(2004) 03 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India APPELLANT

Vs

Mallika RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Citation : 2004 4 CPJ 762 : 2005 1 CPR 524

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal partly allowed

Judgement

1. -THE complainant''s case is as follows: THE complainant''s husband by name Govindaraj had taken a insurance policy for Rs. 50,000/- in his name on 30.11.1994 in Policy No. 711810165. He was employed at SDOT/Phones/ Tiruvallur. He took ill and was admitted in Sri Ramachandra Medical College Hospital, Chennai. He died on 21.9.1996. THE complainant preferred a claim to the opposite parties. THE opposite parties have repudiated their liability stating that the deceased suppressed the vital information. THE complainant preferred a revision to the Zonal Manager against the repudiation and the Claim Review Committee upheld the repudiation. THE repudiation by the opposite parties is illegal and it amounts to deficiency in service. THEre is no proof that the complainant was under treatment for any illness and so without any basis, the opposite parties have repudiated the claim. Hence, this complaint.

2. THE opposite parties submitted as follows: It is true to say that Govindaraj had taken a life insurance policy on 20.11.1994 for Rs. 50,000/-. He died on 21.9.1996. It being an early claim, the Corporation initiated inquiry and the inquiry revealed that the life assured was an alcoholic and had suffered from jaundice, prior to his proposal for insurance and had also taken treatment at Ramachandra Medical College Hospital, Chennai. He was on leave on medical grounds for 13 days for treatment of Acute Hepatitis and for 15 days for treatment of peptic ulcer, prior to his submission of the proposal. THEse facts were not revealed in the proposal form. THE proposal was accepted on the basis of information furnished by the insured. THE assured died of Hepatic

Encephalopathy, Alcoholic liver disease. Hypokalemia, Azotemia and Portal Hypertension. As there was suppression of material information, the claim was rightly repudiated. THE complainant was informed of the decision of the LIC and the Review Committee upheld the repudiation. Thus there is no deficiency in service and hence, the opposite parties pray that this complaint may be dismissed with costs. The lower Forum accepted the complaint and directed the opposite parties to pay the sum due under the policy along with interest at 12% per annum from 1.1.1997 and further sum of Rs. 1 lakh for deficiency in service and Rs. 1 lakh towards mental agony. Hence, the appeal by the opposite parties.

The short point for consideration is: Whether there was suppression of material facts by the proposer? From the proposal form produced on the side of the opposite parties, it is apparent that under the relevant columns dealing with the personal history to the 9 questions asked therein, he had answered them in the negative and further stated that his health was good. Ex. B3 is the Medical Attendant''s Certificate which shows that the primary cause of death was Hepatic Encephalopathy. The secondary cause is shown as alcoholic liver disease. The third cause is shown as Hypokalemia and fourth and fifth causes are Azotemia and Portal Hypertension respectively. Ex. B4 is the document upon which the appellant relies to show that the complainant husband was suffering from peptic ulcer and other liver complications. It purports to be a certificate issued by the employer. A look at it would show that it cannot be relied upon at all. It is in manuscript. There are numerous corrections. It is not known when it was prepared, when it was compared and with reference to what documents they were prepared and extracted. If really, the appellants want to prove their case, they ought to have sent for the original records namely the leave letters, if available or the proceedings of the concerned officer who had granted the leave. But the document Ex. B4 does not answer any description. It appears to be a record prepared haphazardly and no significance can be attached to the same. Barring this, we have no records to show that the allegation made in the version of the opposite parties that he was alcoholic or suffered from jaundice prior to his proposal or that he was treated for acute hepatitis. The Life Insurance Organization being a statutory body ought to be more responsible and if they take a stand, they must arrange some acceptable proof to establish the same. They cannot base their claim upon such scribbling as we find in Ex. B4. The Medical Attendant''s Certificate will not be in the circumstances of any help because the insurance was on 20.11.1994. The insured died on 21.9.1996. This record itself shows that he was consulted for the first time on 17.9.1996. Therefore, we cannot conclude the noting made in the medical attendant''s certificate that the insured was suffering from Hepatic Encephalopathy even prior to the date of the insurance. For all we know, it might have occurred after the date of the insurance. Therefore, Exs. B2 to B4 are of no significance. It is incumbent upon the insurer to show that there was suppression of material facts and on the basis of such suppression, the acceptance of the policy was made. Here, we have no proof at all to show that either on the date of insurance and the date of proposal or prior to that, he was alcoholic or that he was suffering from jaundice. Therefore, in such circumstances, it has to be held that there is deficiency in service.

3. COMING to the question of compensation, the lower Forum has directed the appellants/opposite parties to pay a sum of Rs. 1 lakh towards deficiency in service and another sum of Rs. 1 lakh towards mental agony. This part of the order of the lower Forum has to be modified. The repudiation of the claim can, of course, bring about a disappointment and may be some hardship as well. But it cannot bring about a mental agony of such a nature as to award a sum of Rs. 1 lakh. There is deficiency in service, of course, for which a reasonable sum has to be granted. Therefore, in such circumstances, we hold that the order of the lower Forum fixing a sum of Rs. 1 lakh as compensation for deficiency in service and Rs. 1 lakh as compensation for mental agony deserve to be modified. Therefore, we hold that in the circumstances, a sum of Rs. 5,000/- towards deficiency in service and a sum of Rs. 5,000/- towards mental agony and hardship would adequately meet the ends of justice. In the result, this appeal is allowed in part; the order of the lower Forum is modified. The opposite parties/appellants are directed to pay the amount due under the Policy No. 711810165 along with a compensation of Rs. 5,000/- for deficiency in service and a sum of Rs. 5,000/- towards mental agony with cost of Rs. 1,000/- to the complainant. Time for compliance : Two months. Appeal partly allowed.