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(2006) 07 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India — APPELLANT

Vs

MASTER AGNEYA KRISHNA TRIPATHI — RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Citation : 2006 3 CPR 27 : 2006 4 CPJ 306

Hon'ble Judges : N.K.Jain , Pramila S.Kumar , Neerja Singh J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal under Section 15 of the is by opposite party-the LIC which has been directed to pay to respondents Rs. 1,00,000 with interest and cost under a life insurance policy obtained by their late father Raj Kumar Tripathi from the appellant-corporation.

2. THE policy in question was obtained by late Raj Kumar Tripathi on 28.7.1994 for a period of 29 years. THE sum assured was Rs. 1,00,000 for which half yearly premium Rs. 608 was payable on 23rd January and July every year. It is no more in dispute that the policy was running in lapsed condition from July, 2001 to January, 2004 when it was got revived by the deceased insured on payment of requisite premium with penalty/interest. He died of cancer of rectum on 30.5.2004. His nominee wife Smt. Kavita Tripathi submitted claim for the sum assured. However her claim was repudiated by the respondent LIC vide letter dated 26.2.2006 on the ground that while : seeking revival of policy in January, 2004 the deceased insured was already suffering with the cancer of rectum which he deliberately suppressed while making declaration of his health condition for the purpose of revival of the policy. Since Smt. Kavita Tripathi, the widow of the deceased insured also expired, the complaint before the Forum below claiming sum assured was filed by their son and daughter-the respondents herein. THE complaint was resisted by the appellant-LIC on the ground that the revival of the policy was vitiated on account of suppression of existing ailment by the de ceased insured at the time of the said revival. THE Forum below after taking evidence of both the parties negatived the appellant''s contention and

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decreed the claim of the respondent, thus giving rise to this appeal. We have heard Mr. Deepesh Joshi, learned Counsel for appellants and Mr. Pradeep Tripathi, learned Counsel for respondents. We have also gone through the evidentiary material on record.

At the out-set it may be observed that before granting revival of the policy the appellant-LIC got the deceased insured examined by its own panel physician Dr. M. Sharma, MD. The appellant-orporation itself has filed the said medical examiner''s confidential report in evidence evidencing that the deceased insured was examined thoroughly by said physician who recorded his own findings in negative on every ailment. Needless to say that in case the deceased was suffering with a serious ailment like cancer or had any symptom of that ailment, the same would not have escaped notice of the said physician. This report in our opinion, demolished the case of the appellant and clearly established that the deceased insured on the date of his exanimation on 13.1.2004 by Dr. Sharma did not have any symptom of his suffering with cancer of rectum.

3. THE appellant-LIC has produced treatment papers of the deceased obtained from Birla Vikas Hospital, Satna. THEse papers merely revealed that the deceased insured on 23.5.2003 was examined in the said hospital and diagnosed to be a case of severe anaemia for which he was given blood transfusion and discharged on the same day. THEse treatment papers did not reveal that the deceased on the date of examination or on any other dates prior to his seeking revival of the policy, was ever diagnosed to be a case of cancer. It is true that later on the deceased was admitted in the said hospital on 25.5.2004 when he was found suffering with carcinoma of rectum. He was again given blood transfusion. However this diagnosis made on 25.5.2004 was after four months of the revival of the policy and cannot be related back to the date of its revival. It is significant to note here that in the declaration of health (Annexure NA-3) obtained from the deceased insured by the appellant-Corporation on 13.1.2004 he was asked to disclose as to whether he has suffered with any such ailment which required seven days or more treatment. The deceased had answered the question in negative. As already pointed out the treatment taken by the deceased in Birla Vikas Hospital, Satna on 23.5.2005 was only for one day when he was given blood transfusion for severe anaemia. It cannot be thus said that the deceased made any false declaration as to the state of his health while seeking revival of the policy. As already pointed, on 13.1.2004 he was examined thoroughly by a physician appointed by the appellant-Corporation and a certificate of good health was given by the said doctor. The policy was in force since July, 1994 and the deceased had paid regularly premium for long 9 years. It was only for a brief interval of one and half years that he defaulted in making premium which was later on recovered from him with interest and penalty.

4. AT the out-set, it may be observed that policy was obtained way back on 28.7.1994 which though running in lapsed condition, was got revived by the deceased-insured prior to his death thus attracting the rigour of Section 45 of the

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Insurance Act which thus reads as follows: "Section 45. Policy not to be called in question on ground of mis-statement after two years. -No policy of life insurance affected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground 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, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it sup-pressed facts which it was material to disclose."

As held by the Supreme Court in the case of Mithoolal Nayak, AIR 1962 SC 814, for the purpose of Section 45 the period of two years has to be calculated from the date on which the policy was originally affected inasmuch as the revival of such a lapsed policy would not constitute a new contract. Under the circumstances, repudiation of claim under the policy was wholly unjustified and the Forum below was absolutely right in awarding sum assured to the respondent-LRs. In the result, the appeal fails and is dismissed with cost Rs. 1,000. Appeal dismissed.

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