(2004) 12 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India APPELLANT

Vs

SATENDRA KUMAR CHAUHAN RESPONDENT

Date of Decision : 01-12-2004

Acts Referred:

Citation : 2005 2 CPJ 172

Hon'ble Judges : Roop Singh , Vinod Shankar Chaubey J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal filed by Senior Branch Manager, Life Insurance Corporation of India, Branch Office C.B.O. 3, Meerut and Branch Manager, Life Insurance Corporation of India, Hapur Branch Office, Distt. Ghaziabad under Section 15 of the Consumer Protection Act, 1986 against order dated 24.11.2003 passed by District Consumer Forum, Ghaziabad in Complaint Case No. 703 of 2000.

2. THE Forum ordered that Rs.1,00,000/- with 6% per annum interest shall be paid till the date of order within one month along with Rs. 800/- as cost of litigation be also paid to the respondent. It has been alleged in the memo of appeal that Smt. Sarita Rani, wife of present respondent, Satendra Kumar Chauhan, who is Head Clerk in an Inter College in District Ghaziabad took policy No. 25843077 for Rs.1 lac under the table and term 14-30 from Meerut for which she filled up the proposal form on 28.3.1999. In the proposal form she replied all the questions of question No. 11 in negative and had declared herself in good health. THE present respondent was shown as her nominee. However, Smt. Sarita Rani died on 21.4.1999, i.e., within 20 days from the date of proposal and within one day of issuing of the policy bond. THE claim being an early death claim so an inquiry was set up and it was revealed that life assured was suffering from T.B. prior to taking the policy but deliberately and fraudulently did not disclose this fact in the proposal form. THE claim under the aforesaid policy was repudiated on 28.11.2000. In the grounds they have mentioned that the order of the Forum is not passed on evidence on records and facts and law. The learned District Forum has erred in appreciating that the person taking insurance is duty

bound to disclose all material facts relating to the risk involved in the policy of insurance. Under Section 45 of the Insurance Act the insurer is justified in repudiating the claim if at any stage it is found that the statements given in the proposal form were wrongly given by the life assured. The life assured in the present case deliberately cancealed the correct state of her health while filling the proposal form. It has also been stated that Tuberculosis can only be detected through x-ray which is not done in this case. It has also been alleged that the present respondent, husband of the life assured, also took a policy so that his wife may also take the policy of Rs. 1,00,000/- (because it is necessary that only those ladies can be insured whose husband has taken the insurance policy). In this case respondent was fully aware of this fact that no house-wife can take any policy of more amount than the policy of her husband and after the death of the wife of the respondent, the respondent stopped paying premium and his policy lapsed. The clear intention of the respondent in taking the policy of Rs. 1,10,000/- was that his wife suffering from grave ill health may also get policy of Rs. 1,00,000/- and without payment of the prescribed premiums for longer period, after the death of his wife, he may claim the sum assured.

The Forum in its order has mentioned that she was medically examined by the doctor before the insurance and there is no evidence that her death occurred due to alleged disease.

3. WE have heard the arguments of the learned Counsel for L.I.C. and learned Counsel for the respondent/complainant. The proposal form mentions about the deceased Sarita Rani whose reply is given. The proposal form also shows that the branch of the L.I.C. is III, Meerut but the declaration in the proposal form dated 28.3.1999 shows the place Ghaziabad. It is argued by the learned Counsel for L.I.C. that this difference of place in the proposal form indicates the intention to defraud the L.I.C. The letter to Sr. Manager, L.I.C. shows that after 24 days of the filling up of the proposal form the insured expired and certainly this should raise a doubt in the minds of the L.I.C. to investigate the matter. There is another document, i.e., medical attendant''s certificate (Annexure No. 4) which shows the death of Sarita Rani occurred on 21.4.1999 and the primary cause has been shown as diahrrea, and the secondary cause of death has been stated as Peripheral Vascular Collapse and a word is there which is read as ''tuberculi'' but it is not very clear. In the column of symptom, they have mentioned "vomiting and loose motion". The repudiation letter is also on the file which shows that she has concealed for the status of her health in the proposal form and that is why the claim has been repudiated. It has also been mentioned in the repudiation letter that one and half years before the proposal she was ill and she took consultation and treatment from a doctor. Affidavit and counter affidavit from both the sides have been filed. It has been asserted and contended that Sarita Rani died one day after the issue of policy bond and the policy taken at Hapur by the complainant, husband of Sarita Rani, lapsed in the year 1999 due to non-payment of premium which shows that the husband took the policy only to get his wife suffering from serious illness insured so that without payment of due

premiums she could illegally and immorally get the insured amount from L.I.C. In the replication and objection it has been mentioned that the lady died due to diahrrea and not because of Tuberculosis as being alleged. There is no nexus of Tuberculosis and her death nor there is any evidence to show that she was suffering from tuberculosis. It is noteworthy that Sri Jageshwar Singh, Manager (Legal) in the Divisional Office, L.I.C., Hazratganj, Lucknow has also filed an affidavit and in his affidavit he has also raised the fact of concealment. He states that information was received that the life assured died on 21.4.1999 within 20 days of submitting the proposal form due to gastroenteritis and on receipt of the information the claim papers were sent to the respondent. It has also been mentioned in the affidavit that due to early death and inquiry was set up and it was revealed that life assured was also suffering from tuberculosis since long and the respondent husband of Sarita Rani got himself insured for Rs. 1,10,000/- in 1998 in Hapur Branch and this is lying lapsed since 1999. The rules provides that no policy can be given to any married women for more than the policy of her husband. The physician certificate shows that life assured died due to Gastroenteritis and the secondary cause was peripheral vascular collapse and tubercauli through which it was revealed that the life assured had deliberately and fraudulently concealed the material fact regarding her health. The claim of the policy was repudiated on the ground of suppression of material facts. It has also been stated in that affidavit that the cause of action arose at Meerut from where the policy was issued and where Divisional Office of the appellant is situated so that District Consumer Forum, Meerut only have the jurisdiction to adjudicate over the matter and District Consumer Forum, Ghaziabad had no territorial jurisdiction and has wrongly exercised the jurisdiction. This affidavit has been sworn on 31.12.2003 and before this in the written statement and affidavit repeatedly it has been mentioned that the lady was suffering from tuberculosis. The report of medical attendent''s certificate shows that earlier she was under the treatment of Dr. R.P. Singh. There is no doubt that she was getting treatment from Dr. R.P. Singh and also there is no doubt that she was also having heart ailment. Whether the word which appears to be illegible can be safely deciphered as "Tuberculi" is the question. If we have the word "Tuberculi" in our mind and mind-set is there that it can be "Tuberculi" then certainly it may be argued that it is "Tuberculi". If for the sake of arguments we say that this is not "Tuberculi", then what else is this? It has not been argued or stated by the respondent/complainant. Hence the benefit of deciphering should go in favour of L.I.C. It may be argued that the doctor who has filled this Annexure 4, the Medical Attendent''s certificate, should have been summoned and examined and clarifications should have been taken from him. It would have been an ideal thing but when it is not there and there is no doubt about the peripheral vascular collapse as well as the death only after 24 days of filling the proposal form shows a strong circumstance of the concealment of the material facts. Another argument is the illegible word which has not been deciphered as any other word by the respondent nor there is any affidavit or denial that the word "Tuberculi" has not been mentioned in the certificate, Annexure 4 and the third strong circumstance is that the husband takes policy for Rs. 1,10,000/- but the policy lapses due to non-payment of premium and this was only taken so that he can take another policy in the name of his wife and the argument of the L.I.C. appears to be quite natural that this has been done only to make the lady, who was suffering from serious disease, eligible for insurance so that after her early death without payment of prescribed premiums (if she had been alive throughout) he can reap the benefit of having full insured amount and in this circumstance the fourth argument that complaint was filed before the District Consumer Forum, Ghaziabad instead of Meerut is also to be taken into care.

4. DUE to above appreciation and discussion the appeal deserves to be allowed. ORDER The appeal of the L.I.C. is allowed. The judgment and order of the learned District Forum, Ghaziabad dated 24.11.2003 is set aside. There will be no order as to costs. Let copy as per rules be made available to the parties. Appeal allowed.