**(1999) 07 NCDRC CK 0028**

**In the National Consumer Disputes Redressal Commission**

Life Insurance Corporation of India APPELLANT

Vs

KEWAL KUMAR RESPONDENT

**Date of Decision :** 28-07-1999

**Acts Referred:**

**Citation :** 1999 2 CLT 648 : 2000 1 CPC 107 : 2000 2 CPJ 14

**Hon'ble Judges :** A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

**Final Decision :** Appeal allowed

## Judgement

1. LIFE Insurance Corporation is in appeal challenging order of District Forum, Amritsar dated September 3, 1998 whereby direction was given to the Corporation to pay the insured amount of Rs. 40,000/- with 15% interest from the date of repudiation of the claim and costs of Rs. 1,000/- to the complainant Kewal Kumar.

2. VED Parkash aged about 53 years had taken a life insurance policy in the sum of Rs. 40,000/- from Life Insurance Corporation effective from September 28, 1992. In 1996, the policy lapsed for non-payment of the premium. It was revived on June 30, 1997. VED Parkash died on September 8, 1997. At that time he had suffered Asthma attack. Kewal Kumar lodged the claim for the insured amount with the Corporation which was repudiated on the ground that the deceased/ insured had not disclosed material facts regarding his health at the time of getting the lapsed policy revived. Hence, District Forum was approached. The Corporation justified repudiation. On the evidence led, the impugned order was passed. The question for consideration in this appeal is as to whether the Corporation bona fide took the decision to repudiate the claim on the material collected or the repudiation was arbitrary. The Corporation relied upon the bed head ticket of Ved Parkash as well as evidence of Dr. Satish Duggal. On September 8, 1997, Ved Parkash was admitted in the Department of Chest and T.B., Medical College, Amritsar in the emergency ward. History of the patient as recorded as told to Dr. Satish Duggal by the patient himself was that he had been suffering from Asthma for the last two years and he had been taking

medicines Ipravent and Budecort inhalers. He further stated that such treatment is recommended to the patients suffering from Asthma in acute form. When brought to the hospital, the patient was suffering from acute attack of Asthma. Inspite of the treatment, the patient could not be cured and he died. Exact cause of death could be known only from Post Mortem Examination but according to him, in this case the complication of acute Asthma like hypoxia, hyper capnia, cerebralordema, or myocardial depression, these may be likely causes of death. He proved medical attendant certificate Ex. R-3 as issued by him. He also proved Ex. R-4 as issued by him. During cross-examination, he reiterated that the patient had disclosed that he was suffering from Asthma for the last two years. According to him, no investigations were done to rule out the possibility of heart ailment. He stated that he did not give any opinion regarding cause of death of his patient regarding diagnosis the patient was suffering from Asthma. This evidence is sufficient to come to the conclusion that Ved Parkash was suffering from Asthma for a period of two years prior to his admission in this hospital. At page 23 of the District Forum record is the medical certificate which the Corporation obtained and at page 19 is the repudiation letter referring to questions, answers of which were given wrongly by the insured at the time of revival of the policy. The copy of the Bed Head Ticket is at page 25 of the record and Proposal Form is at page 29.

The contract of insurance is on the basis of faith. The mere fact that medical examination was conducted before the policy was issued will not save the policy if otherwise the intention of the insured was clear to conceal material facts before taking the policy or getting it revived. Death in the present case occurred within three months of revival of the policy and it required investigation. May be after taking medicines, the Asthma of Ved Parkash was well under control when the L.I.C. doctor examined him for the purpose of revival of the policy but there is no reason to discard evidence of doctor who recorded the history of the patient as given by patient himself. If Ved Parkash was actually suffering from Asthma for the last two years prior to his admission in the hospital, it was his duty to disclose this fact to the Corporation. Asthma is not a routine ailment of which a serious notice is not to be taken. The repudiation of the claim was bona fide and the complainant was only entitled to paid-up value of the policy which amount was offered by the Corporation but not accepted by the complainant. The complainant was not entitled to the insured amount.

3. IT is not in every case that cause of death of the insured must be co-related to the facts which were concealed at the time of submission of proposal form regarding the health. The contention of Counsel for the complainant is that since there is no evidence that death occurred on account of Asthma as no post-mortem of Ved Parkash got conducted, non-disclosure of the disease of Asthma is not material. There is no force in this contention. The fact becomes material when on any basis, the L.I.C. should have given some thought as to whether the risk of the life of the insured is to be covered or not. The stage of the disease of Asthma may be a relevant factor for such consideration and concealment thereof

 

was a material point. For the reasons recorded above, this appeal is allowed. The order of the District Forum is set aside and the complaint stands dismissed. Appeal allowed.