(2014) 09 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

LIFE INSURANCE CORPORATION OF INDIA — APPELLANT

Vs

SANTOSH DEVI — RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 629 : 2014 4 CPJ 139

Hon'ble Judges : V.K.JAIN J.

Advocate : MANISHA TYAGI , ALOK BACHAVAT , Swati Ghildiyal

Judgement

1. LATE Sh. Mool Chand Kumawat, husband of the complainant/respondent took an LIC Policy for a sum of Rs. 1 lakh on 27.11.2003. In the night intervening 13/14.01.2004, he suffered a heart attack and died. Being his nominee, the complainant/respondent lodged a claim with the petitioner corporation. The claim however was repudiated on the ground that though deceased was an alcoholic and had also taken treatment in a De -addiction Centre of a hospital, he had concealed these facts while submitting the proposal for obtaining the LIC Policy. Being aggrieved from repudiation of her claim, the complainant/respondent approached the concerned District Forum for ventilation of her grievance.

2. THE complaint was resisted by the petitioner on the same ground on which it had repudiated the claim. It was stated in the reply that the deceased was admitted in the De -addiction ward of SMS Hospital, Jaipur on 28.08.2003, to get rid of alcoholism and was discharged from there on 13.09.2003. The said fact was suppressed by him, while taking the policy.

3. THE District Forum held that repudiation of the claim was not justified since the deceased had died due to heart attack and not from alcoholism. Being aggrieved from the order of the District Forum, the petitioner preferred an appeal before the State Commission. The appeal having been dismissed vide impugned order dated 09.04.2008, the petitioner corporation is before us, by way of this revision petition.

4. A perusal of the proposal form would show that while giving personal history,

the deceased answered in negative, in response to the question as to whether he had consulted a medical practitioner for any ailment requiring treatment for more than a week. The same reply was given by him while responding to the questions as to whether he had been admitted to any hospital or nursing home for general checkup, observation, treatment or operation and whether he had remained absent from place of work on account of health during the last five years. When asked whether he used or had ever used alcoholic drink, the deceased answered in negative. Thus, the deceased maintained that neither he had consulted any medical practitioner for any ailment requiring treatment for more than a week nor had he been admitted in any hospital or nursing home for any kind of treatment. He also denied having consumed liquor at any point of time. However, it is an admitted position that the deceased was an alcoholic and he had undergone treatment at the De -addiction Centre of the SMS Hospital, after taking medical leaves for 33 days. He got admitted in the hospital on 28.08.2003 and was discharged on 13.09.2003. Thus, the deceased made three mis - representations to the petitioner corporation. Firstly, he falsely denied having consulted a medical practitioner in five years prior to submitting the proposal, secondly he falsely claimed that he had never consumed liquor despite the fact that he was so much addicted to liquor that he had to remain in the hospital to get rid of his addiction and thirdly, he falsely represented that he had not taken leaves for the purpose of his treatment.

5. THE State Commission was of the vies that since the deceased died due to heart attack and not due to lever problem, the concealment/mis -representation made by him was not on a material aspect with respect to his health and therefore, the claim could not have been denied by the petitioner corporation.

6. AS regards, the deceased having concealed his habit of taking liquor, it was contended by the learned counsel for the respondent/complainant that a large number of persons take liquor and even if the deceased had disclosed in the proposal form, that he had been taking liquor, the proposal submitted by him would not have been rejected and therefore, the aforesaid concealment can not be said to be so material as to result in altogether rejection of the claim submitted by his widow, when the habit of taking alcohol was not in any manner responsible for his heart attack. He also submitted that had the deceased disclosed that he had been treated for alcohol addiction and was hospitalized after taking leaves for some days even that would not have resulted in rejection of the proposal submitted by him. The learned counsel for the petitioner corporation on the other hand submitted that the deceased was duty bound to disclose all the facts to the best of his knowledge, while submitting the proposal form and giving a false answer would ipso -facto entitle the petitioner corporation to reject the claim irrespective of the fact that such concealment/mis - representation had no bearing on the deceased which caused the death of the deceased. This was also his contention that had all the facts been disclosed to the corporation, it is quite possible that the proposal might not have been accepted or a higher premium would have been sought.

7. IN P.J. Chacko vs. Chairman, L.I.C. of India, AIR 2008 SC 425 the insured was required to disclose in the application form for obtaining the policy, as to whether he ever had any accident or injury and had remained absent from place of work on the ground of health during last five years. The insured answered in negative to both the questions and also claimed that the state of his health was good. Later, it was found that the insured had undergone adenoma thyroid operation four years prior to submitting the proposal, though cause of his death was polyneuritis, which had no connection with the operation he had undergone. The suit filed by the legal heirs of the deceased for recovery of the amount of insurance was decreed by the Trial Court. On an appeal preferred by LIC, the learned single Judge of the Hon ''ble High Court held that since there was nothing to indicate that had the insured disclosed the factum of previous operation, the corporation might not have been inclined to insure him and would have insisted on a higher premium, non -disclosure was not a material fact justifying repudiation of the policy. On an intra court appeal, the Division Bench of the High Court, however, opined that the parties were bound by the warranty clause contained in the agreement and the non -disclosure was to the material fact which were required to be answered correctly. Being aggrieved from the rejection of their claim, the plaintiffs approached the Hon ''ble Supreme Court, by way of an appeal and inter alia submitted that insurance being a requirement of social security, the suppression in question could not have led to repudiation of the policy. The learned counsel for the LIC on the other hand submitted that undergoing operation had a direct nexus with the health of the insured and the suppression therefore was on a material fact. It was also contended by him that on account of untrue averments made in the declaration, the contract of the Insurance itself was null and void. It was also pointed out by him that the policy had been repudiated within two years.

8. REJECTING the appeal, filed by the plaintiffs, the Hon ''ble Apex Court, inter alia, noted the following three conditions for application of the second part of Section 45 of the Insurance Act, which postulates repudiation of the policy within a period of two years in case a statement made in the proposal for Insurance was found to be inaccurate or false: - ""a. the statement must be on a material matter or must suppress facts which it was material to disclose:

b. the suppression must be fraudulently made by the policy -holder; and

c. the policy -holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. ""

The Hon ''ble Supreme Court observed that if a person makes a wrong statement, with the knowledge of consequence therefrom, he would ordinarily be estopped from pleading that even if such a fact had been disclosed it would not have made any material change. It was further observed that the proposer must show that his intention was bonafide and a proposal can be repudiated if a fraudulent act is discovered. It was also observed that in such a case, it was not necessary for the insurer to establish that the suppression was fraudulently made by the policy holder or that he must have been aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose. The Hon ''ble Apex Court quoted its earlier observation that the effect of mis -representation on the contract is precisely the same as that of non -disclosure; it affords the aggrieved party a ground for avoiding a contract. In Life Insurance Corporation of India & Ors. vs. Asha Goel (Smt) & Anr. (2001) SCC 160, the Hon ''ble Apex Court, inter alia, held as under: - ''''The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person. ''''

In Satwant Kaur Sandhu vs. New India Assurance Company Ltd. (2009) 10 SCR 560, the Hon ''ble Apex Court, inter alia, observed that the term material fact has been explained by the court in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the Contract of Insurance and has a bearing on the risk involved would be material. Though, the aforesaid view was taken while considering the medi -claim policy and not a Life Insurance Policy, the interpretation given to the expression ''material '' would apply with equal force to a life Insurance policy.

9. IN our view, considering the facts and circumstances of the case, the mis -representation and concealment of fact made by the insured in the proposal form was certainly on a material fact. Not only was the insured taking liquor, he had been taking it in so much quantity that he had become addicted to it and had to undergo treatment for de -addiction in a hospital for a number of days, taking leaves from the job in which he was engaged at that time. The Insurance Policy was taken on 27.11.2003, whereas the insured was admitted in hospital during the period from 28.08.2003 to 13.09.2003, which was just 2 -3 months before of his taking the insurance policy. In our view, it cannot be said that had the insured disclosed in the proposal form that he was admitted to the De -addiction Centre of the SMS Hospital, Jaipur for as many as 16 days after taking leave from his office, the petitioner corporation would still have accepted the proposal and that too at the same premium which was charged from him, on the representation that he was a hail and hearty person, who was not hospitalized at any time during the last few years, was not suffering from any ailment and was neither smoking nor taking liquor. We are in agreement with the learned counsel for the petitioner that had the true state of affairs been disclosed to the insurer,

it is quite probable that either the proposal would have been rejected or a higher premium would have been charged, considering that insurance of a person who was addicted to liquor and had been hospitalized for as many as 16 days to get rid of his addiction to alcohol carried a greater risk as compared to the insurance of a hail and hearty person with no history of any ailment and hospitalization.

10. SINCE the mis -representation/suppression of fact related personally to the insured, it cannot be said that it was a bonafide suppression without any malafide intention. The concealment was of a fact which was exclusively in the knowledge of the insured and could not have been detected by the petitioner corporation by way of a reasonable and practicable inquiry.

11. FOR the reasons stated hereinabove, we are of the considered view that the District Forum and the State Commission fell into error in allowing the complaint despite mis -representation and concealment of material fact, by the insured. The revision petition is, therefore, allowed and the impugned orders passed by the District Forum and the State Commission are hereby set aside. No order as to cost.

