(2008) 05 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India — APPELLANT

Vs

MANJU DEVI — RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Citation : 2008 4 CPJ 404

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta , Vimla Sethias J.

Advocate : M.L.Vyas , P.L.Sharma

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") has been filed by the appellant-Insurance Company against the order dated 25. 4. 2007 passed by the learned District Forum, Jhunjhunu in case No. 314 of 2005 by which the complaint filed by the complainant-respondent under Section 12 of the Act of 1986 was allowed in the manner that the appellants were directed to pay to the complainant-respondent a sum of Rs. one lac as insurance claim amount along with other benefits payable under the policy in question of the deceased within one month from the date of order, failing which the complainant-respondent would be entitled to get interest @ 9% and the appellants were further directed to pay to the complainant respondent a sum of Rs. 1,000 as cost of litigation.

2. THE necessary facts giving rise to this appeal are as follows: on 15. 10. 2005, the complainant-respondent had filed a complaint under Section 12 of the Act of 1986 before the District Forum, Jhunjhunu against the appellant-Insurance Company stating inter alia that on 8. 10. 2004 her husband Nandlal Sharma (hereinafter referred to as "the deceased") had taken insurance policy bearing No. 194758558 for Rs. one lac from the appellant-Insurance Company and that policy was for 25 years. It was further stated in the complaint that the deceased had suddenly died on 28. 10. 2004 due to heart attack and, thereafter, the complainant-respondent being wife and nominee of the deceased prefrred a claim before the appellant-Insurance Company, but that claim was repudiated by the appellants Insurance Company through letter dated 18. 3. 2005 stating inter

alia that prior to taking the policy in question, the dceased was suffering from the Chronic Obstructive Pulmonary Disease (COPD) for which he had consulted medical man and had taken treatment from him and in the hospital and apart from this, the deceased was alcoholic since last 15 years and he took treatment for pulmonary TB in the year 1993, but these facts were not disclosed by the deceased while filling in up the declaration form on 2. 10. 2004 and thus, the deceased had made incorrect statements and withheld correct information regarding health and on that ground, the claim of complainant-respondent was repudiated. Thereafter, the present complaint was filed. A reply was filed by the appellant-Insurance Company on 6. 2. 2006 and they have taken the same pleas which were taken by them in the repudiation letter dated 18. 3. 2005. It was further submitted by the appellants-Insurance Company that prior to taking the policy in question, the deceased was suffering from COPD with coronary pulmonale tubercular ascitis and was under treatment and he had first remained in SMS Hospital from 8. 10. 2004 to 12. 10. 2004 and then again he was got admitted in the SMS Hospital on 27. 10. 2004 at about 3. 24 p. m. and he expired on the same day in the SMS Hospital at about 4. 00 p. m. and not on 28. 10. 2004 as alleged by complainant-respondent. It was further submitted by the appellants that the proposal form for taking the policy in question was filled in up by the deceased on 2. 10. 2004 and policy was issued on 8. 10. 2004 and prior to issuance of policy in question, the deceased was got admitted in SMS Hospital at 8. 49 a. m. on 8. 10. 2004 for taking treatment of COPD with coronary pulmonale tubercular ascitis and as per the bed head ticket of the deceased, he had also undergone treatment in July, 2004 and he was suffering from distension of abdomen for one and half months and from pulmonary TB since 1993 and apart from this, deceased had take antituberculosis treatment (ATT) and he was consuming alcohol for the last 15 years and all these facts were not deliberately and intentionally disclosed by the deceased while filling in up the declaration form on 2. 10. 2004 and, thus, he was guilty of suppression of material facts regarding health and on that ground, the claim of the complainant-respondent was rightly repudiated and the present complaint deserves to be dismissed. After hearing the parties, the learned District Forum, Jhunjhunu through order dated 25. 4. 2007 allowed the complaint of the complainant-respondent in the manner as indicated above holding inter alia- (i) That it was not a case of suppression of material facts regarding health on the part of the deceased. (ii) That the claim of the complainant-respondent was wrongly repudiated by the appellants and repudiation of claim amounted to deficiency in service on the part of the appellant-Insurance Company.

Aggrieved from the said order dated 25. 4. 2007 passed by the learned District Forum, Jhunjhunu, the appellant-Insurance Company have preferred this appeal. In this appeal, the main contention of the learned Counsel for the appellant-Insurance Company is that prior to taking the policy in question, the deceased was suffering from the Chronic Obstructive Pulmonary Disease (COPD) for which he had taken treatment and apart from this, the deceased was alcoholic since

last 15 years and he was patient of pulmonary TB since 1993 and he had taken anti-tuberculosis treatment (ATT), but these facts were not deliberately and intentionally disclosed by the deceased while filling in up the declaration form on 2. 10. 2004 and, thus, the deceased had made incorrect statements and withheld correct information regarding health and on that ground, the claim of complainant respondent was rightly repudiated by the appellants and the learned District Forum has committed serious error and illegaliity in decreeing the claim of the complainant-respondent. The findings of the learned District Forum decreeing the claim are wholly illegal, erroneous and perverse one and, therefore, the same cannot be sustained and liable to be quashed and set aside and this appeal deserves to be allowed.

On the other hand, the learned Counsel appearing for the respondent-complainant has supported the impugned order of the learned District Forum.

3. WE have heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondent and gone through the entire materials available on record. There is no dispute on the point that the deceased had filled in up the declaration form on 2. 10. 2004 for taking the policy in question and in that declaration form, he had not disclosed that he was suffering from any disease and the policy in question was issued by the appellant-Insurance Company in favour of the deceased on 8. 10. 2004 for Rs. one lac.

4. THERE is also no dispute on the point that the deceased had died on 27. 10. 2004 meaning thereby within one month of the issuance of the policy in question. From the hospital records produced by the appellant-Insurance Company, it appears that the deceased was got admitted for the first time in SMS Hospital, Jaipur on 8. 10. 2004 and he was discharged from that hospital on 12. 10. 2004 and as per bed head ticket, it was found that the deceased was suffering from COPD with coronary pulmonale with tubercular ascitis and it was aslo found that there was distension of abdomen for one-and-half months. In the past history, it was also mentioned that the deceased was patient of pulmonary TB since 1993 and POD since 2000 and he had taken anti-tuberculosis treatment (ATT) and he was alcoholic for the last 15 years. It further appears from the record that on 27. 10. 2004, the deceased was again got admitted in SMS Hospital, Jaipur where he had died on the same day at about 4. 00 p. m. and in the bed head ticket dated 27. 10. 2004, the diseases, which were found earlier when deceased was got admitted in that hospital on 8. 10. 2004, were again mentioned and apart from that, it was further found that there was respiratory distress. It was further found that the deceased was patient of COPD with coronary pulmonale with CCF (cogestive cardiac failure).

5. IT further appears from the record that after the death of deceased, an application (Ex. D/3) was moved on behalf of the complainant, respondent before the appellant-Insurance Company indicating that deceased had died on 28. 10. 2004. Note : In the application Ex. D/3, the complainant-respondent had wongly mentioned the date of death of deceased as 28. 10. 2004 and as per hospital

record, the deceased had died on 27. 10. 2004.

6. THERE is also no dispute on the point that the claim of the complainant-respondent was repudiated by the appellants through letter dated 18. 3. 2005 on the ground of suppression of material facts regarding health by the deceased. Thus, in the facts and circumstances just narrated above, the question for consideration is whether the repudiation of claim of complainant-respondent on ground of suppression of material facts regarding health by the deceased was justified or not or whether the findings of the learned District Forum decreeing the claim of the complainant-respondent could be susained or not.

Before proceeding further, it may be stated here that it is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the Insurance Company and its agents to disclose all material facts in their knowledge since obligation of good faith applies to both equally and in this respect, the decision of the Hon''ble Supreme Court in M/s. Modern Insulators Ltd. v. Oriental Insurance Co. Ltd. , I (2000) CPJ 1 (SC)=ii (2000) SLT 323=air 2000 SC 1014, may be referred to.

7. THE onus probandi, in cases of fraudulent suppression of material facts rests heavily on partly alleging fraud namely the insurer. In this respect, the decision of the Hon''ble Supreme Court in LIC of India v. Smt. G. M. Channabasamma, I (1991) ACC 411 (SC), may be referred to where it was held that the burden of proving that the insured had made false representation and suppressed material facts is undoubtedly on the Life Insurance Corporation of India. Furthermore, mere concealment of some facts will not amount to concealment of material facts. Suppression of fact must be a conscious operation of the giver of the answer which he knowingly did not disclose.

8. THE Hon''ble National Commission in National Insurance Co. Ltd. v. Bipul Kundu, II (2005) CPJ 12 (NC)=2005 CTJ 377 (CP) (NCDRC), has hld that for repudiating a claim of an insured, it is for the insurer to show that a statement on a fact, which was material for the policy, had been suppressed by the insured and that statement was fraudulently made by him/her with the knowledge of the falsity of that statement. As already stated above, the death of the deceased had taken place within two years of the issuance of the policy. It may be stated here that where the insurer wishes to call in question a policy within two years of its being effected, it is enough if the insurer is in a position to show that a statement made in the proposal for insurance or in any report of a medical officer or referee or friend of the insured or in any other document leading to the issue of the policy is inaccurate or false.

9. IT may further be stated here that even if the death takes place within two years, mis-representation, if any, that should be material in the sense of having some effect upon life expectation whether direct or indirect and if it is found

material, that defence could be taken by the Insurance Company, not otherwise.

10. THE word "misrepresentation" means suggestio falsi, in matter of substance essentially material to the subject, whether by acts or by words, by manoeuvres, or by positive assertions or material concealment (suppressio veri) whereby a person is misled and damnified. The word "fraud" means a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter. In this respect, the decision of the Hon''ble Supreme Court in Ram Preeti Yadav v. U. P. Board of High School and Intermediate Education and Ors. , V (2003) SLT 394=jt 2003 (Suppl. 1) 25 (SC), may be referred to.

It is also well settled that misrepresentation itself amounts to fraud in some cases.

11. THE word "misconduct" means an act or conduct in the nature of a breach of trust or an act resulting in loss to other party. The word "suppression of fact" envisages a deliberate or conscious omission to state of fact with the intention of deriving wrongful gain. In this respect, the decision of the Hon''ble Supreme Court in Collector of Customs Calcutta v. Tin Plate Co. of India Ltd. , (1997) 10 SCC 538, may be referred to.

12. KEEPING the above legal position in mind, if the facts of the present case are examined, it clearly appears that the appellant-Insurance Company have proved the facts by producing cogent and reliable evidence and hospital records that prior to taking the policy in question, the deceased was suffering from CODP with coronary pulmonale tubercular ascitis with CCF (congestive cardiac failure) and he was also patient of pulmonary TB since 1993 and PDD since 2000 and he had taken anti tuberculosis treatment (ATT) and he was also alcoholic for the last 15 years and these facts were intentionally, knowingly and deliberately not disclosed by deceased in his declaration form dated 2. 10. 2004 and, thus, it was a case of suppression of material facts regarding health on the part of the deceased. No doubt past history recorded in the bed head ticket could not be treated as primary evidence, but in some cases that could be treated as primary evidence and the present case is such a case where past history recorded in the bed head ticket should be treated as primary evidence for determining the facts regarding health of the deceased, especially looking to the facts that though declaration form was filed in up by the deceased on 2. 10. 2004, policy in question was issued in his favour on 8. 10. 2004 and on the same day deceased was got admitted in SMS Hospital, Jaipur and deceased had died within one month of issuance of policy in question. As per past history recorded in the bed head ticket, the deceased was suffering from COPD with coronary pulmonale tubercular ascitis and as per medical science, it could easily be said that a person, who is suffering from COPD means that he was patient of that disease for the last atleast three years and such disease could not be developed within a month or two and, thus, it can reasonably be inferred or presumed or concluded that at the time of taking the policy in question, the deceased was award of the

fact that he was suffering from the disease of COPD, but he deliberately and intentionally did not disclose that fact in his declaration form dated 2. 10. 2004 and thus, he was guilty of suppression of material facts regarding health.

13. FOR the reasons stated above, it is held that repudiation of claim of complainant respondent by the appellants-Insurance Company through letter dated 18. 3. 2005 on ground of suppression of material facts regarding health by the deceased, was justified and no illegality or irregularity has been committed by the appellants Insurance Company in repudiating the claim of complainant respondent and in view of this, the findings of the learned District Forum decreeing the claim of complainant respondent could not be sustained and the same are liable to be set aside as they are wholly illegal, erroneous and perverse one.

14. HOWEVER, looking to the entire facts and circumstances of the case and on humanitarian consideration, this State Commission thinks is just and proper to award ex gratia amount to the tune of Rs. 20,000 to the complainant respondent, who is a widow. In view of the discussions made above, this appeal deserves to be partly allowed and the impugned order of the learned District Forum, Jhunjhunu dated 25. 4. 2007 is liable to be quashed and set aside. Accordingly, this appeal filed by the appellants is partly allowed in the manner that the impugned order dated 25. 4. 2007 passed by the learned District Forum, Jhunjhunu is quashed and set aside. However, the appellant-Insurance Company are directed to pay to the complainant respondent a sum of Rs. 20,000 as ex gratia amount. The appellant-Insurance Company while preferring this appeal has initially deposited a sum of Rs. 25,000 before the District Forum Jhunjhunu and, thereafter, in compliance of the order of this State Commission dated 26. 6. 2007, the appellants have further deposited a sum of Rs. one lac which included Rs. 25,000, which were deposited earlier. Out of the amount deposited by the appellants, the District Forum, Jhunjhunu may pay a sum of Rs. 20,000 to the complainant-respondent and the remaining amount may be returned to the appellant-Insurance Company. Appeal partly allowed.

