(1998) 04 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation — APPELLANT

Vs

Shakuntala Devi — RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Citation : 1998 3 CPJ 267 : 1999 1 CPR 279

Hon'ble Judges : Saroj Rajwade , N.K.Vaidyas J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the order dated 7.5.1997 passed by the District Consumer Disputes Redressal Forum, Satna, wherein the Forum has directed the opposite party (appellant) to pay to the complainant insured sum of Rs. 25,000/- on account of the death of the insured Mohanlal and interest at the rate of 18% w.e.f. 1.1.1995 and Advocate fee Rs. 500/-, failing which to pay 18% interest per annum till the date of payment.

2. HEARD the arguments of both the parties and perused the record of the case. The appellant''s main contention is that the Life Insurance Corporation has repudiated the claim of the complainant on the ground that the insured had with-held correct information about his health in the proposal form by answering in negative to the question : "Have you ever suffered from Diabetes, Tuberculosis, High or Low Blood Pressure". Similarly, when question as to state of his health, the reply given was "good".

That the Life Insurance Corporation submitted before the District Forum certificates dated 13.3.1995 and 2.7.1995 wherein it has been clearly stated that the deceased insured Mohanlal son of Hiralal resident of Uchehara, Aabakari Tola, Maiher Road, Tahsil Nagod had got himself registered for treatment of tuberculosis on 21.3.1992 and his registration number was x 16576. That he was being treated as an outdoor patient by District Tuberculosis Centre and this treatment was continued for 18 months. Both the certificates are issued by District Tuberculosis Officer, Satna. The Life Insurance Corporation therefore held that "they were thus in possession of indisputable proof to show that about two

years before he proposed for the above policy he had suffered from Tuberculosis for which he had consulted a medical man and had taken treatment from a hospital. Thus, he made incorrect statements and with-held correct information from LIC regarding his health at the time of effecting insurance policy and, therefore, his case was repudiated".

3. ON a perusal of the record of the case, we find that the deceased insured had taken LIC Policy No. 375015607 on 28.12.1993 and he expired on 20.9.1994 i.e. within 10 months from the commencement of the policy. According to Section 45 of Insurance Act, if an insured has made any mis-statement about his health or in other querry made in the proposal and he expires or claim is repudiated within a period of two years from the date of commencement of the policy, the claim is liable to be repudiated only on the basis of "mis-statement". In the instant case, policy was taken up on 28.12.1993, deceased insured expired on 20.9.1994 and the claim was repudiated on 13.3.1995 i.e. not only death occurred within period of two years but also the claim was repudiated before completion of two years from the date of commencement of the policy. The contract of insurance is entirely based on good faith and conscious and the proposal form of the insurance is the basic document upon which the Corporation undertakes to cover risk on the life of the proposed assured, and if the Corporation feels that there are certain facts narrated in the proposal form which shall affect the longevity of the life of the assured then the Corporation shows their inability to enter into contract. If, the proposer has wilfully with-held facts which were previously known to him, the contract becomes vitiated and voidable at the option of the insurer to be called in question within two years. In First Appeal No. 193/91 decided on 26.2.1992, Hon''ble National Commission has held "that only this much has to be seen whether the LIC has taken a decision to repudiate the claim in good faith after due application of its mind to relevant aspects. ONce it is found that the insurer had duly considered all the relevant facts and circumstances and taken a decision in good faith as to whether the claim put forward by the insured or nominee under the policy should be allowed to any extent, it cannot be said that there had been any deficiency in service on the part of the insurer in relation to performance of its duties under the contract of insurance. In such a case in the event of the insured or his nominee or legal heirs as the case may be, feeling dis-satisfaction with the decision communicated by the insurer, he will have to seek redressal either by resort to arbitration under the relevant clauses in the policy or by institution of a suit before the ordinary Civil Court. The certificates issued by District Tuberculosis Officer clearly established that the deceased insured was suffering with tuberculosis for the last 18 months and this fact was within his I knowledge because he was taking regular treatment in the hospital, and therefore it amounted to mis-statement in the proposal form. Thus, in the present case, we find that the decision communicated by the LIC to the complainant as per their letter No. Claims dated 30.3.1995 has been taken in good faith after due application of mind, and there has been no deficiency in service. The appeal is therefore allowed and the order

of the District Forum is set aside and complaint is dismissed. In the circumstances of the case parties shall bear their own costs throughout.

4. BEFORE we part with this case, we may observe that we have been informed that the complainant is a young widow who has to bring up her children as the only earning member of the family i.e. deceased husband is no more. Probably, there is a provision with the LIC that in fit and deserving cases, the LIC can make ex- gratia payment. We do hope and trust that if a proper application is made in that behalf by the complainant making out a case for grant of ex- gratia payment, the appellant shall consider it sympathetically. Appeal allowed.

