(2009) 01 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

LIFE INSURANCE CORP. OF INDIA APPELLANT

Vs

M.BHAVANI RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Citation : 2009 0 NCDRC 39 : 2009 1 CPJ 231

Hon'ble Judges : Ashok Bhan , B.K.Taimni J.

Advocate : S.P.Mittal , Kapil Sankhla

Judgement

1. LIFE Insurance Corporation of India (LIC) (hereinafter referred to as the petitioner for short) has filed this Revision Petition against Order dated 28.10.2004 of A.P. State Consumer Disputes Redressal Commission, Hyderabad (hereinafter referred to as the State Commission for short). By the impugned Order, the State Commission has upheld the Order of the District Consumer Disputes Redressal Forum-II, Hyderabad (hereinafter referred to as the District Forum for short). Shortly stated, the facts of the case are:-

2. LATE Shri S. Muralidharan had taken a Life Insurance Policy bearing No. 3640369345 in the sum of Rs.1,00,000/- and paid premium of Rs.662/- on 28.02.1990. The duration of the policy was 25 years. From May, 1990 to January, 1994, the amount of premium was made by deduction from his salary. For the period February, 1994 to May, 1995, the premium was paid through the Development Officer of LIC. Thereafter also, the premium amounts were paid regularly. He died on 18.07.1997. Complainant/respondent-wife of LATE Shri S. Muralidharan filed a claim application on 31.07.1997 which was rejected by the petitioner and it was intimated that at the time of renewal of the insurance policy in the year 1996, the deceased-husband of complainant, did not disclose that he was suffering from Malignant Brain Tumor. That the complainant was entitled to the paid-up value of the policy only upto the date of revival of the policy and not to the entire sum due under the policy. Complainant/respondent being aggrieved, filed the complaint before the District Forum seeking appropriate relief. Petitioner-opposite party filed its reply. It admitted the factum of insurance. It was stated

that the life insured died on 18.07.1997 on account of Malignant Brain Tumor and the secondary cause being a cardiac arrest. It was further stated that the insured had suppressed the fact of pre-existing decease. That in the enquiry conducted, it was revealed that he had availed medical leave and had taken medical treatment in NIMHANS, Bangalore for giddiness and was operated there in June, 1993. It was also stated that he was treated in Adayar Cancer Institute, Chennai from 04.06.1993 to 18.06.1995.

District Forum, taking into consideration the pleadings as well as the documents on record, held that there is deficiency of service on the part of the petitioner and, accordingly, directed the petitioner to jointly and severally pay the balance claim of Rs.84,333/- with interest @ 9% p.a. from 31.07.1997 till the date of payment besides costs of Rs.1,000/-.

3. PETITIONER being aggrieved filed an appeal before the State Commission. The State Commission dismissed the appeal holding that at the time of revival of the policy, no fresh declaration had been taken from the insured. That under the circumstances, it was difficult to come to the conclusion that the insured had suppressed the pre-existing disease with a fraudulent intention. Petitioner being aggrieved, filed this Revision Petition, which was admitted. Notice was ordered to be issued on 07.04.2005 for 06.01.2006. In spite of service, respondent did not put in appearance. Fresh notice was ordered for 09.10.2006. Even on the adjourned date of hearing, respondent did not put appearance. Notice was again issued on 01.12.2008 for 12.01.2009 but none has put in appearance for the respondent. Ordered to be proceeded ex-parte. Counsel for the petitioner has been heard at length.

4. AFTER expiry of the policy, if the party chooses to revive the contract of policy, then, the revival, in law is, clearly a fresh contract and a duty is cast on the insurer to file a fresh declaration. In the case of revival of policy, a fresh declaration is a must. State Commission is wrong in observing that no fresh declaration was taken from the deceased at the time of revival of the policy. Petitioner has annexed the declaration on 03.01.1996 given by the deceased while getting the policy revived. In this, the deceased had made the following declaration: - 1) I hereby declare that I am in good health and that I have not undergone nor have been advised to undergo any medical or surgical treatment or X-Ray, ECG, Pathological or other tests since the date of proposal or last revival to this date.

The State Commission has clearly erred in observing that fresh declaration was not taken from the deceased. The deceased, in the declaration, has not mentioned that he was suffering from Malignant Brain Tumor. Petitioner has put on record the certificate issued by Cancer Institute (W.I.A.), Regional Cancer Centre, Chennai dated 21.02.2002, which reads as under: - Mr. S. Muralidharan was a 32 year male, admitted to Cancer Institute on 10.7.1993, diagnosed as Malignant Astrocytoma in the left fronto parietal region. Before admission he has already undergone Craniotomy and decompression by resection of tumor elsewhere. In the Institute he received post operative radiotherapy to brain to a total dose of 5600cGy. Follow up CT scan of head on 15.12.93 did not show recurrence. His general condition remained good with mild residual weakness. Follow up CT scan done on 3.2.96, was suspicious of recurrence of the tumor. Recurrent lesion was considered inoperable and patient was started on chemotherapy on 5.2.96. He was treated with PCV regime (CCNO, Vincristine and Procarbazine). Patient received 6 cycles of above regimen until 17.6.1996. CT scan showed persistant tumor and chemotherapy was stopped. He was admitted at outside hospital on 6.2.97, due to seizures and vomiting. MRI done at this time showed multiple lesions. He underwent VP shunt on 11.2.97. His mental condition continued to deteriorate and he was advised only supportive care. He subsequently expired on 31.5.1997. The certificate issued by the Cancer Institute, Chennai clearly goes to show that the petitioner had undergone medical treatment for Malignant Brain Tumor in the year 1993 and, while getting the policy revived in the year 1993, deceased suppressed the fact that he was suffering from Malignant Brain Tumor. Declaration given by him while getting the policy revived was false. Deceased was clearly guilty of suppressing the pre-existing fatal disease from which he was suffering at the time of getting the policy revived. Suppression of pre-existing disease disentitles the claimant to the amount insured under the policy. The Orders passed by the State Commission as well as the District Forum run counter to the well-established principle that if a policy is taken or revived by suppressing pre-existing material fact like pre-existing disease, then, the insurance company is not liable to pay the amount insured under the policy. For the reasons stated above, the Orders passed by the State Commission as well as the District Forum are set aside and the complaint is ordered to be dismissed. No costs.

