(2000) 07 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India APPELLANT

Vs

Susheela Devi RESPONDENT

Date of Decision : 13-07-2000

Acts Referred:

Citation : 2001 3 CPJ 116

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Advocate : Arjun Bhargava , M.U.Siddiqui

Final Decision : Allowed

Judgement

1. THIS is an appeal against the judgment and order dated 13.7.1991 passed by District Consumer Forum, Badaun in Complaint Case No. 25 of 1993.

2. THE facts of the case stated in brief are that the complainant is the widow of Ram Murti Lal who had two policies of insurance with the Life Insurance Corporation of India. THE first policy was of Rs. 50,000/- dated 1.6.1992 and the other policy was for Rs. 20,000/- which was taken on 28.1.1989. At the time of taking the policy, the agent did not read over the contents of the form to the deceased and got his signature on blank forms. THE premium of both the policies were being paid regularly. The policy holder died on 19.12.1992 and the claim form was submitted to the Life Insurance Corporation on 22.12.1992 alongwith necessary papers. The Life Insurance Corporation of India has not allowed the amount to be paid to the complainant and was adopting delay tactics. The opposite party raised an objection about the overage of the deceased. It was alleged that if the age was written less, then the premium which was due according to age could have been deducted and the amount of the policy should be paid. The complainant has claimed a sum of Rs. 20,000/- as damages also.

The opposite party No. 1, Life Insurance Corporation of India, in its written version has alleged that the complaint has been filed on wrong facts. Only one policy was got done by the opposite party No. 2. The other policy was got done by another agent. The claim was repudiated on the ground that false age was declared by the deceased at the time of filling up of the proposal form. After the death of the policy holder the age was rectified. There was a difference of eight years between the real age and the age which was disclosed by the deceased.

3. THE learned District Forum, after considering the case of the parties, directed the Life Insurance Corporation of India to pay a sum of Rs. 77,451/- along with 18% per annum interest. It also directed that the excess premium on account of difference in age be deducted from this amount. Aggrieved against the order of the learned District Forum, Life Insurance Corporation of India has come in appeal and has challenged the correctness of the order passed by the Forum.

4. WE have heard the learned Counsel for the parties. Learned Counsel for the appellant has stated that Ram Murti Lal had given a proposal on 15.7.1992 for a sum of Rs. 50,000/- in which he declared his date of birth as 1.1.1944 meaning thereby he was 45 years of age at the time of filling up the proposal. According to the learned Counsel he also submitted the certificate of High School along with the proposal form. Learned Counsel has argued that after the death of the deceased, the age was verified by them and it was found that he was 8 years older and the certificate which was given in support of the date of birth was a fictitious one. A perusal of file goes to show that the deceased died within two years of taking of the policy. The complainant has to prove that the age given by the deceased at the time of filling up of the proposal form was correct. The proposal form goes to show that the date of birth has been shown as 1.1.1944 and the age has been disclosed as 45 years. This proposal form was filled up on 20.1.1989. This age was admitted by the Life Insurance Corporation on the basis of certificate issued by one Junior High School, Sahadatganj. The copy of the High School Certificate is Annexure 3 filed by the Life Insurance Corporation. There is a letter of one Jagdish Chandra addressed to the Branch Manager of Life Insurance Corporation, Badaun. He has written in this letter that he is attaching along with the letter a School Leaving Certificate of Prachin Primary School, Alapur in which the date of birth of the deceased has been given as 22.7.1937. Before that no other School Leaving Certificate was given. He has further stated that the claim be paid to his mother, Smt. Susheela Devi. Along with this letter School Leaving Certificate is attached which shows that the date of birth of the deceased was 22.7.1937. The previous certificate of Junior High School, was dated 17.8.1992. According to the learned Counsel when this letter was received by the Life Insurance Corporation enquiry was made about the age of the deceased and the first School Leaving Certificate which was submitted at the time of filling up of proposal form was got verified. To support his contention that the School Leaving Certificate which was given along with the proposal form was a false one, a copy of letter issued by the Principal of that College to the Life Insurance Corporation has been filed. It is dated 28.4.1993. It mentions that Ram Murti Lal s/o Sri Munni Lal was never issued any School Leaving Certificate from the school and that School Leaving Certificate does not bear his signature. Thus from these two documents, it is proved on record by the Life Insurance Corporation that the School Leaving Certificate in which the date of birth is given

as 1.1.1944 by the deceased was not issued by this institution and was a false certificate. The complainant has not filed any evidence to show that the second certificate which has been sent along with the application by the son of the deceased is not correct has not been produced. Thus from the perusal of the entire evidence on record it is clear that the age which was disclosed by the deceased as 1.1.1944 at the time of filling up of proposal form was a false certificate and it does not represent his real age. His real date of birth according to the second certificate submitted by his son is 22.7.1937. Thus there is a difference of 7 years between the two ages.

5. THIS aspect of this matter has not been considered by the learned District Forum and it has ignored consideration of this material fact of the case. Learned Counsel for the Life Insurance Corporation has argued that when the correct age was not declared at the time of filling up of proposal form and it was supported by a false certificate, therefore, the terms of the policy have been violated and the admitted age which has been given by the deceased becomes false. According to the learned Counsel for the opposite party even if the age is found to be 7 years higher, then the Life Insurance Corporation should in terms of its manual for policy servicing department should determine the right age and deduct the excess payment which was to be paid from the amount which is payable by the Life Insurance Corporation. Reliance has been placed at page 24 of this manual at item No. 11. THIS provision has been relied upon by the learned District Forum and after considering this item, the learned District Forum has granted the relief to the complainant. Learned Counsel for the appellant has argued that this item No. 11 will not apply to those cases in which the age has been admitted by the Life Insurance Corporation and was found supported by a School Leaving Certificate.

6. A perusal of this item will go to show that if the Corporation finds that without prejudice to the Corporation''s rights and remedies including those under the Insurance Act, 1938, in such cases the age given in the proposal if found to be higher, then the premium shall be payable in such cases at the age calculated on the sum assured for the correct age at entry and the assured will have to pay to the Life Insurance Corporation the accumulated difference between the premium for the correct age and the original premium, from the commencement of the policy upto the date of payment with interest @ 9% compounding half-yearly. In our opinion this clause will not apply to the facts of the present case. As has been argued by the learned Counsel for the appellant, this clause starts with the words that "the Insurance Corporation will act according to clause without prejudice to other rights etc.". In the present case the Corporation on the basis of enquiry found that the age has not been correctly disclosed and the repudiation of the claim was got done and it is within the jurisdiction of the Life Insurance Corporation to repudiate the claim on such a ground. If the Life Insurance Corporation did not think it advisable to invoke the provisions of this clause, then no fault can be found with the decision of Life Insurance Corporation. The Life Insurance Corporation was within its rights in case of wrong

declaration of date of birth by the deceased to repudiate the policy. According to the learned Counsel for the appellant this clause will only apply to those cases in which the age has not been admitted by the Life Insurance Corporation. Thus we find that on the basis of evidence on record, the deceased has not disclosed his true age at the time of filling up of the proposal form and the Life Insurance Corporation was within its right in repudiating the claim of the complainant. The judgment and order of the learned District Forum cannot be said to have been taken the correct view on the basis of facts of the case. The appeal is, therefore, liable to be allowed. Order

The appeal is allowed. The judgment and order of the learned District Forum are set aside and the complaint is dismissed.

7. LET copy as per rules be made available to the parties. Appeal allowed.