
(2004) 01 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

Life Insurance Corpn. of India

APPELLANT

Vs

V. TAMIL SELVI

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Citation : 2005 2 CPJ 420 : 2005 2 CPR 361

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal dismissed

Judgement

1. THE opposite party viz., Divisional Manager and Branch Manager of Life Insurance Corporation of India are the appellants herein. THE complainant filed the complaint stating as follows: THE husband of the complainant one Vijayakumar was a resident of Puliyankurichi Village, in Attur Taluk. He had insured his life with the Life Insurance Corporation of India [LIC] for a sum of Rs. 1 lakh under policy No. 700354646. It is a policy under double benefit accident scheme commencing from 26.8.1994. THE premia due thereon were paid regularly. On 25.5.1995, the said Vijayakumar died at Sundar Surgical Nursing Home due to a dog bite. THE complainant made a claim to the opposite parties for the payment of the amount. THE Insurance Company paid a sum of Rs. 4,948/- by way of premia only along with the assure sum of Rs. 1 lakh. THEy did not pay the additional sum of Rs. 1 lakh under the double accident benefit scheme. THE opposite party wrote a letter asking for the actual date of dog bite and the reason for not reporting the matter to the police for which the complainant has sent reply. She had given the date of dog bite as 17.5.1995 and had also given reasons for not reporting to the police. Even after the receipt of the said letter, the opposite parties insisted upon the complainant to inform the exact date of dog bite. In spite of repeated requests and reminders, no action was taken by them. So, the complainant issued a notice through her Counsel on 19.7.1997 claiming the additional sum. THEREafter only a letter was received by the complainant to the effect that her claim has been rejected since the deceased was bitten by dog either on 8th/10th December, 1994 and not on 17.5.1995. Further, there is no provision in any law for reporting the dog bite to

the police. Thus, there is deficiency on the part of the opposite parties in rendering service and hence the complaint.

2. THE opposite parties filed their version pleading thus: THE deceased Vijayakumar had taken the policy on his own life for a sum of Rs. 1 lakh with accident benefit and the risk commenced from 26.8.1994. It was reported that the assured died on 25.5.1995 due to "Hydrophobia". THE claimant submitted the claim form on 23.6.1995. Since the policy has resulted into an early claim within a short period of 8 months and 29 days and as the sum assured was high in a sum of Rs. 1 lakh, investigation into the bona fides of the claim was conducted. THE investigation revealed that the deceased was bitten by a dog either on 8th or 10th December, 1994 and had taken some local treatment for the same. According to the policy conditions, the accident should have been caused outward violent and visible means and the injury should result in the death of life assured within 120 days of the incident. Also, the incident should be reported to the police and post-mortem should be conducted. But in this case, the accident viz., the incident of dog bite was not reported nor the death has resulted within 120 days of dog bite. It has occurred after 165 days from the date of dog bite. THE allegation of the complainant that the deceased was bitten by a dog only on 17.5.1995 is untenable. Hence in accordance with the policy conditions, the claim for basic sum assured viz., the sum of Rs. 1 lakh with the premium already paid plus interim bonus of Rs. 6,700/- less the unpaid premia, were all paid. THE claim for accident benefit was rightly repudiated. THERE is absolutely no deficiency in service. THERE is no cause of action for the complainant. The lower Forum accepted the case of the complainant and directed the opposite parties to pay sum of Rs. 1 lakh due under the double accident benefit scheme with interest at 12% from 1.8.1995. Hence this appeal.

At the outset, the averments made by the Counsel for the appellant that the dog bite has not been reported to the police and that post-mortem has not been done and, therefore, on that ground the opposite parties were justified in rejecting the claim, does not sound sufficient, for, it being a case of a person having been bitten by an animal being not an offence punishable under any of the sections of the Indian Penal Code or other penal laws and not being a crime, there is no necessity for reporting the matter to the police. Equally, there is no compulsion for conducting any autopsy on the victim.

3. THE moot point to be decided in this case is whether the death has resulted within 120 days of the dog bite. Because the policy conditions specify under condition No. 10(b) that "if the life assures shall sustain any injury resulting solely and directly from the accident caused by outward violent and visible means and such injury shall within 120 days of its occurrence solely, directly and independently of all other causes result in the death of the life assured", insurer shall "pay an additional sum equal to the sum assured under this policy". THEREfore, it becomes necessary to fix the date when the incident of dog bite took place. Unfortunately, the lower Forum had, in the course of its order,

adopted a method of one foot in the sea and one foot on the shore. For, the confusion the lower Forum suffered from, is patent from its observations. It has observed that "though the complainant has informed the opposite parties about the date of dog bite, she has not produced any proof or evidence to support her contention. A perusal of Ex. A-16 Xerox copy of medical report issued by Sundar Surgical Nursing Home, Attur, in which the policy holder has taken treatment before his death and Exhibit B4 Xerox copy of Medical attendant's certificate would go to show that the policy holder has taken treatment for 7 days in the said nursing home before his death. But from the above said documents, we cannot be able to know the exact date of the dog bite..... Hence, the contention of the complainant that the policy holder was bitten by the dog on 17.5.1995 i.e., 7 days before his death cannot be accepted. Further, the opposite parties have obtained a letter Exhibit B7 from the co-worker of the policy holder. A perusal of Exhibit B7 shows that the co-workers have given information to the effect that the policy holder A Vijayakumar was bitten by a dog in the last week of January, 1995... Considering the above said contradictory version of the complainant, we are not able to hold that the complainant has proved his contention that the dog bite has happened on 17.5.1995." Having stated so much, the lower Forum veers round to hold that the opposite parties have not produced any acceptable evidence and held that "considering the above facts and evidences, we hold that the death of the life assured has been taken place within 120 days from the date of dog bite." Thus having rejected the contention of the complainant and having definitely held that the dog bite did not take place on 17.5.1995 and, therefore, the complainant has not proved her contention, to say without any basis and material that the dog bite should have occurred within 120 days from the date of death of the assured, is really a finding and conclusion arrived at without any basis as though from the air. Though the lower Forum referred to the letter of the co-worker who has stated that the deceased policy holder was bitten by a dog in the last week of January, 1995, there is no reason given to reject that case. On the other hand the lower Forum has stated that it is not the case of the complainant that the deceased policy holder was bitten by the dog in the last week of January, 1995 and, therefore, the letter produced from the deceased Vijayakumar's co-worker cannot be enforced. When the lower Forum does not accept the complainant's case that the dog bite was on 17.5.1995, then it should have accepted the materials produced by the opposite parties LIC. THE complainant is said to have served as a teacher in Govindampalayam Government High School in Attur Taluk. It is also stated that he was an educated man and he was quite aware of the seriousness of dog bite. It is true that nothing prevented the complainant from producing an affidavit from the teachers employed in that institution or the villagers to say that the dog bite was only on 17.5.1995. LIC has urged in their repudiation that in their opinion the deceased died of Hydrophobia due to rabies sustained in a dog bite either on 8th or 10th December, 1994. It is argued that the complainant has not chosen to produce any affidavit from third parties to contradict the same. On the other hand, the case sheet shows that the deceased was admitted in Sundar Surgical Nursing

Home only on 25th where he died on the same day. Of course, it is also not the case of the complainant that he underwent native treatment at his village. From Ex. B-9 which is a certificate of identity and burial or cremation, it is stated under column 4(d) that the duration of illness was two weeks. Contract of insurance being a contract based upon good faith, if any of the conditions that are fundamental to the contract are breached, then, the entire contract would fail. Here, the question is whether the death had taken place not within 120 day of the dog bite. In Ex. B-2 which is the Xerox copy of the letter written by the complainant Tamil Selvi, it is stated that (Vernacular matter omitted)." THEse words (Vernacular matter omitted) have been inserted subsequently. In the relevant column in document marked as Ex. B-3, it is stated it is only a week prior to his death he reported that he was not well. In the medical attendant's certificate also it is stated that he was suffering from the disease for about 7 days before his death and symptoms that were found at the time of admission were "restlessness, shivering, Hydrophobia". THE certificate Ex. B-6 shows that the deceased did not avail of any medical treatment in the month of December 1994 to May, 1995; that he availed two days casual leave in January, 1995 and one day in February 1995; three days casual leave in March, 1995 and that he did not avail any casual leave during April 1995. THE certificate under Ex. B-7 is signed by one Ponmudi and one Dhanabal, Assistants, Government High School, Govindampalayam on 17.2.1997. It is to the effect that the deceased Vijayakumar told them that he was bitten by a dog in the course of the last week of January, 1995. THE death has taken place on 25.5.1995. If the certificate Ex.-7 is accepted, then that would mean that he was bitten by the dog in the last week of January, 1995 which may be any time from 24th January to 31st January, 1995 and still be within 120 days. We have already referred to the certificate given by the employer stating that the said Vijayakumar did not avail any leave in December 1994, but availed casual leave in January, 1995 on 21.1.1995 and on 27.1.1995 and Restricted Holiday on 16.2.1995 and three days of casual leave in March, 1995 and did not avail of any casual leave during April, 1995. He was also not under medical leave at any point of time during the period. The condition states that the injury should have been sustained and this injury caused must be by outward violent and visible means and such injury must have occurred within 120 days of the death of victim. Therefore, if we compute 120 days from 25.5.1995 the date of death, for the purpose of condition No. 10, the accident or injury should have been caused on or after 25th January 1995 or 27th January 1995, as the case may be. Their own certificate shows that they were informed by the deceased's wife that he was bitten by a dog in the last week of January 1995. In Ex. B-3 the complainant has stated that the deceased died of Rabies and he was unwell for a period of one week prior to the date of death. In the medical attendant's certificate, Ex. B-4, it is stated that it was observed about 7 days prior to the death. In the burial certificate, it is mentioned that the deceased was unwell for about two weeks prior to the date of death. If really the deceased was bitten by a dog infected with rabies in the month of December 1994, he could not have been in a position to attend the

school till April, 1995. Moreover, there is no medical evidence to show the disease of rabies would set in immediately on the date of dog bite or that it would take time for incubation and spread of virus to become apparent later. But normally we can take it that Hydrophobia cannot be a silent disease or a dormant one for nearly four months before ever becoming a killer. At the same time, it is true that the patient affected by a dog infected with rabies would not succumb to death immediately on the date of bite itself. Therefore, taking into consideration the circumstances, just as there is no evidence to show that the deceased was bitten by a dog on 17.5.1995, the contention of the LIC that he sustained the dog bite even in the month of December 1994 is somewhat far-fetched. On the other hand, their certificate itself would show that they were informed that the dog bite was in the course of the last week of January, 1995. Moreover, the fact that he has been attending school till April 1995 would go to show that he would not have been bitten by a dog in the course of the last week of January 1995, for, he would have by that time developed some symptoms and would not have been in a position to attend the classes. Therefore, it is clear that the dog bite had taken place within 120 days of his death, though, indeed from the materials placed by both sides we are not in position to pen the exact date with any accuracy. Therefore, though the lower Forum has rejected the case of the complainant and has failed to give proper reasons for holding that dog bite ought to have happened within 120 days of the death of the assured, still, on that ground, we cannot interfere, since, the conclusion arrived at otherwise in granting the relief to the party cannot be faulted with. The Consumer Protection Act is a benevolent legislation intended to provide cheaper and speedy relief to the consumers. Such relief should not be denied by placing too stringent construction of clauses or by insisting upon rigid proof of averments made in the complaint. Though it is true that LIC is vested with the monies of the public as a trustee, they have to safeguard and take all care and precaution before accepting a claim with a view to see that there is no unjust claim by persons. Still, at the same time, where we find that the claim appears to be a bona fide one and there is nothing to show that there is any tinge of doubt or suspicion, as far as possible, the claim should be honoured. Here in this case, the death is not a denied one. That the death was due to Hydrophobia is also not disputed. That the deceased was bitten by dog is also not disputed. It is when, that is the only doubt raised by LIC. When they themselves have produced records viz., certificates from the institution to show that the deceased, who was a teacher, was performing his duties in the months of January, February and March 1995, there is no reason why we should discard the claim merely because the complainant has failed to produce material before the Forum below to show the exact date of dog bite. That the complainant's husband was a teacher and he was hailing from village near Attur and that he was bitten by a dog while he was in his fields, is a submission made by the complainant which is not refuted. Therefore, in all probabilities, this occurrence of dog bite would not have been witnessed by third parties. If it had taken place in a public place, where there might have been people to witness it, in that case, it would have been possible

for the complainant to produce affidavits. Therefore, in such circumstances, we are of the view that the conclusion arrived at by the lower Forum and the resultant award passed by it cannot be termed as untenable or unsustainable in law. The grant of interest at 12% is rather high. Hence we shall reduce it to 9%.

4. CONSEQUENTLY, the appeal is dismissed but with modification that the interest ordered shall stand reduced to 9%. Considering the nature and the circumstances of the case, we direct that there will be no order as to costs. Appeal dismissed.