand Medical Hospital wherefrom the deceased got the treatment and O.P. NO. 1 had collected death certificate, etc. has allegedly proved that the deceased was admitted on 16.8.1998 in Dayanand Medical Hospital. In this light, in absence of any evidence except filing the proposal form, etc. in the face of affidavits of Surinder Kaur, Inderjeet Kaur and Swaran Singh it is not possible to hold that the deceased was alcoholic. He got study award in his education. Simple allegations made by the petitioner that the deceased was alcoholic; was suffering from diabetes mellitus, and jaundice, etc. would not be sufficient. The unproved case history recorded by some person

on the date of admission of Sh. Bachan Singh, the deceased, would not be cogent and convincing evidence to repudiate the claim unless it was coupled with medical report for the treatment prior to submission of the proposal form. As regard the other case, it may further be mentioned that in respect of provisions of Section 45 of the Insurance Act, 1938, the other case was decided in favour of the complainants. But the policy could not be called in question in that case in view of the period of policy. But that is not the case here.

Annexures Q. 3 and Q. 4 relied upon by the petitioner was rightly not found cogent and reliable as it was not brought on record as were who treated the deceased patient before he was admitted in the hospital. It has also not been proved that the patient had brought any letter from any doctor at the time of admission and that doctor was examined to prove his previous ailment to justify the submission that wrong statement was made by the deceased.

7. WITHOUT there being any proof supported with cogent and reliable evidence, this Commission would not be justified in interfering in the impugned order just on the basis of surmises. For the aforesaid reasons, we do not find any force in this revision petition and it is dismissed accordingly. R.P. dismissed.