(2007) 07 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India — APPELLANT

Vs

DEVKI BAI — RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Citation : 2007 3 CPR 93 : 2007 4 CPJ 50

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Advocate : N.K.Srivastav , Rajesh Mahadik

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986, directed against the order passed by the District Consumer Disputes Redressal Forum, Durg (hereinafter referred to as the ''district Forum'' for convenience) in Complaint No. 257/2006. The District Forum allowing the complaint and holding the appellant/o. P. deficient in service has directed the appellant/o. P. to pay Rs. 1,40,000 as compensation, Rs. 5,000 towards inconvenience and Rs. 1,000 as cost of complaint.

2. ADMITTEDLY, the complainant''s husband Shankarlal had obtained 3 insurance policies from the O. P. on 15. 9. 2002, 28. 12. 2004 and 15. 1. 2005 for Rs. 30,000, Rs. 55,000 and Rs. 55,000. The policy holder and the complainant''s husband expired on 9. 7. 2005 of a heart attack. Complainant lodged a claim with the O. P. for obtaining the assured amount but the claim amount was not paid. O. P. in the written version has admitted that three insurance policies as claimed were issued on the life of the deceased Shankarlal. It is submitted that the insured had deliberately suppressed material facts in the proposals and given false answers to the queries. Therefore, the claim was repudiated and the complainant informed accordingly.

Copies of the proposal form dated 10. 9. 2002, 28. 12. 2004 and 28. 12. 2004 have been filed by the O. P. On going through the said proposals it is noted that in the query regarding consultation with any doctor within preceding 5 years and obtaining treatment has been answered in the negative. Similarly, the query regarding suffering from any disease relating to stomach also has been answered

in the negative. Copy of the medical record of the deceased obtained from the employer has been filed by the O. P.

3. ON going through the medical records, it appears that the deceased was undergoing treatment for pain in abdomen and excessive vomiting from 4. 1. 2001. He was also advised endoscopy on 2. 4. 2002. It also appears that he was admitted to the hospital on 2. 4. 2002. Thus, it is clear that the complainant did not answer the questions in the proposal truthfully. Learned Counsel for the appellant submitted that the deceased had given false answers to questions in the proposal forms relating to the state of his health and consultation with any doctor. Thus, he has violated the principle of utmost faith, the very essence and the basis of the contract of insurance. It was submitted that under the circumstances the claim was rightly repudiated and the O. P. can not be said to be deficient.

4. LEARNED Counsel for the respondent, defending the impugned order submitted that the alleged suppression of the disease in the proposal form had no nexus with the cause of death which has been mentioned as MI in the documents. It may be noticed that the deceased-insured was taken to the hospital and was reported to be brought dead, as would be clear from Certificate of Hospital Treatment marked as R-8. It would, therefore, be clear the insured had died, before my treatment could be given to him. In the certificate of doctor, cause of death has been mentioned as MI or Myocardial Infarction. However, it does not appear that there was any post-mortem examination of the deceased insured. Therefore, it appears that opinion regarding cause of death being Myocardial Infarction might have been considered as probable cause of death by the doctor issuing certificate. In any case, in the foregoing circumstances, no definite inference regarding cause of death, can be drawn. It is further clear that the complainant had suppresed material facts regarding ailments of Chronic duodinal Ulcer deceased Multiple Ulcerous gastro Out let obstruction, grade-II Oesophagitis Secondary to fungal infection and treatment thereof, in the proposal form. In the circumstance, serious ailments as above, have not been disclosed in the proposal form. Obviously, there was breach of faith and confidence regarding the agreement of insurance.

5. LEARNED Counsel for the appellant relied on the order dated 21. 9. 2004 by the National Commission in the matter of LIC of India v. Smt. Ayesha, (3362 of 2004) reported in Legal Digest July, 2006 issue. The National Commission has held as under : "claim repudiated on the ground that the assured suppressed the material fact about his sickness and on being on medical leave before purchase of the policies. The cause of death had no relevance to the non-disclosure of health at the time of purchase of policy. Repudiation uphled. "

6. IN view of the above discussion and the material on record and the above citation, the appeal deserves to be allowed. Accordingly, the impugned order is set aside. The complaint is disallowed. Parties shall bear their own costs. Appeal allowed.

