(2012) 05 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

LIC OF INDIA APPELLANT

Vs

Yogender Mittal RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 286 : 2012 2 CPJ 556

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : petition is allowed

Judgement

1. LIFE Insurance Corporation of India (hereinafter referred to as the ''Petitioner '') has filed this revision petition being aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the ''State Commission '') in Appeal No.823/2002 decided in favour of Dr.Yogender Mittal, Respondent herein who was the original complainant before the District Forum.

2. THE facts of the case according to the Respondent/Complainant are that he had taken a policy known as "Ashadeep Policy " with profit (accident benefit) from the Petitioner/Insurance Company and the date of risk was 28.10.1993 with date of maturity being 28.10.2018. The sum assured under the said policy was Rs.1 lakh and the annual premium was Rs.4,939/-. On 12.12.1994, Respondent/ Complainant was diagnosed as a case of Cancer in the Right Pyriformtossa by Tata Memorial Hospital and he lodged a claim under Benefit (B) of the Policy Schedule. Petitioner/Insurance Company repudiated the claim on the grounds that as per provisions of Benefit (B) of the Policy Schedule, no such claim could be entertained if the disease occurs within a period of one year of taking the insurance policy. According to the Respondent/Complainant the claim was wrongly repudiated because the date of risk as mentioned in the policy was 28.10.1993 and he was diagnosed with Cancer on 12.12.1994 i.e. after the expiry of one year from the date of risk. Therefore, being aggrieved by the repudiation of his claim, Respondent filed a complaint before the District Forum and requested that Petitioner/Insurance Company be directed to pay him 50% of

the sum assured i.e. Rs.50,000/- along with interest @ 24% from the date of claim till realization, balance 50% of the sum assured along with vested bonuses, payment of 10% of the sum assured every year till the maturity of the policy along with interest @ 24% per annum from the date of due date of payment till realization, waiver of future premiums, Rs.1 lakh as damages for mental agony and harassment, litigation cost and any other relief which may be deemed appropriate. The above contentions were denied by the Petitioner/Insurance Company who stated that since the insurance proposal was accepted only on 15.01.1994 and not on 28.10.1993 as contended by the Respondent, the policy would be valid from 15.01.1994 and because the life assured was diagnosed as suffering from Cancer on 12.12.1994 i.e. within one year from that date, the exclusion clause of one year is attracted and Respondent is not entitled to any relief in terms of Benefit (B) of the Policy Schedule.

3. THE District Forum after hearing both parties allowed the complaint and directed the Petitioner/Insurance Company to pay the Respondent 50% of the sum assured i.e. Rs.50,000/- along with interest @ 12% per annum from three months of the filing of the claim till realization and 10% of the assured sum every year commencing from the policy anniversary. An amount of Rs.1,000/- was awarded as litigation costs.

4. AGGRIEVED by this order, Petitioner/Insurance Company filed an appeal before the State Commission which dismissed the same by observing as follows: "According to the appellant, the case of the respondent falls within the Exclusion clause 11-A(I) of the terms and conditions of the policy as the first premium receipt and acceptance letter was not sent to the appellant. However, close perusal of the Policy shows that it was specifically mentioned in the schedule that the date of risk would be from 28th October, 1993 and as such the date of risk has to be taken as commencement of the policy because in para 11 A it is clearly mentioned that benefit under clause B of the policy schedule is not applicable if any of the condition mentioned in para 11(b) occurs at any time or after the date on which risk under this policy is commenced but before the expiry of one year reckoned from the date of the policy. The said clause reads as under:- "Payment of an amount equal to 10% of the sum assured every year, commencing from the policy anniversary falling on or immediately after the date of eligibility for Benefit (B) and ending with the policy anniversary preceding the stipulated date of maturity or the date of death of the life assured whichever is earlier. "

However, the plea of the counsel of the appellant that risk on life is not covered irrespective of the back date of instruction does not hold water in terms of the date of the risk as mentioned in Clause 11 (B). "

Hence, the present revision petition. Counsel for both parties made oral submissions. Counsel for Petitioner while admitting that Respondent had taken the "Ashadeep Policy " stated that the Respondent had filled up the insurance proposal form on 13.11.1993 with a request to get the policy to commence from 28.10.1993. The proposal was examined and there was a requirement of an ECG which was made available on 20.12.1993 and thereafter following payment of first premium on 15.01.1994 by the Respondent, the Policy was issued on 25.02.1994. Since the Respondent was diagnosed with Cancer on 12.12.1994 i.e. within one year of the issuance of the Policy, the claim was rightly repudiated as per the exclusion clause 11(A) of the Policy and therefore, Benefit (B) of the Policy Schedule is not applicable if. Counsel for Petitioner relied on a judgment of the Hon ''ble Supreme Court in Life Insurance Corporation of India Vs. Dharamvir Anand - 1998(5) SCALE 584 where in respect of a similar clause, the Hon ''ble Apex Court had ruled that the date of the policy is interpreted to mean the date on which the policy was issued and not the date on which risk under the policy commenced by way of a back dated policy. Since the present case is squarely covered by the ratio laid down by the Hon ''ble Apex Court in the above case, the claim was rightly repudiated by taking the date of commencement of the policy as 15.01.1994. A similar view was again taken by the Hon ''ble Supreme Court in Life Insurance Corporation of India Vs. Maniram - JT 2005(&) SC 240.

5. COUNSEL for Respondent on the other hand reiterated that the Fora below had rightly interpreted that the Policy is to be reckoned from 28.10.1993 since in the policy document this has been stated in black and white. The contention of the Petitioner that the policy has to be reckoned from 15.01.1994 when the first premium receipt (FPR) was issued is not correct and no such receipt was sent to the Respondent. In any case, the date of receipt does not have any relevance when there is clear policy bound date from which the commencement of risk was to begin. The facts and circumstances of Dharamvir Anand (supra) are not applicable to the Respondent ''s case because in the instant case, Petitioner itself had concluded the contract and accepted in writing that the risk factor of the insurance policy will commence from 28.10.1993. Since the first year was completed on 27.10.1994 and the Cancer was detected for the first time on 12.12.1994 i.e. after one year of the commencement of the policy, the Respondent is entitled for Benefit (B) covered under the policy. Counsel for Respondent denied that the policy was back dated at Respondent ''s instance for purposes of income tax benefit.

6. WE have carefully considered the submissions made by the learned Counsel for both parties and have gone through the evidence on record including the judgments of the Hon ''ble Supreme Court cited by the Counsel for Petitioner. It is clear from the facts on record that the policy was approved and accepted after completion of various formalities and on receipt of the first premium on 15.01.1994 and not from 28.10.1993 from when the risk was covered. The Hon ''ble Supreme Court in Dharamvir Anand(supra) in a similar situation where two policy dates were involved had clearly ruled that the relevant date of the policy in respect of settling a claim would be the date on which the policy is issued and not the date on which the risk under the policy commences by way of back dated policy. Respectfully, following the above judgment of the Hon ''ble Supreme Court which is relevant in this case, we accept the Petitioner ''s contention that the date of policy commenced from 15.01.1994 (i.e. on completion of formalities and

payment of first premium) and the insuree was detected with Cancer on 12.12.1994 i.e. within one year of that date and therefore, as per Exclusion Clause 11(A) of the Policy, Benefit (B) will not be applicable. The Fora below erred in not appreciating this fact and we therefore, set aside their orders and dismiss the complaint. The revision petition is allowed with no order as to costs.