(2014) 09 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

M/S. Icici Prudential Life Insurance Co. Ltd — APPELLANT

Vs

Mary Joseph — RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 591

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : AVANISH KUMAR , C.B.GURURAJ

Judgement

1. THIS revision petition has been filed by the petitioner against order dated 23 -04 -2010 passed by the learned State Consumer Disputes Redressal Commission, Karnataka (in short, ''the State Commission '') in Appeal No. 2774/2009 - M/s ICICI Prudential Life Insurance Co. Ltd. Vs. Mary Joseph, by which, while dismissing appeal, order of the District Forum allowing the complaint was set upheld.

2. BRIEF facts of the case are that complainant/respondent ''s husband Mr. Joseph availed housing loan from ICICI Prudential in the year 2006 for construction of residential house. Mr. Joseph also obtained insurance policy on 27 -03 -2006 from opposite party/petitioner. On 12 -01 -2007 Mr. Joseph died. Complainant submitted claim to the opposite party, which was repudiated on the ground that policy holder was under treatment for cardiac disease in the month of June, 2004 and suppressed material facts while obtaining policy. Alleging deficiency on the part of the opposite party, complainant filed complaint before District Forum. Opposite party resisted complaint and submitted that claim was rightly repudiated as insured suppressed material facts regarding his previous treatment and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint. Appeal filed by the opposite party was dismissed by learned State Commission vide impugned order, against which this revision petition has been filed.

3. HEARD learned Counsel for the parties and perused record. Learned Counsel for the petitioner submitted that claim was rightly repudiated by the petitioner on

account of suppression of material disease and previous treatment by insured even then learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal, hence revision petition be allowed and impugned order be set aside. On the other hand, learned counsel for the respondent submitted that order passed by learned State Commission is in accordance with law, hence revision petition be dismissed.

4. PETITIONER submitted discharge summary of Mr. K.M. Joseph/insured issued by Department of Cardiology before District Forum in which it was observed that Mr. Joseph was admitted in hospital on 24 -06 -2004 and was discharged on 01 -07 -2004 and diagnosed with Ischemic Cardiomyopathy - Two Vessel coronary artery disease with LV dysfunction. It was further confirmed by Vikram Hospital and Heard Care vide letter dated 26 -03 -2007. Complainant has also mentioned in the complaint, letter of repudiation dated 27 -03 -2007 by which claim was repudiated on account of suppression of previous treatment regarding cardiac disease. Reply to the personal details in the proposal form runs as under: - - i) Have you ever suffered or are suffering from any of the following: -

ii) Ailments/Symptoms relating to the Heart, Digestive System, Kidney, Brain or Nervous System, Mental/Psychiatric ailment - No

5. IN the light of aforesaid discharge summary it becomes clear that insured gave false reply regarding his treatment pertaining to heart disease and suppressed material facts while obtaining insurance policy.

6. HON ''ble Apex Court in (2008) I SCC 321 - P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India observed as under : - - ''''Misstatement by itself is not material for repudiation of the policy unless the same is material in nature. But, a deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law. The purpose for taking a policy of insurance is not very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered ''''.

7. COMPLAINAN T died on 12 -01 -2007 i.e. within 10 months of obtaining insurance policy and as policy has been obtained by suppressing material disease and giving false answers in proposal form, policy becomes void in the light of aforesaid judgment of Hon ''ble Apex Court and petitioner has not committed any deficiency in repudiating claim.

8. LEARNED counsel for the respondent submitted that there is no nexus between the cause of death and suppression of previous heart treatment. Respondent has not placed post -mortem report of the deceased by which cause of death could have been ascertained and in such circumstance it cannot be inferred that there was no nexus between the cause of death and previous disease. He has also placed reliance on judgment of this Commission in II (2005) CPJ 9 (NC) L.I.C. of India Vs. Badri Nageswaramma (Deceased) & Ors. in which it

was held that where deceased an old T.B. patient having diabetes but was not known to him on the date of proposal, the burden was on the insurance company to prove false representations and suppression of facts and as doctor ''s certificate was without affidavit, repudiation was held improper.

9. AFORESAID judgment is not applicable to the facts and circumstances of present case as complainant has not denied previous treatment of deceased in the hospital pertaining to Ischemic Cardiomyopathy.

10. IN the light of aforesaid discussion it becomes clear that on account of suppression of previous treatment regarding material disease pertaining to heart, petitioner has not committed any deficiency in repudiating claim and policy stands vitiated. Learned District Forum committed error in allowing complaint and Learned State Committed further error in dismissing appeal and revision petition is to be allowed.

11. CONSEQUENT LY , revision petition filed by the petitioner is allowed and impugned order dated 23 -04 -2010 passed by learned State Commission in Appeal NO. 2774/2009 - ICICI Prudential Life Insurance Co. Ltd. Vs. Mary Joseph and order of District Forum dated 14 -07 -2009 in Complaint No. 33/2009 - Mary Joseph Vs. ICICI Prudential Life Insurance Co. Ltd. is set aside and complaint stands dismissed with no order as to costs.