
(1991) 11 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

MANJULABEN V. PARMAR

APPELLANT

Vs

L.I.C. of India

RESPONDENT

Date of Decision : 29-11-1991

Acts Referred:

Citation : 1991 0 CPC 95 : 1992 1 CPJ 101 : 1992 1 CPR 272 : 1993 1 CLT 341

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Advocate : Kailash Vasudev

Final Decision : Disposed of

Judgement

1. - FACTS leading to this appeal, against the order of the Consumer Disputes Redressal Commission, Gujarat State, at Ahmedabad, are that Vithaldas C. Parmar of Rajkot (hereinafter referred to as the assured) had taken a life insurance policy from Life Insurance Corporation of India (for short the Corporation), which has the monopoly of life insurance business in India under the provisions of Life Insurance Corporation Act, 1956, under the Jeevan Mitra Plan. The said policy commenced from January 16, 1986. Under the terms of the policy, twice the amount of the sum for which the policy was taken was payable in the event of the death of the assured. In the present case the assured died on December 4, 1986 i.e., within nine months and twenty days after taking the policy. Thereafter Appellant No. 1, Manjulaben v. Parmar, widow of the assured (hereinafter also referred to as "the widow") lodged a claim under the policy with the Corporation (i.e. with Respondent No. 1 in the present appeal, which is the branch office of the Corporation at Rajkot). The Corporation vide their letter dated 23rd/25th March, 1987 repudiated the claim on the ground that the deceased had not disclosed the material/ correct information regarding his health against question Nos. 18, 20 and 24 in the proposal form and that the answers given were false as they (i.e. Corporation) were having indisputable proof that for about two years before the proposal, the assured had suffered from chest pain and cough for which he had consulted medical man and had taken treatment.

2. THE aforementioned widow made a representation dated September 4,1987 to the Corporation but the same was rejected by the then Assistant Secretary vide letter dated March 8,1988. THE widow thereafter approached present appellant No. 2 Consumer Education and Research Society (for short CERS), which is a registered voluntary Association entitled to join as complainant under the Consumer Protection Act, 1986.THE CERS wrote a letter to the Chairman of the Corporation on October 19,1988 pointing out that there was no concealment of any material information and that the medical examination conducted by the approved doctor of the Corporation did not find any active ailment of the heart of the assured. However, the CERS also failed to get any relief for the widow. THEREUPON the widow and CERS filed the complaint before the State Commission. THE Branch Office and the Head Office of the Corporation were arrayed as respondents in the complaint. In the complaint the complainants prayed for an order directing the opposite party to make a payment of Rs. 40,000/- being the amount payable under the terms of the Insurance Policy together with interest at 18 per cent per annum plus Rs. 2 lacs as exemplary damages for the deprivation and humiliation suffered by the widow and her family on account of gross negligence, inhumane and reckless conduct of the opposite party and its officers for a long period of three years. Award of Rs. 5,000/- as costs for the widow and Rs. 10,000/- as costs for CERS was also prayed for.

The opposite party contested the complaint petition. Various objections about the maintainability of the complaint were taken. On merits it was pleaded that Life Insurance Policy is a contract of "utmost good faith" between the Life Insurance Corporation and the assured; that in order to enable the proposer to give such information as would help the Corporation in accepting mortality risk involved in each case, an elaborate proposal cum personal statement is required to be filled in by the proposer and the assessment of risk thereafter is based on the information given in the proposal form.

3. THE complainants thereafter filed a rejoinder stating that the claim has been rejected by the Corporation maliciously and without regard to the merits of the case; that it would be seen that as a matter of policy, the opposite party summarily rejects the claim where the death of an assured occurs within one year of taking of the Insurance Policy and the said policy appears to have been applied in the present case as well without considering the consequences of such rejection on the beneficiaries i.e. the widow and the children of the assured. It may be mentioned here that before the State Commission the advocate for the opposite party was prepared to pay Rs. 20,000/- as ex-gratia payment. The State Commission suggested to him to make that payment to show their bona fides. However, on instructions, the advocate for the opposite party stated that unless and until the widow gave receipt for the full and final settlement, the Corporation was not prepared to make ex-gratia payment. The complainants were not prepared to accede to such a demand and, therefore, no payment came from the Corporation.

4. TO prove the respective cases the widow herself appeared in the witness box and examined her son Girishbhai, and Profesor Manubhai Shah, the Managing Trustee of the CERS as an expert. As against this, the Corporation examined Mr. Thakkar, the then Branch Manager serving at the relevant time at Rajkot Branch of the Corporation, Dr. Dholakia, who had examined the assured at the time when the proposal was made, Dr. Bharat Parekh who had examined the assured on June 17, 1986, i.e., to say about six months after the date of the proposal and Vaidya Ramnikbhai Pandya, the medical attendant of the assured prior to and for some months after the proposal. After examining the evidence and hearing the parties the State Commission gave a firm finding as follows: "Considering the evidence adduced by the parties, we come to the conclusion that the assured was not aware of any disease pertaining to heart at the time he signed the proposal form. His answers to various questions in the proposal form were honest and correct and the repudiation of the claim by the Corporation is not supported by any legal and valid grounds. The grounds given in the letter of repudiation dated 23rd/25th March, 1987, clearly show the non-application of mind by the authority."

(Emphasis added). In view of the above finding the State Commision allowed the complaint and the Corporation was directed to pay to the widow, Manjulaben for herself and for the benefit of other heirs of the assured a sum of Rs. 40,000/- together with running interest on the said amount at 18 per cent per annum from March 25, 1987 till payment. The opposite party i.e. the Corporation was also directed to pay to the complainant No. 1 i.e. the widow a sum of Rs. 1,000/- by way of costs of the complaint. The State Commission disallowed exemplary damages to the complainant widow on the ground that in arriving at the decision about repudiation the officers of the Corporation have taken into consideration the following circumstances: (i) the policy was of higher amount than originally taken by the assured; (ii) the assured expired within one year; (iii) the assured had consulted a cardiologist; (iv) Mr. Ramniklal Pandya (Vaidya) gave a certificate rightly or wrongly, that there was myocardial infarction; and (v) the officers were not personally benefitted by rejecting the claim. The State Commission was, therefore, of the opinion that it could not be said that the decision of the officers was arbitrary, oppressive and malicious and at the most it could be said that the decision was erroneous or there was an error of judgment which might not ultimately stand the scrutiny of the Court.

5. FEELING aggrieved against non-award of exemplary damages to the widow and costs to claimant No. 2 (i.e. the CERS), the complainants have come to this Commission in appeal.

6. THE only question to be considered in the present appeal is whether the claim of the widow under the policy was disallowed by the Corporation arbitrarily or whether the repudiation was bonafide. After going through the paper-book and the judgment of the State Commission, we are of the opinion that in the present case the repudiation can be said to be aribtrary and mala fide. THE State

Commission has itself remarked that the father of the assured was 72 years old and was living and his (i.e. the assured's) mother was 69 years old and she was also alive. Considering all the circumstances the State Commission was of the opinion that there was a history of longevity in the family. THE State Commission also remarked that the assured was a regular customer of the Corporation having got policies one after the other (i.e. 5 policies in all before the present proposal, four of which policies had matured). About the last policy for higher amount it was remarked that the assured might have opted for it as by passage of time he has become older and money value was also going down and, therefore, he needed higher policy amount for the welfare and benefit of his family members which consisted of his wife and children. In the circumstances we fail to understand how the policy of the higher amount put doubts in the minds of the officers of the Corporation about the bona fides of the assured. The assured had, of course, consulted a cardiologist i.e. aforementioned Dr. Parekh but it was about 6 months after the proposal. Dr. Parekh has not stated that the assured was suffering from any heart disease. The cardiogram taken by him did not disclose any disease of heart (it may be mentioned here that the case of the Corporation is that the assured died due to heart disease but it has been held by the State Commission that there was no satisfactory evidence about that fact). Dr. Dholakia has categorically stated in his examination-in-chief that he had found the assured to be of first class health and fit for insurance. The said Doctor had also examined the heart of the assured clinically and found the same to be normal.

The assured died on December 4, 1986 at the casualty ward of the Rajkot Government Civil Hospital. The Corporation did not examine the doctor who had last attended the assured in the Hospital nor produced any material on record from that hospital relating to the assured. On the other hand, the Corporation examined Vaidya Pandya who had given two reports to the Life Insurance Corporation of India on their printed forms, one is dated 22nd December, 1986 and the other 30th January, 1987. He mentioned in his earlier report that the primary cause of the death of the assured was chest pain and cough and secondary cause was acute myo-cardial infarction. He certified that he was treating the assured for 3 years except the last six months. Vaidya Pandya admitted before the Commission that the words "myo-cardial infarction" were taken by him from the report written by the Doctor of the Government Hospital. In fact, "acute myo-cardial infarction" could be the primary and not the secondary cause of death and "chest pain and cough" could only be symptoms of myo-cardial infarction. This gives room to doubt the competence of the Vaidya to understand what myo-cardial infarction. Further in his report of 30th January, 1987 he stated that the patient's illness was aggravated by his having taken bananas and pears against his advice and the consumption of these fruits led him to state in the certificate 22nd December, 1986 that the patient was a person of intemperate habits. We fail to understand why the Doctor who last attended him in the Hospital was not examined by the Corporation. On the other

hand, the Officers of the Corporation preferred to induce Dr. Vaidya to introduce the words "myo-cardial infarction" in his certificate.

7. AS the certificate issued by Dr. Pandya on 22nd December, 1986 did not fully help the Corporation, they obtained another certificate from him dated 30th January, 1987. Against column No. 11 of the subsequent report the said Vaidya wrote "one week from first examination". The word "one week" appears to have been introduced because question No. 20 of the proposal form related to information whether the proposer had any ailment since the last 5 years which had continued for more than a week and requiring constant treatment and whether any medical advice was necessitated during the last 5 years for the aforesaid ailment for a continuous period of one week. From the above it is clear that the certificate from the above mentioned Vaidya Pandya were undependable and appear to have been manoeuvred and procured by the Officers of the Corporation just to defeat the claim under the policy as assured had died within one year of taking the policy. It may be mentioned here that the State Commission has disbelieved the statement of Vaidya Pandya and has remarked that there was no material if he was a qualified medical practitioner and even in his last report he did not give his registration number nor the said number was disclosed in his deposition. It may be mentioned here that Vaidya Pandya has stated that the deceased was suffering from cough and chest pain. He added that every patient having complaint of cough would also make complaint of chest pain and that on diagnosis he had found the assured to be suffering from cough and cold. He had also admitted that Dr. Parekh, had told him that the deceased had nothing except cold and cough and that he had prescribed some medicine and that otherwise the deceased was found to be alright. Thus there is nothing to show that before his death the assured was suffering from any heart disease or he had the knowledge about the disease and that he had concealed it from the Corporation at the time of taking the policy.

8. THE above discussions clearly show that in the present case the action of the officers of the Corporation cannot be said to be bona fide. THE concerned Officers appear to have adopted dubious methods to repudiate the claim under the policy to save their skin as the assured had died within one year of taking the policy .THErefore, we are clearly of the opinion that the repudiation of the claim under policy by the officers of the Corporation cannot be said to be a decision taken in good faith after due exercise of care and proper application of the mind rather it was arbitrary, oppressive and malicious. Even after the direction issued by the State Commission the Corporation did not pay anything to the widow as is clear from the rejoinder filed in this appeal by the appellants. The Corporation had sent a voucher for the insurance amount and interest amounting to be Rs. 66,000/- in all to the widow for her signature. The widow signed it and returned it to the agent of the Rajkot Office of the Corporation on 8th February, 1991. She was told that she would receive the cheque for the amount in about 12 days time. When she did not receive the cheque for the amount, she visited the Rajkot Office of the Corporation on 14th March, 1991 where she was told by an officer

on duty that as she had filed an appeal before this Commission, the payment would not be made till the appeal had been disposed of or withdrawn. This was nothing but harassment of the widow. Considering all the circumstances in the present case we are of the opinion that the widow is entitled to be adequately compensated for the harassment and mental agony to which she had been subjected. The damages cannot be ascertained or calculated by any rule of thumb. We can only fix the amount considering the hard times undergone by the widow and her children for so many years. We assess such damages at Rs. 20,000/-.

9. THE second thing to be considered is if the complainant No. 2, CERS, which is a registered consumer voluntary organisation, should have been awarded the cost of the complaint or in this appeal. When the beneficiary under the insurance policy has filed the complaint we think that CERS was unnecessarily joined as a party in the complaint and in this appeal. THEY are not entitled to any costs.

10. THE Complainant No. 1 was awarded costs by the State Commission in respect of the complaint. She is also entitled to costs in this appeal which we assess at Rs. 2,000/-. Before closing this order we may mention here that the respondents have filed cross objections in this appeal. Those purport to have been filed under Sec. 22 of the Consumer Protection Act. That Section only lays down the procedure to be adopted by this Commission while disposing of complaints or any other proceedings. The powers to be exercised are those of Civil Court as specified in Sub-Sections (4) and (5) of Sec. 13 of the Act. Those Sub-Sections of Section 13 do not mention of filing cross objections in an appeal. Hence we are of the opinion that cross objections cannot be filed in an appeal filed before this Commission. We need not dilate upon this point as cross objections as such were not argued.

In the light of the above observations we maintain the order of the State Commission so far as it relates to the direction to the Corporation to pay Rs. 40,000/- with interest and costs in the complaint to the widow. We further award Rs. 20,000/- to the widow as damages and also costs which we have assessed at Rs. 2,000/-.

11. THE Corporation will have pay all these amounts to the respective claimants within one month from the date of receipt of the copy of this order by them. If any amount has been paid by the Corporation to the widow under the direction of the State Commission, that amount will be adjusted from the total payment awarded to the claimant No. 1 i.e. the widow. Complaint decided accordingly.