(2003) 02 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation — APPELLANT

Vs

HADAM LAL DHARMANIA — RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Citation : 2005 1 CPJ 45

Hon'ble Judges : M.Y.Kawoosa , ChVidya Sagar J.

Final Decision : Appeal disposed of

Judgement

1. THIS appeal is directed against the order dated 19.2.2002 passed by the DF by virtue of which DF has allowed the complaint and has directed the appellant/ O.P. to pay Rs. 50,000.00 being 50% of the assured amount with an amount equal to 10% of the assured amount from February 1996 till the date of maturity to the respondent/complainant. The appellant was further directed to waive of the premium after the operation till the date of maturity if covered under the policy. Rs. 2,000.00 were directed to be paid to the respondent as litigation charges.

2. SHORTLY put and shorn of details respondent who was complainant before the DF obtained Life Insurance (Accidental Policy) for Rs. 1.00 lac for 15 years commencing from 28.5.1993 to 28.5.2008. Respondent in January, 1996 developed some kidney problem. He got himself medically checked up from Jammu Doctors who referred him to Sir Ganga Ram Hospital, Rajinder Nagar, New Delhi. Delhi doctors examined the respondent and diagnosed that both the kidneys of the respondent had failed, advised transplant. On 18.4.1996 respondent was operated upon for kidney transplant and he was discharged on 19.5.1996. The respondent raised the claim with the O.P. i.e., appellant. O.P. took the stand that the kidney failure of the respondent was due to being diabetic patient for the last 13 years prior to the operation. According to the appellant respondent concealed the fact of being diabetic patient at the time of filing up of the Forum in the year 1993. In this ground claim was declined to be paid by the appellant. The respondent approached the DF with a complaint

wherein the appellants resisted the complaint only on this ground that the respondent had deliberately concealed his ailment of diabetes while filling up of form of insurance thus under Section 45 he was not entitled to the insured amount as claimed by him. Parties led evidence and certain documents also have been filed on the basis of which DF came to the conclusion to allow the complaint.

Appellant filed this appeal. Two preliminary objections have been raised by the Counsel for respondent No. 1 that the appellant has not deposited 25% of the awarded amount and secondly the appeal is barred by time.

3. WE have heard both the Counsels for the parties. WE are not convinced that the appeal be rejected on these grounds. Firstly because appellant has deposited Rs. 25,000/- as th of the awarded amount. Awarded amount is Rs. 50,000.00 plus 10% of the assured amount from February 1996 till the date of maturity. Awarded amount has been calculated differently by the parties. However, we are of the view that the appellant has fulfilled the mandatory provisions by filing the certificate regarding the depositing of 25% of the awarded amount. Even if the assessment of the Counsel for respondent is found correct the appellant can be asked to deposit the balance amount but there is no deliberate attempt by the appellant to disobey the mandatory provisions of law. Secondly, we have found the appeal is delayed by 13 days. The explanation given by the Counsel for appellant appears to be satisfactory. According to him there were 11 holidays in the month and on three consecutive days there was Jammu Bandh which stood in the way of appellant to file the appeal in time. We have gone through the case. The case deserves to be decided on merits so we condone the delay.

4. HEARD learned Counsels for the parties regarding the merits of the appeal and we have gone through the whole record. The simple and main contention of the learned Counsel for appellant is that renal failure always and oftenly is due to diabetes and is a disease of continuous process. Learned Counsel for the appellant has based his argument on the basis of discharge certificate of Ganga Ram Hospital wherein they have stated that the cause of renal disease was diabetic and in Column 2, Sub-column 3 they have written that approximate date on which the life insured became aware of renal disease is February 1996. Learned Counsel for the appellant has invited our attention to another certificate of Dr. Vijay Gupta who has certified that the renal failure is a long drawn illness patient was diagnosed in February 1996 and at the stage of renal failure he was put on dialysis in February 1996. According to this doctor the patient was diabetic for the last 13 years. Learned Counsel has invited our attention to another certificate issued by Dr. A.K. Bhalla of Sir Ganga Ram Hospital who has stated that kidney disease was due to diabetic for 13 years. Learned Counsel for appellant has vehemently argued that the patient was suffering from diabetes for the last 13 years prior to the year 1996. He has concealed this disease at the time of filling up of the proposal form. This argument has very rightly been rebutted by the learned Counsel for the respondent on the ground that the respondent came to know about the renal failure only in 1996, when he was

referred by Jammu Doctors to Sir Ganga Ram Hospital, New Delhi. According to him the patient has not deliberately concealed the ailment before filling up the form of insurance. We have addressed ourselves to this point very thoroughly. First we try to throw light on the subject as per the law laid down by the Apex Court in this regard, in the case titled LIC v. Smt. Asha Goyal and Another, AIR 2001 SCW 161. They have discussed Section 45 at length and has held that three things are to be proved for the application of Section 45 of the Insurance Act. No. 1, that the statement must be on a material matter or must suppress facts which it was material to disclose. No. 2, the suppression must be fraudulently made by the policy holder and No. 3 policy holder must have known at the time of making statement that it was false or that it suppressed facts which it was material to disclose. Mere inaccuracy of falsity in respect of some recitals or items in the proposal is not sufficient. The burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so there is no question of the policy being avoided on grounds of mis-statement of facts....." Applying this method in the present case it was incumbent on the appellant to prove that the respondent was suffering from diabetes before filling up the form for insurance and that he deliberately and fraudulently concealed this fact from the appellants. After going through the record it appears that the appellant has proved that renal failure of the respondent was due to diabetes because the doctors in the Ganga Ram Hospital have stated that it was due to diabetes of 13 years. This fact is borne out by Dr. V. Gupta of Jammu Hospital who also says that renal failure is a continuous process and it has its origin from the diabetes. We may not hesitate to hold that the patient might have been a diabetic patient before the operation was conducted for transplant of kidney but the main question is whether the patient was in know of the fact that he was a diabetic patient before 1996 and secondly whether he deliberately concealed this fact. On weighing the evidence of both sides there is no difficulty in holding that the appellant has not been able to prove that the respondent was knowing himself that he was a diabetic patient before 1996. Even then Ganga Ram Hospital people in their discharge certificate have categorically reported that the respondent got the knowledge of this disease for the first time in 1996. There is not an iota of evidence to show that the patient was treated before 1996 for diabetes. No Hospital record, no prescriptions have been produced and no evidence either documentary or oral has been produced by the appellant to show that the respondent knew that he was a diabetic patient before filling up of the insurance form. There is concrete evidence on the part of the respondent who has proved beyond any doubt that the respondent who filled up the form of insurance in 1993 was got examined by the appellant''s doctor and appellant doctor also was of the opinion that the respondent was in sound health. Doctor of the appellant who examined the patient did not detect that the respondent was diabetic patient. This fact has been admitted by the appellants also that the respondent was got examined by their own doctor before issuing the policy. It does not behove now to the Insurance Company to reopen the matter. There are various judgments on this subject while it has been held that once the Insurance

Company examined the patient and recorded the certificate that the insured bears the sound health and then issued the policy they could not reopen it later on. It is not to prove that the respondent was a diabetic patient but the burden of proof was on the appellant to prove that the patient was in know of the fact that he was a diabetic patient and he deliberately concealed this fact from the Insurance Company before filling up the form of insurance. For these reasons, thereof the refer, we are of the view that the order passed by the DF does not suffer from any infirmity. However, we have heard learned Counsel for respondent who has filed cross objections. In the cross objections he has raised two points. No. 1, that no compensation has been given to the respondent for not accepting his claim and refund of the premium though the DF has waived. With DF premium from date of operation till the date of maturity but this premium too was paid by the respondent but no order has been made for the refund of the same. We are of the view that both the pleas are genuine so we order that the premium which he has deposited from February 1996 till date be refunded to the respondent and further appellants are directed to pay Rs. 3,000/- as compensation. Appeal is accordingly disposed of.

5. A copy of this order be given to the parties to be collected by them in person for through their authorized agent. Appeal disposed of.

