(2011) 05 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Life Insurance Corpn.of India — APPELLANT

Vs

Ashok Manocha — RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Citation : 2011 0 NCDRC 275 : 2011 3 CPJ 418 : 2011 3 CPR 23

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision petitions are dismissed

Judgement

1. THESE two revision petitions (R.P. No.10/2007 and RP No.11/2007) have been filed by the Life Insurance Corporation of India & another (hereinafter referred to as the Petitioners) being aggrieved by the order of the State Consumer Disputes Redressal Commission, Punjab(hereinafter referred to as the State Commission) in favour of Ashok Manocha and another, respectively (hereinafter referred to as the Respondents).

2. SINCE the facts and points of law involved are common in both cases, we propose to dispose of these revision petitions through a single order by taking into consideration the facts of Revision Petition No.10 of 2007. The facts of the case according to the Respondent, Ashok Manocha, are that his brother Pawan Kumar had purchased a life insurance policy on 28.06.2004 for a sum of Rs.2 lakhs under the Plan and Term 150-121 and the Respondent was his nominee in this policy. Unfortunately, Pawan Kumar died in an accident within a period of 4 months on 25.10.2004 and after his death Respondent filed a claim with Petitioner/Insurance Company as the nominee of the deceased, after completing all the required formalities and submitting the required documents. Petitioner/ Insurance Company repudiated the claim on 30.03.2005 on the grounds that deceased had concealed and suppressed material information regarding his health status because he was admitted in B.B.M.B. Hospital, Nangal on 13.03.2003 with congestive heart failure and non-insulin dependent diabetes mellitus. Respondent denied this contention and stated that cause of his death was the accident and not because of any pre-existing disease. Further there was

no affidavit filed in evidence of the doctor who attended the deceased and treated him to support Petitioners contention. Moreover, the deceased had been examined by doctors of Petitioner/Insurance Company at the time of taking the policy and the post-mortem also clearly indicated that his cause of death was not due to any heart problem. Respondent, therefore, filed a complaint before the District Forum on grounds of deficiency in service and requested that Petitioner be directed to pay him Rs.4 lakhs i.e. double the insured amount as per the terms of Policy along with interest @ 18% and Rs.10,000/- as costs.

Petitioner/Insurance Company have denied the contentions of the Respondent and stated that there is credible documentary evidence that the deceased had suffered from diabetes mellitus and heart problems which he did not disclose at the time of effecting the insurance and that a policy being a contractual agreement between an insuree and the insurer in utmost good faith, suppressing material information would entitle the insurer to reject the claim. The District Forum after hearing both parties and considering the evidence on record accepted the complaint on the grounds that there was no credible proof of the fact that the deceased Pawan Kumar was suffering from any disease as contended by the Petitioner/Insurance Company and the nexus between cause of death and the alleged illness was not established. The operative part of the order of the District Forum reads as follows: There is no evidence worth the name in the form of affidavit of some doctor to the effect that treatment was actually and factually taken from him by the insured. Nexus between the alleged illness of the insured and the cause of death has not at all been established. Admission of the insured on account of illness (which is alleged to have been suppressed by the insured from the insurer) was just for one day and the death of the insured in this case was not on account of that illness or any other illness but the death of the insured admittedly had taken place on account of accident and it is not the set up case of the O.P. that the illness with which the insured was allegedly suffering had contributed to his death. In view of the discussion made above, we reach the conclusion that repudiate of the claim made by the O.Ps. cannot be said to have been made in a proper and legal manner.

3. THE District Forum directed the Petitioner to settle the claim of the Respondent under the policy with interest @ 6% from the date when the claim was repudiated i.e. 30.08.2005 till the date of actual payment as well as Rs.1,000/- as costs. Aggrieved by this order, Petitioner/Insurance filed an appeal before the State Commission which upheld the order of the District forum and dismissed the appeal. Hence, the present revision petition. Counsel for both parties were present and made oral submissions. Counsel for Petitioner stated that the learned fora below erred in not appreciating the fact that the insuree had suppressed material facts pertaining to his health and this Commission as well as the Honble Supreme Court in its various judgments has held that the principle of uberrima fides(utmost good faith) applied in such cases and, therefore, withholding of material information or giving incorrect replies regarding the state of health makes the claim of the insuree liable for

repudiation. In the instant case, there is evidence from the reputed B.B.M.B. Hospital, Nangal that the deceased was admitted in that hospital with sudden difficulty in breathing and restlessness and the diagnosis arrived at the hospital clearly states that the insuree was a known case of cardiomyopathy, congestive heat failure and non-insulin dependent diabetes mellitus. Further, in the case summary, it was stated that the patient was already taking medicines for these problems. The certificate of hospital treatment and diagnosis was signed by one Dr.M.D.Sharda, SMO who is an M.D. in Medicine. On the other hand, it is in evidence that the Petitioner had replied in the negative as to whether he had diabetes, blood pressure etc. in the insurance proposal form. Counsel for Petitioner further contended that in fact, the Respondent had also filed a complaint before the Insurance Ombudsman following the repudiation of his claim which was also dismissed. Under the circumstances the claim was rightly repudiated.

4. COUNSEL for Respondent reiterated that in the absence of any affidavit of the doctor as well as any officer from the Petitioner/Insurance Company to prove the authenticity of the medical certificate, no reliance could be placed on it. On the other hand it is established by credible documentary evidence which was accepted by the fora below which are courts of fact, that insuree died as a result of an accident and there was no nexus whatsoever between insurees admission in the B.B.M.B. Hospital for one day and the cause of his death. At this point, counsel for Petitioner pointed out that it is not correct that no affidavit was filed by any officer of the Petitioner/Insurance Company. In fact, the affidavit of Shri H.K. Chaudhary, Manager(Legal) was on record before the District Forum wherein facts pertaining to insurees admission and treatment in the B.B.M.B, Hospital are clearly stated. This affidavit has also been acknowledged in Para 5 of the order of the District Forum, it is mentioned that on behalf of the Petitioner/Insurance Company the affidavit of H.K.Chaudhary, Manager(Legal) was tendered as evidence. This affidavit thus certified the authenticity of the certificate issued by the B.B.M.B. Hospital. We have heard learned counsel for both parties and have carefully gone through the records. The fact that an insurance policy was obtained by the deceased from the Insurance/Petitioner Company and his death as a result of an accident is not in dispute. The policy was repudiated by the Petitioner/Insurance Company on the grounds of suppression of material facts and therefore, what is required to be examined is the credibility and authenticity of the medical certificate indicating that the insuree was heart and diabetes patient at the time of his taking the insurance policy and that the policy could thus be repudiated on the grounds of suppression of material facts. In this connection, we note that the certificate of the hospital which has been submitted as evidence, does not have the seal of the doctor who had signed it. Further and more importantly, there is no affidavit of the said doctor nor of any officer of the Petitioner/Insurance Company to prove the authenticity of the medical treatment at B.B.M.B. Hospital as also the medical certificate issued thereafter. These apart from filing the written statement of H.K. Chaudhary, an officer of the Petitioner/

Insurance Company in support of its case, Petitioner/Insurance Company did not lead any other evidence in support of the contentions made in this statement. Counsel for Petitioner has contended that since the written statement was made in affidavit form, it should be taken as evidence which we are afraid, we cannot do. Written statements cannot be taken as evidence since the Respondent did not get an opportunity to cross-examine or challenge the same. It is well settled that pleadings cannot be held as evidence and in the absence of any evidence in support of the case set up, the certificate produced by the Petitioner from the hospital is of no help to the Petitioner because as stated above the Petitioner took no steps to prove the same; production of a document is different from proof of the same. In view of the above facts, we uphold the orders of the fora below that the insuree died as a result of an accident for which he was covered under the insurance policy. Therefore, the revision petitions are dismissed accordingly.

5. THE Petitioner/Insurance Company is directed to settle the claim of the Respondent under the policy with interest @ 6% from the date when the claim was repudiated i.e. 30.08.2005 till the date of actual payment as well as pay Rs.1,000/- to the Respondent as costs within six weeks.

