(1997) 11 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Mansa Devi APPELLANT

Vs

Life Insurance Corporation of India RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Citation : 1997 2 CPC 578 : 1997 3 CPR 545 : 1998 1 CLT 94 : 1998 1 CPJ 316

Hon'ble Judges : P.N.Nag , I.D.Bali , Krishana Tandon J.

Final Decision : Appeal allowed

Judgement

1. THE challenge in this appeal is to the order of the learned District Forum, Mandi, dated 16.1.1997, whereby the complaint of the complainant/appellant (hereinafter to be referred to as the complainant) has been dismissed.

2. THE relevant brief facts of the case necessary to be mentioned for determining the point in controversy are that the complainant is a nominee of the life assured late Shri Pratap Singh who had assured his person vide Policy No. 150169258 which commenced on 28.6.1993. THE life assured died on 28.6.1995 when the policy was in force. From the date of death, the complainant applied to the respondent (hereinafter to be referred to as the Life Insurance Corporation) for payment of the assured amount alongwith interest @ 18% per annum, but the same has been repudiated by the Life Insurance Corporation on the ground that the life assured was a chronic patient of diabetes and he has suppressed material facts while proposing for insurance and his death took place on account of aforesaid disease. At this stage, we may notice that Mr. Bimal Kumar Sharma, learned Counsel for the Life Insurance Corporation has requested for adjournment, as he has no brief for argument with him. This matter was partly heard on 27.5.1997 and the Counsel for the complainant had already argued the matter and the matter was heard at Shimla, but on the next date on 1.8.1997, on the request of the Counsel for the Life Insurance Corporation, case was adjourned. Again, adjournment has been sought, although the matter has been partly heard. In these circumstances, the matter cannot be adjourned indefinitely.

The District Forum has relied upon certain documents on the record from which, according to the District Forum, it stands proved that the life assured had been suffering from diabetes for the last eight years and he died of this disease.

3. WE regret we are unable to accept this contention. There is no doubt, certain documents (Annexures R-2 to R-6) have been placed on record and reliance has been placed by the District Forum on such documents, but these documents are neither originals nor are the attested copies of the originals and compared with the originals. Most of these documents are not even legible. These are only photo copies without attestation and no reliance can be placed on such documents, as we have already held in a series of judgments of the State Commission. Moreover, there is no affidavit filed by the Life Insumace Corporation in support of these documents. Mr. Bimal Kumar Sharma, learned Counsel for the Life Insurance Corporation submits that such an affidavit has been filed; but he has not been able to show us a copy of the affidavit, which is alleged to have been filed. Further, admittedly, opinion of the doctor that the deceased was suffering from diabetes which resulted in his death, also has not been produced in order to testify this fact. It is settled law that the opinion of the doctor-an expert-unless he is subjected to the test of examination and cross examination in a Court, cannot be considered as authentic and such evidence cannot be relied upon and form the basis of a finding. Once the life assured has died, it is incumbent upon the Life Insurance Corporation to settle the claim and to pay the assured amount, which they have failed to do and the action of the Life Insurance Corporation is wholly arbitrary and has resulted in deficiency of service. Even otherwise, the so called aforementioned documents do not disclose the seriousness/gravity of the disease the life assured was suffering. WE are of the opinion that merely mentioning of ''diabetes'' without its seriousness/gravity, cannot be considered as a serious ailment which was necessary for the life assured to bring it to the notice of the Life Insurance Corporation. Mr. Bimal Kumar Sharma, Counsel for the Life Insurance Corporation has relied upon the authority of the National Commission in Life Insurance Corporation of India v. Smt. Lily Rani Roy, I (1997) CPJ 46 (NC), and Parees Offset Pvt. Ltd. v. United India Insurance Company Ltd. & Ors., II (1995) CPJ 9 (NC) and wants to demonstrate that even if it is held that the claim has been repudiated arbitrarily, but it cannot be said that the same has been repudiated by the Life Insurance Corporation otherwise than in good faith and there is no deficiency on the part of the Life Insurance Corporation.

4. THESE authorities cannot advance the case of the complainant, as we are of the firm opinion that once the life assured has died, the Life Insurance Corporation could not have arbitrarily without any justifiable cause withheld the assured amount and their action cannot be termed as bona fide and in good faith. The learned Counsel for the Life Insurance Corporation has further relied upon the judgment of the National Commission United India Insurance Company Ltd. v. Biman Krishna Bose, II (1995) CPJ 62 (NC), whereby the National Commission has held that non-disclosure of the fact that the complainant was suffering from hypertension at the time of submission of proposal form for

mediclaim policy, is fatal to the complainant''s case. In the present case, we have already held that the Insurance Company has failed to substantiate that the complainant has suppressed material facts at the time of proposing for insurance. In the light of what is discussed above, the appeal succeeds and the order of the District Forum is set aside and the Life Insurance Corporation is directed to pay to the complainant the insurance claim in accordance with the terms of the policy within four weeks. The amount shall be payable alongwith interest @ 18% per annum with effect from 6.8.1996 i.e. from the date of filing of the complaint till the amount is actually paid. There is no orders as to costs. Appeal allowed.

