(2006) 02 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

LIFE INSURANCE CORPORATION OF INDIA APPELLANT

Vs

Ramswaroop Meena RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Citation : 2006 2 CLT 514 : 2006 2 CPJ 206

Hon'ble Judges : SUNIL KUMAR GARG , SUSHMA TANWAR , T.P.GUPTA J.

Judgement

1.THIS appeal under Section 15 of the Consumer Protection Act, 1986 has been filed against the order dated 28.5.2004 passed by the District Forum, Dausa by which the complaint of the respondents was allowed in the manner that the appellants were directed to pay to the complainant respondents a sum of Rs. 25,000 in respect of the life insurance policy and a sum of Rs. 6,575 as amount of bonus along with interest @ 9% p.a. w.e.f. the date of filing of the complaint i.e., 2.9.2003 and further Rs. 500 as amount of compensation and Rs. 1,000 as costs.

2. THE necessary facts giving rise to this appeal are as follows : That the wife of respondent No. 1 and mother of respondent Nos. 2 to 5 (hereinafter referred to as deceased) had taken an insurance policy for Rs. 25,000 from the appellants on 28.8.1997 upto 28.7.2017 bearing policy No. 191387242. It was further stated in the complaint that due to some reason payment for the premium was not paid for the months of August 2001, February, 2002 and August 2002. The policy had lapsed but on 26.2.2003 the policy was again revived by the appellants and for that fresh declaration form was also got filled in by the deceased on 24.2.2003. It was further stated in the complaint that the deceased had died on 1.5.2003 because of biting by poisonous animal and information to this effect was given by the respondents on 21.5.2003 to the appellants. Thereafter the claim was preferred by the respondents before the appellants and that claim was repudiated by the appellants through letter dated 29.7.2003 inter alia stating that the deceased was suffering from the diseases TBM and Hemiparesis and for that she had taken treatment in the hospital during the

period 2003 but that fact was not disclosed while filling in up the declaration form thus she had made deliberate misstatements and withheld material information from the appellants regarding her health at the time of getting the policy revived, therefore, the claim of the respondents was repudiated. Thereafter the present complaint was filed.

A reply was filed by the appellants before the District Forum and the same plea which was taken by them in their repudiation letter dated 29.7.2003 was taken by the appellants and apart from that it was further stated by the appellants that the deceased had taken treatment for the diseases mentioned above in the SMS Hospital, Jaipur where she had been admitted for the period from 17.2.2002 to 2.3.2002 for getting the treatment. Thus it was a case of misstatement on the part of the deceased and the claim was rightly repudiated. Hence complaint be dismissed.

After hearing both the parties the learned District Forum through impugned order allowed the complaint of the complainant -respondents in the manner as indicated above inter alia holding -

(1) that it was not a case of suppression of material facts, (2) that since the cause of death of the deceased had no nexus with the diseases as alleged by the appellants, therefore, from the point of view also the claim was wrongly repudiated by the appellants. Aggrieved from that order passed by the District Forum, Dausa this appeal has been filed by the appellants

. In this appeal the main contention of the learned Counsel for the appellants is that since before filling in up the declaration form on 24.2.2003 there is ample evidence to show the fact that the deceased had remained as indoor patient in the SMS Hospital, Jaipur for the period from 17.2.2002 to 2.3.2002 for the treatment of the diseases TBM and Hemiparesis and when this fact was not disclosed by her in the declaration form, therefore, it was a case of misstatement on the part of the deceased and thus findings of the District Forum to the effect that there was no suppression of material facts on the part of the deceased are wholly erroneous, perverse and illegal and thus the same cannot be sustained and liable to be quashed and set aside and this appeal deserves to be allowed.

3. ON the other hand the learned Counsel appearing for the respondent - complainants has supported the impugned order of the learned District Forum.

4. WE have heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondents and gone through the entire materials available on record. There is no dispute on the point that the deceased had taken the insurance policy from the appellants on 28.8.1997 and there is also no dispute on the point that policy had lapsed later on and the same was revived on 26.2.2003 and on 24.2.2003 fresh declaration form was filled up by the deceased and in that declaration form the deceased had not mentioned the diseases like TBM and Hemiparesis.

5. THERE is also no dispute on the point that from the record available the deceased had remained in the hospital for the period from 17.2.2002 to 2.3.2002 and where the diagnosis of the diseases was mentioned as TBM and Hemiparesis. There is also no dispute on the point that the deceased had died on 1.5.2003 and cause of death of the deceased was not the diseases known as TBM and Hemiparesis.

6. THERE is also no dispute on the point that the claim of the respondents was repudiated by the appellants through letter dated 29.7.2003 on the ground of suppression of material facts. Thus in the facts and circumstances just narrated above the question for consideration is whether it was a case of suppression of material facts or not and whether the findings recorded by the District Forum are liable to be confirmed one or not.

7. 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 -disclosures of the facts which the parties known. 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 Honble Supreme Court in M/s. Modern Insulators Ltd. v. Oriental Insurance Company, I (2000) CPJ 1 (SC)=AIR 2000 SC 1014, may be referred to.

8. THE onus probandi, in cases of fraudulent suppression of the material facts rests heavily on party alleging fraud namely the insurer. 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.

9. THE Honble National Commission in National Insurance Co. Ltd. v. Bipul Kunda, II (2005) CPJ 12 (NC)=2005 CTJ 377 (CP) (NCDRC), has held 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.

10. 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. Even for the sake of argument it may be taken as granted that before filling up the declaration form the deceased had taken treatment for the diseases TBM and Hemiparesis in the hospital but the question is whether suppression of those diseases in the declaration form would amount to concealment or suppression of material facts in real sense in the present case or not.

11. THE test to determine materiality is whether the fact has any bearing on the

risk undertaken by the insurer. If the fact has any bearing on the risk, it is a material fact; if not, it is immaterial.

12. IN our considered opinion, there are certain diseases such as kidney, heart and brain as they are connected with the life span of a person and if any misstatement is made in respect of such type of diseases by the person seeking insurance, in such case it can be believed that knowingly the person taking out the insurance has made misstatement. But if any one suffers from temporary illness such as fever, caught cold, etc., and the same was not mentioned at the time of taking insurance, it cannot be stated in true sense that a misstatement in respect of the state of health has been made by the person seeking insurance. The chest disease cannot be treated as a disease, in the same manner as the diseases such as of kidney, heart and brain which directly affect the life span of a person. Chest disease is not a permanent disease, but it is a recurring disease and a person suffering from chest disease can survive for a longer period. Chest disease can never be the cause of death itself. Apart from this there is no nexus between the cause of death of deceased and chest disease. The immediate cause of death of deceased could not be said to be chest disease, which was suppressed by the deceased.

13. THUS , chest disease could not be said to be fatal one and, therefore, non -mentioning of such type of disease in the declaration form would not amount to misstatement in real sense.

14. FURTHERMORE , even if the deceased was suffering from chest disease at the time when she made the proposal, chest disease is not proved to have bearing on the cause which resulted in death of the deceased. Therefore, even if the deceased has failed to disclose that she was suffering from chest disease at the time when she made the proposal, the liability under the policy could not be denied on the ground of suppression of material facts. Since in this case the appellants had failed to prove the fact that the deceased had died because of any chest problem connected with TB disease, therefore, the death of the deceased in the present case cannot be said to have been connected with the chest disease. When this being the position it cannot be said that there was suppression of material facts.

15. APART from this, even for the sake of argument that decease might have been suffering from the disease TB, now TB is 100% curable disease and patient of that disease can survive for a longer period and besides this, the immediate cause of death of deceased was biting by some poisonous animal and not TB and there is no nexus between the cause of death of deceased and TB. The death of the deceased having not been connected with the TB disease, it cannot be considered to be material so far as death of the deceased is concerned. Thus, it cannot be said that there was suppression of material facts by the deceased.

16. THUS , it is held that non -mentioning of the disease chest in the declaration form by the deceased does not amount to suppression or concealment of

material fact or misstatement in real sense. So far as the law laid down in the case of LIC of India and Anr. v. Parveen Dhingra, (II (2003) CPJ 70 (NC) and Panni Devi v. LIC of Ors., III (2003) CPJ 15 (NC), on which reliance has been placed by the learned Counsel for the appellants is concerned, it may be stated her that these rulings stand on different footing when applied with the facts of the present case in the manner that the death of the deceased had not taken place from the disease of TBM and Hemiparesis.

17. THUS , for the reasons stated above, it is held that non -mentioning of the disease TBM and Hemiparesis in the declaration form by the deceased does not amount to suppression or concealment of material fact or misstatement in real sense and, therefore, the appellants were not justified in repudiating the claim of the respondent -complainants on the ground of suppression of material facts and the appellants have repudiated the claim of the complainant -respondents without any basis and on wrong assumption and in an arbitrary manner and in view of this, the findings of the learned District Forum decreeing the claim of the complainant -respondents are liable to be confirmed as they are based on correct appreciation of entire materials and evidence available on record and they do not suffer from any basic infirmity, illegality or perversity and this appeal deserves to be dismissed. Accordingly, this appeal filed by the appellants is dismissed. Appeal dismissed.

