(2012) 02 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India — APPELLANT

Vs

SUDESH — RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Citation : 2012 0 NCDRC 68 : 2012 1 CPR 391 : 2012 2 CPJ 65

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : S.P.Mital , Rajpal Singh , Sandeep Chaudhary

Judgement

1. THIS appeal is against the order of the Delhi State Consumer Disputes Redressal Commission in CC No.C-363/1999. The State Commission has allowed the Complaint of Smt. Sudesh W/o late Jagbir Singh and directed the Insurance Company to pay the assured sum of Rs.5 lakhs, together with compensation of Rs.25,000/- towards mental agony and costs.

2. IT is seen from the record that late Jagbir Singh, husband of the Complainant, had obtained a policy on his life of Rs.5 lakhs from the appellant LIC of India Ltd. This policy was against the proposal form submitted on 23.2.1996. The assured died 13 months later, on 25.3.1997. The claim under the policy was repudiated by the OP/LIC of India Ltd through their letter of 13.8.1998 addressed to the Complainant. IT was on the ground that the deceased Jagbir Singh had withheld material information at the time of seeking the insurance cover. This letter of repudiation reads as follows:- "In this connection we have to inform you that in the proposal for assurance dt. 23.2.96 signed by deceased life assured at the time of taking this policy he had answered the following questions as under noted: Question No.11 Do you use or have you ever used alcoholic drinks, narcotics or any other drugs? Answer Occasionally one or two pegs at a get together or party. We may, however, state that this answer was false as we hold indisputable proof to show that before he proposed for the above policy, he was Chronic Alcoholic and Chain Smoker. He did not however, disclose these facts in his proposal form, instead he gave false answers therein as stated above. IT is therefore evident that he had made deliberate misstatements and withheld

material information from us regarding his habits at the time of effecting the assurance and hence in terms of the policy contract and the Declarations contained in the forms of Proposal for Assurance, we hereby repudiate the claim and accordingly we are not liable for any payment under the above policy and all moneys that have been paid in consequence thereof belong to us."

Repudiation of the insurance claim as above, has not been found to be proper and justifiable by the State Commission, in view of the following? a) The assured was subjected to a medical examination by the doctor of the OP/insurance company and was found to be in good state of health. b) The OP had relied upon the certificate of Mohinder Hospital where the deceased had undergone treatment from the 20.3.1997 and had died on 25.3.1997. It did not produce any record of treatment prior to 20.3.1997. Treatment of the deceased at Mohinder Hospital, itself was more than one year after the policy. c) The assured was found to be suffering from deep jaundice, which could be for any reason and not necessarily due to chronic heavy drinking alone. d) In the medical record of Mohinder Hospital, relied upon by the OP/Insurance Company, it was noted that the insured was a known alcoholic for many years. A reference was also made to the deceased having already been shown to the All India Institute of Medical Sciences. The insurance could have procured the relevant record from the AIIMS to verify about the nature of complaint relating to the health of the deceased and to ascertain what treatment was received by him, if any, prior to obtaining the insurance policy. While the insured had disclosed in the proposal form that he occasionally took one or two pegs (of alcoholic drinks) at get-together or a party, the Insurance Company chose not to investigate this matter further, before agreeing to provide the insurance cover. It was the obligation of the Insurance Company, which it had failed to discharge. It cannot subsequently take advantage of its own acts of commission or omission.

We have heard the counsels for the two parties and also perused the records of this case. In an earlier part of this order we have cited the ground for repudiation as contained in the letter of 13.8.1998 written by the OP to the complainant. It claims to hold "indisputable proof" that the deceased was a chronic alcoholic and a chain smoker, before he proposed for the insurance policy. It is also stated that the assured concealed this fact in the proposal form by merely stating that he occasionally took one or two pegs, in response to a question in the proposal form. This apparently refers to the statement in the affidavit evidence of the OP before the State Commission, which has relied upon the certificate of Dr. I.P.S.Kalra of Mohindra Hospital. A copy of this certificate is available as part of the documents relied upon by the appellant. It is in a prescribed form called Medical Attendant?s Certificate. Column no.11 contains a question "Have you any other information or remarks to make in connection with this claim concerning deceased?s ailments, habits, mode of living etc." In the answer, a hand written ? No? has been cut out and replaced by "known alcoholic for many years". This is contrary to the answer to question in Column No. 9, in which Dr Kalra states that he had not treated the patient any time during the last three years. The remark

about being a known alcoholic could therefore, not have been based on his personal knowledge. However, the State Commission while considering the evidence in this behalf has taken note of a remark in the case sheet of the Mohinder Hospital to the effect that the deceased was a known alcoholic for many years.

3. THE above mentioned certificate of Dr. Kalra also shows that the patient was brought with symptoms of jaundice, which were first observed only about 8 days back. [answers to question Nos. 4(d), 4(e) and 6(a)]. THErefore, this certificate has no relevance to any question about pre-existing medical condition. It is clear that the appellant/LIC of India has relied entirely on the record of treatment of the period 20-3-1997 to 25-3-1997 for repudiation of the claim under a policy taken more than one year prior to this period. Learned counsel for the appellant/ LIC of India could not point to any other evidence produced before the State Commission, which could show that the deceased suffered from any or all of these ailments at the time when the proposal for insurance was made on 23.2.1996. We, therefore agree with the State Commission that the question of disentitlement under the insurance policy, on the ground of concealment / suppression of information, would have arisen in this case only if there was evidence to show that the insured had undergone hospitalization/treatment for any disease in near proximity of the time when insurance policy was obtained and had chosen not to disclose it. The fact also remains that voluntary disclosure of information relating to occasional drinking, as made in the proposal form by the deceased, was not investigated further before the appellant chose to issue the insurance policy in favour of the deceased, Jagbir Singh.

4. IN view of the examination above, we find ourselves in complete agreement with the findings and decision of the Delhi State Consumer Disputes Redressal Commission in CC No.363/1999. We find the appeal of LIC of INdia completely devoid of merit and dismiss the same. The order of the State Commission is consequently confirmed with no order as to costs.

