

(2012) 07 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Met Life India Insurance Company Ltd

APPELLANT

Vs

Addanki Satyanarayana

RESPONDENT

Date of Decision : 12-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 842

Hon'ble Judges : V.B.GUPTA , VINAY KUMAR J.

Final Decision : Revision Petition dismissed

Judgement

1. PRESENT Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (for short as "Act ") challenging order dated 21.3.2011 passed by A.P. State Consumer Disputes Redressal Commission, Hyderabad (for short as "State Commission). Vide impugned order, appeal of petitioner challenging order dated 12.5.2011, passed by District Consumer Disputes Redressal Forum, Praksam District(for short as "District Forum ") was dismissed.

2. BRIEF facts are that respondent/complainant "s wife and her family members joined the scheme "Met Smart Plus " of the petitioner/opposite party, which is a Unit Linked Policy with life insurance. The scheme is primarily aimed at investment. Yearly premium is Rs. 25,100/- and the term is for 55 years. The surrender value on maturity in the fifty fifth year is Rs. 2,51,73,756/- and death benefit is Rs 5,02,000/- in case within twelve years of commencement of policy. Respondent "s wife and her family members paid Rs. 25,100/- each towards premium of the policy. Petitioner has conducted health tests from their panel Doctors. Being satisfied with the health condition of respondent "s wife and her family members, its issued policy with effect from 19.12.2007 and the date of maturity of is 01.07.2062. It is further stated that on 31.3.2008, respondent "s wife suddenly fell on the ground from the cot in semi unconsciousness and immediately was taken to M/s Venkatarama Neuro Care and Trauma Hospital, at Ongole. From there she was referred to M/s Medwin Hospital, Nampally, Hyderabad. After conducting number of tests, surgery was conducted but unfortunately, she died on 13.4.2008, at M/s Medwin Hospital. After death of his

wife, respondent submitted claim forms, but petitioner repudiated the claim on the ground that his wife was suffering from Hypertension since four years and she did not disclose the same at the time of taking policy. Petitioner sent a cheque of Rs. 18,357/- refunding the premium amount. Thus, Petitioner repudiated the claim on wrong assumption respondent has suppressed material information regarding his wife "s health at the time of taking policy.

3. PETITIONER in its written statement admitted that respondent "s wife had submitted an application for "Met Smart Plus Policy " and policy was issued on 19.2.2007. It is further stated that only minimal medical tests were performed before issuance of the policy, since she had declared good health and has suppressed material facts regarding Hypertension and Diabetes. On the contrary, she was suffering from Diabetes and Hypertension prior to the issuance of policy as evident from the medical records and discharge summary issued by the hospital. On the basis of medical record, claim was repudiated on account of non disclosure of material facts by the insured at the time of filing of application form. The insured is obliged to give full and correct information on all matters which would influence the judgment of prudent insurer in determining whether he will accept the risk, and if he would, at what rate of premium and subject to what conditions. The fact of material non disclosure and misrepresentation by the insured has led to the repudiation of the said claim. There is no deficiency in service on the part of the petitioner.

4. OP No. 2, in the complaint before District Forum, i.e. M/s Medwin Hospitals, Nampally, Hyderabad filed its counter. O. P. No. 3, that is, Dr. M.R.C. Naidu before District Forum, filed memo adopting the counter filed by the second opposite party. District Forum allowed the complaint and passed the following directions; " For the foregoing reasons we are of the opinion that repudiation of the claim on wrong assumption that she suppressed the material facts regarding her health at the time of taking policy was not justified and it amounts to deficiency in service on the part of the 1st opposite party. Since no claim is made against opposite parties 2 and 3, the petition against opposite parties 2 and 3 is liable to be dismissed. In the result, complaint is allowed directing the 1st opposite party to pay Rs. 5,02,000/- towards insurance amount and Rs.3,000/- towards costs of litigation to the complainant within 2 months from the date of order. Failing which the 1st opposite party is liable to pay interest @ 9% p.a. from the date of order till the date of payment. The complaint against opposite parties 2 and 3 is dismissed without costs "

5. AGGRIEVED by the order of District Forum, petitioner filed an appeal before the State Commission, which dismissed the same vide impugned order. Hence, this revision.

6. IT is contended by learned counsel that petitioner has provided sufficient cause for condonation of delay. Due to dismissal of the complaint on account of condonation of delay, a meritorious case has been thrown out on technical ground. It is further contended that each day delay has not to be explained. The

delay caused ought to have been condoned by imposition of reasonable costs. In support, learned counsel has relied upon a decision of this Commission, *Tata Motors Limited v. Sunil Kumar and Another*, II (2012) CPJ 307 (NC), (RP No. 2726 of 2011) decided on 4.4.2012.

7. SHORT question which arises for consideration is as to whether State Commission was justified in not condoning the delay of 278 days in filing of the appeal before it.

8. THE main grounds seeking condonation of delay are reproduced as under; "2. That the Appellant came to know about the impugned order on receipt of the notice of execution petition on 2.3.2012 in the order dated 12.5.2012 and then it enquired about the order from the advocate at Ongole. On enquiry it was stated by the advocate that he had sent the certified copy of order earlier itself. However, it is stated by the Appellant that the order was not received by Appellant at any point of time before receipt of the notice of execution petition. On enquiry it was found that certified copy of the impugned order dated 12.05.2011 was received by the advocate of the Appellant at Ongole and the same was forwarded to the retainer advocate of the appellant at New Delhi but unfortunately packet containing the certified copy of order was lost in transit and the Appellant was under impression that the case was still pending for orders and advocates was under impression that he had order and the same and the same has been received by the appellant. 3. That immediately upon receipt of the notice of the execution petition the appellant instructed the advocate at Ongole to get the certified copy of order from the District Forum and upon receipt of the order of the Learned District Forum the same was sent to Legal Department of the Appellant which recommended for the appeal in the matter and thus the Legal Department of the Appellant subsequently forwarded the same to the Advocate handling a particular matter for preparing appeal. 4. That in the present case since the Applicant/Appellant had not received the order of the Learned District Forum after passing of the order due to the reason lost of same in transit thus it was unable to finalize the appeal and file the same before the Hon "ble Commission within the period of limitation and in the interregnum there occurred a delay in filing the Appeal. The delay in filing the Appeal is neither willful nor wanton but only due to the reasons stated above and the Appellant has taken steps immediately upon getting knowledge or order against it. Thus it is submitted that there is no intentional delay on part of the Appellant as the Appellant had not received the order copy directly from the Consumer Forum which is required to be sent under the provision of the Consumer Protection Act ".

In the entire application, it is nowhere mentioned as to on which date, certified copy of the impugned order dated 12.5.2011, was forwarded to the Retainer-Advocate at New Delhi. Further, it has been nowhere mentioned as to on which date notice of execution petition was received by petitioner and when the Advocate applied for the certified copy of the order of the District Forum. It is also not mentioned on which date the same was sent to the legal department

and when legal department recommended for filing of the appeal. Moreover, it has not been mentioned when it was forwarded to the Advocate who was handling the matter and what is the name of that Advocate.

9. INTERESTINGLY , petitioner has placed on record an affidavit of one Prem Singh, Advocate at King Stubb and Kasiva, Advocate and Attorneys, in which the deponent has deposed ; " I say that we are neither able to produce the affidavit from the Local Advocate at Ongole who was earlier handling the matter nor the postal receipt from him as the same could not be obtained from the Local Advocate ".

10. IN the absence of the affidavit of previous counsel or the postal receipts, we have no hesitation in holding that grounds on which condonation of delay is being sought are not supported by even basic documents. In HUDA v. Shakuntala Devi, II (2012) CPJ 314 (NC), this Commission while dealing with Section 24-A of the Consumer Protection Act, 1986, has held; "The expression "sufficient cause " has not been defined in the Act, rightly so, as it would vary from facts and circumstances of each case. At the same time, while examining the question of condonation of delay, it has to be kept in mind that it is the duty of the condoning authority to record satisfaction of the explanation submitted as to whether it is reasonable and satisfactory which is essential pre-requisite for condonation of delay. It is equally well settled that the delay cannot be condoned on the ground of equity as well as on the ground of generosity. As regards the ground taken in the first application it would transpire that totally vague and ambiguous assertion has been made. Except the reason that appellant Estate Officer, Rewari was having the dual charge of the office of SDM, no sufficient reason was given by the appellant for the condonation of delay in filing the appeal. It cannot be ignored that there is a delay of 181 days in filing the appeal and no datewise movement of the file has been mentioned in the application. The appellant has failed to mention that on which date matter was put up before him (Estate Officer) and on which date decision to file the appeal was taken. As far as the departmental delay is concerned, it has been observed by the Hon "ble National Commission in case titled Union of India v. Vijay Laxmi, reported in 2006 (1) CPC 61 (NC), where the petitioner claimed condonation of 65 days delay in filing the revision petition on the ground that the delay occurred as the matter had to be examined at various levels by the various Government departments. While repelling the prayer made it was observed that the petitioner had not disclosed the datewise movement of the file from one table to another table. It was further stated that no urgency had been shown from the side of the petitioner and the approach had been casual and for that reason it was not condoned. The Hon "ble Apex Court has also observed in case titled state of Nagaland v. Lipokao and others, reported in 2005 (2) RCR (Criminal) 414, that "proof of sufficient cause is a condition precedent for exercise of discretion by the Court in condoning the delay ". Further in case titled D. Gopinathan Pillai v. State of Kerala and Another, reported in (2007) 2 SCC 322, it has been held by the Hon "ble Apex Court that "when mandatory provision is not complied and the

delay is not properly satisfactorily and convincingly explained, the Court cannot condone the delay on sympathetic ground only ". Under the circumstances, the reasons given in the application were taken as inadequate and insufficient to condone the delay. The ratio of the above mentioned case fully applies to the facts and circumstances of the present case. Therefore, the ground stated in the application cannot constitute sufficient cause so as to condone the delay in filing the appeal as prayed for in the application from the side of the appellants. Therefore, the application for condonation of delay in filing the appeal is rejected. "

11. UNDER these circumstances, State Commission was justified in not condoning the delay of 278 days, without any proof or explanation.

12. EVEN on merits, petitioner has no case since District Forum in its order observed; "In the present case the only evidence available is death summary issued by the 2nd opposite party hospital it was produced by the complainant himself. No doubt in the death summary it was mentioned that the deceased was patient of diabetes and hypertension. But it was not mentioned since how long she was suffering from such a disease. There is no documentary proof or evidence available on record to show that the deceased had taken treatment in any hospital and was on medication for diabetes and hypertension prior to taking policy. The O.P.1 failed to produce any documentary evidence to show that the deceased had taken any treatment for diabetes and hypertension prior to taking policy. The O.P.2 hospital in their counter categorically stated that the deceased was not treated in their hospital previously and for the 1st time she was admitted in their hospital on 03.04.2008. Further the diabetes and hypertension are such diseases which can be diagnosed only through some tests. There is nothing on record to show that prior to taking policy she had undergone any tests in any hospital. For the 1st time when tests were conducted in O.P.2 hospital she was diagnosed as hypertension and diabetic mellitus. There is no evidence that she had knowledge about such disease at the time of taking policy. Therefore it can not be said that the deceased was guilty of suppression of material facts about her health. Considering the evidence on record we are of the opinion that O.P.1 miserably fail to prove that the deceased was aware that she was suffering from Diabetes and Hypertension at the time of taken policy ad that she deliberately suppressed the same. For the foregoing reasons we are of the opinion repudiation of the claim on wrong assumption that she suppressed the material facts regarding here health at the time ot taking policy was not justified and it amounts to deficiency in service on the part of the 1st opposite party. Since no claim is made against opposite parties 2 and 3, the petition against opposite parties 2 and 3 is liable to be dismissed ".

Looking from any angle, we do not find any infirmity or illegality in the impugned order passed by the State Commission. Present revision petition is devoid of any merits and there is no legal force in it. Accordingly, the same is here by dismissed with costs of Rs.10,000/-(Rupees Ten Thousand only).

13. PETITIONER is directed to deposit the costs of Rs. 10,000/-(Rupees Ten Thousand only) by way of demand draft in the name of "Consumer Legal Aid Account ", within four weeks from today.

14. IN case, costs are not deposited within the prescribed period, then petitioner shall be liable to pay interest @ 9% p.a., till realization. List on 7th September, 2012, for compliance. Revision Petition dismissed.