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(2003) 02 NCDRC CK 0094

In the National Consumer Disputes Redressal Commission

L.I.C. Of India APPELLANT

Vs

MOHINDER KAUR RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Citation : 2003 2 CPJ 30

Hon'ble Judges : J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni , K.S.Gupta J.

Final Decision : Revision Petition dismissed

Judgement

1. PETITIONER was the opposite party before the District Forum where the respondent-complainant had filed a complaint alleging deficiency in service on the part of the petitioner. District Forum dismissed the complaint, but on appeal being filed by the complainant, the State Commission allowed the appeal as also the complaint. It is against this order that petitioner Insurance Company has filed this revision petition.

2. BRIEFLY, the facts of the case are that the late husband of the respondent/ complainant had obtained a life insurance policy from the petitioner, which was issued on 30.11.1995 with a commencement date mentioned as 28.8.1995. When unfortunately the insured died on 3.3.1996 and upon a claim being preferred by the complainant who was the nominee as per insurance Policy - it was repudiated on the ground that at the time of taking policy the insured had concealed information on the existing ailments like cirrhosis of lever and diabetic mellitus. It is in these circumstances that the respondent before us, filed a complaint before District Forum who after hearing the parties and material produced dismissed the complaint holding, the ''repudiation'' in order. On an appeal filed by the complainant, the State Commission allowed both the appeal and the complaint, hence this petition by the revision petitioner. Upon issue of notice to the respondent/complainant a reply was filed rebutting grounds of revision. It is argued by the learned Counsel for the petitioner that as per investigations carried out by the petitioner, the insured was suffering from cirrhosis of lever and diabetic mellitus which he concealed while filing the form.

As per record obtained from the doctor who treated the insured on January, 1996 based on information given by the wife of the insured (complainant in this case), the insured has these problems. The insured died of heart failure within six months of taking the policy. Cirrhosis of lever and diabetic mellitus do not appear so soon to hasten the end. As per medical literature there is a direct nexus between these ailments and heart failure. District Forum was correct in arriving at the conclusion, it did. State Commission erred on two counts, one that no post-mortem was done to ascertain the cause of the death and two, that the insured had mentioned in the application form for obtaining the policy that he takes liquor in smaller quantity, and two that the nexus between the cause of death and the disease has not been established. On the other hand it was argued by the amicus curiae appointed by this Commission that in fact there has been no concealment of any information. Whatever information was required to be given and was within the knowledge of the insured, was given. He also drew our attention to Section 45 of the Insurance Act which prohibits repudiation on the grounds of concealment after two years of taking the policy. It was also his case that doctor whose certificate is relied upon to repudiate the case was not examined. He also reiterated the arguments as advanced by the complainant in the reply filed before the Commission. It was his case that the order of the State Commission is correct hence need to be upheld.

We heard the arguments and perused the material on record. There is no dispute that insurance policy was issued on 31.10.1995 effective 28.8.1995. Letter of repudiation was issued on 30.9.1997. Section 45 of the Insurance Act reads as follow : "No policy of life insurance effected before the commencement of the Act shall after the expiry of two years from the date of commencement of this Act and no policy of Life Insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in proposal for insurance or in any report of a medical officer or referee or friend or the insured on in any other document leading to issue of the policy was inaccurate or false unless the insurer shows that such statement (was on material matter or suppressed facts which it was material to disclose and that, it was fraudulently made) by the policy-holder and that the policy-holder knew at the time of making it that the statement was false (or that it suppressed facts which it was material to discloses) : Provided nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the term of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

3. WE also see that Hon''ble Supreme Court in Mithoo Lal Mayak v. LIC of India, AIR 1962 SC 814, laid down following three conditions for second part of applicability of Section 45 of Insurance Act. They were : (a) the statement must be on a material matter or must suppress facts, which it was material to disclose; (b) the suppression must be fraudulently made by the policy holder;

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and (c) the policy holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

In Lakshmi Insurance Co. Ltd. v. Bibi Padma Wati, AIR 1961 Punjab 253, it was laid down : "According to the provisions of Section 45 the insurance contract can be avoided on fraud, and charge of fraud, naturally requires a high degree of probability. It is well-known that fraud is odious and cannot be presumed. The Courts will not be satisfied with proof, which falls short of showing intentional misrepresentation was made with knowledge of perpetrating fraud."

4. THERE can be no dispute that repudiation letter was issued after expiry of two years from the date of insurance being effective i.e. 28.8.1995 hence exceeding the period mentioned in Section 45 of the Insurance Act. In order to avoid Section 45 or to circumvent the provisions of this section. ''Fraud'' had to be proved. What we see on record is a document signed by one Doctor containing reference to the insured having the said ailments. This document is not proved by any method nor supported by any affidavit leaving it at best, an unproved document. It is no doubt understood that evidentiary value of such a document is little, as the report of Dr. Hardev Singh was challenged at all Forums by the complainant. If fraud or deliberate withholding of information, which was within the knowledge of the insured, has to be made the ground of repudiation or revision petition before us, than this has neither been alleged much less proved by the petitioner. On this point of law alone, which goes against the petitioner, we must reject this revision petition as being devoid of merits. This revision petition is dismissed. Parties to bear their own costs. Revision Petition dismissed.

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