(2012) 07 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

LIFE INSURANCE CORPORATION OF INDIA — APPELLANT

Vs

GURINDER KAUR — RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 823 : 2012 3 CPJ 597

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Appeal dismissed

Judgement

1. LIFE Insurance Corporation of India which was opposite party before the State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as ''State Commission '') has filed this appeal against the judgment and order of the State Commission dated 11th April, 2007 in Complaint No. 7 of 2003 (Pb)/ RBT No. 7/2007 whereby the State Commission while allowing the complaint directed the appellant to pay the assured sum of Rs. 5,00,000 to the complainant with interest @ 9% p.a. from the date of repudiation of the claim till realization. Rs. 10,000 were awarded by way of costs.

2. COMPLAINANT /respondent, Gurinder Kaur, wife of late Karaj Singh filed a complaint on 4th February, 2003 claiming that her husband had obtained policy bearing No. 470619681 dated 5th November, 1999 for a sum of Rs. 5 lacs at an yearly premium of Rs. 17,197. Unfortunately, he died on 20th February, 2001 (within 13 months) from the date of signing the proposal. That after the death of her husband she had lodged a claim with the appellant which repudiated the same on the ground that the insured had suppressed material facts regarding his health. Being aggrieved, respondent filed a complaint before the State Commission. On being served, appellant entered appearance and filed written statement refuting the claim of the respondent. It was submitted that the insured was suffering from hypertension and blood pressure and that he had suffered a paralytic attack three years prior to the taking of the policy. It was stated that life insured was not keeping good health at the time of signing the proposal and had taken treatment from a doctor. Being an early death claim the

matter was investigated and on comparison of the signature of the insured on the proposal form (Annexure C-1), medical examiner ''s confidential reports (Annexures OP3 and OP4) as well as on ECG form the signatures differed and somebody else was presented before the medical officer at the time of medical examination and taking ECG. That this was a case of forgery and impersonation, which was detected after the inquiry made. That the respondent had obtained the opinion of the handwriting expert and also filed her affidavit that the signatures on the proposal form and the medical examiner ''s confidential reports differs. That this was a disputed question of facts which required a full-fledged trial before the competent Court of law as held by the Hon ''ble Supreme Court of India. That the respondent had initially approached the Ombudsman whovide its order dated 25th September, 2002, after examining all the documentary evidence placed on record and contentions raised by the parties, reached the conclusion that the case required elaborate evidence taking examination and cross-examination on oath of the cardiologist, LIC agent and handwriting expert which is outside the scheme of insurance ombudsman.

3. STATE Commission after taking into consideration the pleadings and evidence led by the parties overruled the objections raised by the appellant, allowed the complaint and directed the appellant to pay Rs. 5 lacs to the respondent with interest @ 9% per annum from the date of repudiation of the claim till realization.

4. THE State Commission has held that the appellant failed to produce any satisfactory/acceptable evidence to prove that the insured had been taking treatment for hypertension or that he had suffered a paralytic attack. The State Commission disbelieved the report of the handwriting expert and compared the signatures of the assured on the proposal form, medical examiner ''s confidential reports and ECG form and came to the conclusion that signatures on all the three documents are of the same person. Burden to prove that the deceased had suppressed material facts regarding his health while filling the proposal form was on the appellant. Appellant failed to produce any satisfactory/acceptable evidence to prove that the assured was guilty of suppression of facts. Appellant put on record certificate issued by Dr. Lakhbir Singh Sandhu to prove that Karaj Singh was under his treatment for hypertension and heart disease. This certificate, as pointed out by the State Commission, cannot be relied upon because the said certificate is neither dated nor on the printed letterhead and does not even mention the registration number of the doctor. The certificate does not disclose the specific period during which the life insured was suffering from hypertension and heart disease. There was no mention of the paralytic attack by Karaj Singh. The State Commission rightly disbelieved the certificate and we endorse the findings recorded by the State Commission. The other plea of the appellant that the assured had taken treatment from Kakkar Hospital cannot be accepted as no document of Kakkar Hospital has been placed on record to prove that the deceased had suffered paralytic stroke before taking the policy. Appellant has failed to substantiate the plea that the assured was suffering from hypertension and heart disease and had suffered a paralytic attack.

5. LEARNED Counsel for the appellant strenuously contended that the signatures of the assured on the proposal form did not tally with his signatures on the medical examiner ''s confidential reports and the ECG form for which he has relied upon report of Jassi Anand, finger print and handwriting expert who in his report has stated that signatures in the proposal form, medical examiner ''s confidential reports and the ECG form are of different persons.

6. THE State Commission held that the report of the handwriting expert was not reliable. In exercise of powers vested in it under Section 73 of the Indian Evidence Act, the State Commission itself compared the signatures on the proposal form, medical examiner ''s confidential reports, the ECG form and came to the conclusion that the signatures on the three documents are of one and the same person. Contention of the learned Counsel for the petitioner that the opinion given by the handwriting expert was binding on the State Commission and the State Commission could not evaluate the evidence itself cannot be accepted. The opinion given by an expert is a piece of evidence which could be evaluated by the Court. It is for the Court to accept or not to accept the opinion of the expert. Opinion of the expert is not binding. It has been held in innumerable cases by the Supreme Court of India that the opinion of the expert is not binding. The State Commission is well within its right to accept or not to accept the evidence given by the handwriting expert. In view of Section 73 of the Indian Evidence Act the Commission itself could compare the admitted and the disputed signatures. We have ourselves examined the signatures on the proposal form, medical examiner ''s confidential reports and the ECG form. On close scrutiny, prima facie, we find that the signatures on all three documents are of the one and the same person. The proposal form and the medical examiner ''s confidential reports are of the same date i.e. 16th November, 1999. The medical examination is done by a doctor appointed by the Insurance Company and the insured was referred/accompanied by the insurance agent to the designated doctor. Theory put forth by the Counsel for the appellant that a person other than the assured had been sent to the medical examiner is far-ï¿ 1/2fetched and cannot be accepted. In that case either the medical examiner or the agent of the insurance company colluded with Karaj Singh or all the three documents were signed by the same person. We find that there are many similarities in the words of writing Karaj Singh because words ''K '', ''r '', ''a '', ''s '' and ''h '' are similar.

7. FOR the reasons stated above, we endorse the findings recorded by the State Commission and dismiss the appeal with no order as to costs. Appeal dismissed.