(2003) 07 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India — APPELLANT

Vs

MEERA DEVAL — RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Citation : 2003 3 CPJ 525 : 2003 3 CPR 453 : 2004 1 CLT 479

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 12.12.2001 passed by District Forum, Nainital, whereby the complaint of the complainant was allowed for recovery of Rs. 1,00,000/- along with interest as insured amount after the death of her husband Shri Ashok Kumar Deval.

2. THE brief facts of the case are that Smt. Meera Deval, wife of the deceased Shri Ashok Kumar Deval filed a complaint after the death of her husband as nominee and beneficiary of life policy taken by her husband Shri Ashok Kumar Deval. THE policy is said to have been taken on 15.7.1997. It was effective from 28.7.1997 to 28.7.2017. It is said that on 4.1.1999 Shri Ashok Kumar Deval died out of heart attack. Before his death, he was admitted in K.K. Hospital, Bareilly and got treatment. After the death when the claim was lodged with the Insurance Company, it repudiated the claim on the ground that the deceased was suffering from diabetes and kidney troubles from before 8 years of his death. When the claim was repudiated, the complaint was filed. The Insurance Company filed Written Statement and admitted the insurance. According to the opposite party, the deceased was admitted in K.K. Hospital on 21.12.1998 and insured was suffering from diabetes for the last 10 years before his death. In para 3, it is said that the deceased was suffering from diabetes for last more than 10 years. It is alleged in para 4 that the claim was repudiated on the ground that the deceased was suffering from diabetes prior to taking of the insurance. It is alleged that there is no deficiency in service of the respondent. In para 13 it is alleged that according to the certificate of doctor of K.K. Hospital dated

25.6.1999, the insured was admitted in hospital on 21.12.1998 and the diagnosis was chronic renal failure - Diabetic Renal disease Diabetic Mallitus. Again in para 15, it is told that the life insured was suffering from diabetes from before submitting proposal form and since false information was given, the policy is null and void.

From the allegations in the Written Statement, it is clear that according to the Insurance Company, the deceased was suffering from diabetes. Only in para 13, it is told that the doctor of K.K. Hospital has diagnosed that the deceased was having chronic renal failure -Diabetic Renal disease. It was not said even in this para that what is the case of the opposite party regarding kidney trouble, if any. In this para, it is only said that was the report of the doctor. But in other paras, only illness of diabetes have been pleaded.

3. THE learned Forum took the evidence of the parties and came to the conclusion that the repudiation was not correct and, therefore, allowed the claim. Being aggrieved by that order, the present appeal has been filed. We have heard the learned Counsel for the parties and gone through the records. The learned Counsel for the appellant argued that the deceased died within two years of the taking of the policy and, therefore, according to the provisions of Section 45 of the Insurance Act, the Insurance Company is not to prove any fraud and wilful suppression of facts, but has only to prove that such a disease was there. It was argued that had the policy been before of two years, then, fraud etc. was obligatory to be proved by the Insurance Company. He has referred a number of rulings, namely I (2001) SLT 89, Life Insurance Corporation of India v. Asha Goel; III (2001) CPJ 383 (U.P. State Consumer Disputes Redressal Commission, Lucknow), Life Insurance Corporation of India v. Smt. Pramila Kalani & Ors. On this point, he also argued that the matter of insurance is of utmost faith and uberruna fides. Nobody is going to dispute these propositions of law. But the basic question remains, whether the deceased was suffering from diabetes from before 8 or 10 years of his death and for that, the evidence of the parties are to be scanned. According to the opposite party, the deceased Shri Ashok Kumar Deval was suffering from diabetes for the last 8 or 10 years of his death. Since, the positive allegation is that of the opposite party whatsoever may be the legal proposition under Section 45 of the Insurance Act, the burden of proof is on the opposite party to prove this fact. There is affidavit of both the parties. Report of doctor of Tara Hospital of Ultrasound Examination in which he has reported that on 18.12.1998 the sizes of both the kidneys were normal with normal cortico medullary differentiation. This does not show any abnormality in kidney.

4. AS regards the diabetes, the deceased AShok Kumar Deval was examined by Haldwani Diagnostic Centre on 22nd July, 1998 and sugar was found to be 84.00 mg/dl when the normal range is between 60-110. This is quite normal. Earlier on 30th May, 1998 his sugar was found to be 137.00 mg/dl. when normal range is 60-140. At both the occasions, it was within normal limit. It was argued that on 30th May this was on the higher side of the normal limit. The question is not of

the higher side but the question is if there was any sugar disease to him and both the reports negated this argument. It was very fantastically argued by the learned Counsel for the Insurance Company that if AShok Kumar Deval was not suffering from any disease, why these examination ? It is very fantastic argument. Every literate person after the age of 40 years is advised to get blood profile and all other clinical examinations 6 monthly. But by mere examination alone, it cannot be said that the person was suffering from disease, therefore, he got the examination. Forms for insurance were filled in. The reply to this ailment is in the negative and an MBBS doctor of the Insurance Company has counter-signed this part and it is specific there that the doctor has to certify that all the replies given are correct. It is fruitless to argue that without any examination, the doctor will endorse that the replies have been given correctly. On this proposal form, the signature of the doctor specifically shows that before the insurance, the Insurance Company has got the insured examined by doctor and when he certified that there was no such disease, the policy was given to the insured. Not only this, the insured has earlier got a policy which matured in 1992. Order for return of maturity value of Rs. 15,284.20 was given and it is said that soon after this, the present policy was taken. We mean to say that the deceased was earlier customer of the Insurance Company and he has got his life insured earlier as well, but, no illness was ever reported. Much reliance have been placed on the report of Dr. S.Z. Khan of K.K. Hospital. Before his death, the deceased was admitted in K.K. Hospital on 21.12.1998. Dr. S.Z. Khan was a consultant in K.K. Hospital, Bareilly where the deceased was admitted. He has issued the certificate of the doctor. In this certificate, he has written that deceased has died due to CRF and DRD and the immediate cause of death is said to be cardio respiratory failure. In 4 L he has written that he has not treated the patient and the patient was under the treatment of Dr. S.R. Saxena. Since, this doctor has not treated the patient, he could not have given any opinion and to our knowledge, there is no evidence of Dr. S.R. Saxena in favour of the Insurance Company. In para 6(2) he has written that the patient was suffering from Diabetic Mallitus for the last 10 years, but, he does not know who has treated the patient. He has wrote that who informed him the details of illness was not known to him. How this certificate can be read as primary piece of evidence ? In para 7 he has written that he does not know whether at the time of last illness, the patient was treated by any other doctor. In para 8 he has written that he was not the family doctor of the deceased. He was also unable to know who was the family doctor of this patient. Then his report is only on the basis of hear-say opinions without any authentic proof. The best evidence would have been the doctor who has earlier treated the patient, who has been the family doctor of the patient, who has reported that the patient was having diabetes for the last 10 years, but there is absolutely no such evidence. Now there is certificate of hospital treatment. In this report also, the report in para 7 is that by whom treated not known, by whom history reported not known.

5. THE most surprising part of the story is that the patient was admitted in the

hospital on 21.12.1998. In none of these two reports, there is any allegation that the doctor had any case history or bed-head tickets prepared by his hospital at the time of preparing the certificates. THEse certificates have been prepared on 25.6.1999 after 6 months of the death of the patient. It is very surprising, curious and unbelievable that the doctor will remember the past history of patients who have been admitted in his hospital before 6 months. Nobody can give the details, atleast, of a hospital who is regularly treating patients without looking the prescriptions and earlier papers that to whom he is examined before 6 months, what report he has given and what was the ailment. Both these reports appear to have been prepared on the fake memory of the doctor without any paper before him without any bed-head tickets or any case history. Such reports are not, at all, believable. It may or may not have been supported by an affidavit as argued by the learned Counsel for the complainant.

6. EXCEPT this unbelievable certificate of Dr. S.Z. Khan who never examined or treated the patient, there is nothing to show that the patient was suffering from diabetes or any kidney trouble from before his death muchless for 8 or 10 years and on these vague allegations of Dr. S.Z. Khan, for whatsoever reason it may be, the repudiation of the claim was totally unwarranted. This appeal has got no force and is to be dismissed. ORDER This appeal is, hereby, dismissed. However, cost of this appeal shall be easy. Appeal dismissed.

