
(2002) 03 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

LIC OF INDIA

APPELLANT

Vs

NAVEEN DHINGRA

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Citation : 2003 0 CTJ 239 : 2003 1 CPR 54 : 2003 2 CLT 199 : 2003 2 CPC 285 : 2004 1 CPJ 88

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Revision Petition allowed

Judgement

1. THIS Revision Petition arises out of the order passed by the State Commission allowing the appeal against the order of the District Forum dismissing the complaint.

2. BRIEF facts of the case are that the deceased Ashok Dhingra had taken two insurance policies dated 28.1.1980 for Rs. 10,000/- and another one dated 28.7.1992 for Rs. 25,000/-. Both these policies lapsed in the year 1992 for non-payment of premium. These policies were got revived by the deceased on 8.9.1993 and 9.3.1994, the insured Ashok Dhingra died on 9.10.1994 and upon filing a claim in L.I.C., by his wife, it was repudiated on the ground that the insurer was suffering from liver disease and had suppressed information of his ailment at the time of revival of policies. It is in these circumstances that the complainant filed a complaint before the District Forum who after hearing both the parties dismissed the complaint while agreeing with the petitioner/respondent of the deceased having suppressed the fact of his ailment at the time of revival of the policy. On appeal being filed by the respondent/claimant, it was allowed and order of the District Forum was set aside on the ground that Section 45 of the Insurance Act favours the complainant. The petitioner not being satisfied with this order filed this revision petition before us. It was argued by the learned Counsel for the petitioner, Mr. Joy Basu that there is no denying the fact that the complainant had been in and out of Hospital, was frequently on sick leave and other leaves during 1992, 1993 and 1994 as per record of his

employer, which is also on record before this Commission : it is also not in dispute that at the time of revival of policies, a fresh form was filled in which the complainant denied his having any ailment. According to him the judgments relied upon by the State Commission deal with illness which were not within the knowledge of the insured. This is not the case here. Since the deceased knowingly suppressed the fact of illness the form filled in at the time of revival of policy, it is a violation of the terms of the policy. The State Commission erred on this fact arrived at an erroneous conclusion hence need to be set aside. The other side's plea is that the State Commission was right in holding that they are protected by Section 45 of the Insurance Act. Any information found to be incorrect after two years of taking the policy even while the policy is revived - does not prejudice the case of the complainant. For this he relied upon the judgment of the Hon'ble Supreme Court in Mithoolal Nayak v. LIC, AIR 1962 Supreme Court 814 (VU 9C 117)

We have gone through the material on record and heard the arguments and find only two points for determination.

3. FIRSTLY whether the deceased suppressed information of his ailment at the time of revival of the policy and secondly if it is so is he protected by Section 45 of the Insurance Act. From the material on record i.e. the leave record of the deceased issued by his employer, Canara Bank, go on to show that the deceased was on frequent periods of leave - sick leave - almost on a regular basis during 1992, 1993 and 1994. Enough prescriptions of the Doctor and the deceased's admission in Hospital are on record to establish and corroborate the fact that the deceased indeed was ailing at times requiring hospitalization. Record also shows that he replied in negative (NO) in his form for revival of policy dated 8.2.1993 to all the questions including "Have you ever suffered from any illness/decease requiring treatment for a week or more. Answer "No" is contradictory to his leave record and prescription on record. There is no doubt left in our mind that the deceased was having ailment on the day he filled in the policy revival form which information he suppressed at the time of filling the same. What we have to see now is its effect on the policy with context of Section 45 of the Insurance Act. Section 45 reads as under : Section 45 : No policy of life insurance effected before the commencement of this 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 proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter of 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 disclose : Provided that nothing in this section shall prevent the insurer from calling for proof of age any time if he is entitled to do so, and no policy shall be deemed to

be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

4. IT is not the case of the petitioner that he is trying to take advantage of any wrong/suppression of information at the time of taking the policy in 1980/1989. Had that been the case then his case which have been covered/protected by this section and also the citation referred to above. In cited case issue related to concealing the information at the time of taking the policy hence the Hon"ble Supreme Court held it in favour of the insured by affording protection to the insured under the provisions of Section 45 of the Insurance Act. Hon"ble Supreme Court in the same judgment also goes on to say : "We are relieved of the task of examining the legal position that would follow as a result of inaccurate statements made by the insured in the proposal form or the personal statement, etc. in a case where Section 45 does not apply and where averments made in the proposal form and in the personal statement are made the basis of the contract."

This Commission had dealt with such a situation in L.I.C. of India v. Smt. S. Vijya, I (1995) CPJ 122 (NC), wherein this Commission had held : "IT is evident that in the personal health statement submitted by the insured just prior to the revival of policy, he had suppressed the material facts concerning his health. As such, the repudiation of the policy by the Life Insurance Corporation was fully warranted and there has been no deficiency in service because of such a repudiation. In the result, this Revision Petition is allowed, the order of the State Commission is set aside and that of the District Forum is restored. There is no order as to costs."

The above discussions make it clear that the instant case not covered by Section 45 of the Insurance Act or the citation given. Insurance has been held to be a contract of utter good faith. In this case, in our view, the deceased knowingly gave incorrect information on the personal health in the personal statement in the revival of lapsed policy form. In our view the petitioner was right in repudiating the claim. The order of the State Commission cannot be sustained and is set aside, the order of the District Forum is restored. No orders on costs. Revision Petition allowed.