(2001) 06 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

NIRMALA DEVI — APPELLANT

Vs

Life Insurance Corporation of India — RESPONDENT

Date of Decision : 26-06-2001

Acts Referred:

Citation : 2002 1 CLT 319 : 2002 1 CPJ 89 : 2002 1 CPR 83

Hon'ble Judges : S.K.Dubey , B.L.Khare J.

Final Decision : Appeal dismissed

Judgement

1. COMPLAINANT has preferred this appeal against the order dated 16.6.1997 passed in Case No. 226/1994 by the District Consumer Disputes Redressal Forum, Morena (for short the ''District Forum'').

2. FACTS giving rise to this appeal are thus : The appellant''s husband Munish Kumar Dhakre employed in Police Service of Government of Madhya Pradesh submitted a proposal on 15.1.1994 for obtaining a back-dated Life Insurance Policy of the sum of Rs. 1,00,000/-. Life Insurance Corporation of India (LIC) believing the answers given in the proposal to be true as the life assured was employed in the Police Service of Government of M.P. without getting his medical examination, accepted the proposal and issued a Policy No. 200860801 dated 28.2.1994 covering the risk with back date from 28.12.1993 of the Table and Term 75-20, mode of premium was half-yearly of Rs. 3,420/- payable in June and December every year. Life assured died on 3.4.1994, Medical Attendants Certificate shows that the primary cause of death was stomach pain and secondary cause was vomiting and diahorrea. LIC got the matter investigated and on the basis of material collected found that prior to taking of the policy, life assured was treated in Choithram Hospital and Research Centre where he was admitted on 3.3.1992 for Liver Biopsy on which he was found a case of Diffuse Liver Parenchymal Disease with Australia Antigen Positive with Portal Hypertension. Life assured was also treated in District Government Hospital at Morena and at Maheshwari Nursing Home at Gwalior and also by Dr. R.T. Prajapati. Life assured remained on leave on various days for his treatment from

12.1.1992 - 13.12.1993, the record of absence from duty was so collected from Superintendent of Police, Morena. LIC after due application of mind for suppression of material fact regarding ailment of liver and treatment by various doctors repudiated the claim and called the policy in question. The appellant filed a complaint, which was resisted. The District Forum after appreciation of evidence on record held that the repudiation of the claim was after due application of mind was justified. Learned Counsel for appellant submitted that the proposal was filled by the agent of the LIC who asked the questions, reply of which was given by the life assured. The life assured did not suffer from any serious ailment who discharged his duties till the last day. Therefore, question of suppression of material fact does not arise. The documents produced by LIC have not been proved by legal evidence, nor by the affidavit of the Investigator who collected the record, therefore, the repudiation of the claim was not justified. Counsel cited decision of National Commission in case of LIC v. Smt. H. Mayavati, I (1996) CPJ 13 (NC); LIC v. Smt. Shobha Devi Sunderlal Patni, II (1996) CPJ 67 (NC)=1996 (2) CPR 87 (NC); LIC v. Dodda Sambaiah & Ors., III (1995) CPJ 61 (NC)=1995 (3) CPR 49 (NC), decision of State Commission, Chandigarh in case of Rama Devi v. LIC, 1994 (3) CPR 672, and a decision of State Commission, Gujarat in case of Jawaharlal Chimanlal Mody v. LIC & Anr., 1996 (1) CPR 129.

Learned Counsel for the LIC submitted that Biopsy report and the certificate of the Choithram Hospital and Research Centre and other certificates find corroboration from leave record have not been challenged. Life assured was suffering from serious ailment of liver (Diffuse Liver Parenchymal Disease with Australia Antigen Positive with Portal Hypertension) which is evident from Biopsy report and the certificate dated 15.7.1994 issued by Dr. G.K. Naik of Choitram Hospital and Research Centre, discharge slip dated 5.3.1992, letter of Medical Record Officer dated 27.1.1995, prescription of Dr. Prajapati, Dr. Maheshwari, Outdoor Patient Ticket of Government Hospital, Morena and record of absence from duty issued by Superintendent of Police, Morena. The cause of death had nexus with the disease which the life assured was suffering. The agent might have filled the proposal but not as agent of LIC. The life assured was not illiterate. He being in Police Service of the State Government was not medically examined. The LIC on the material collected for suppression of material fact due application of mind called the policy in question under Section 45 of the Insurance Act, 1938 (for short the ''Act'') and communicated that the claim was not payable. Counsel further submitted that contract of insurance is uberrimae fidei, that is based on utmost good faith and conscience, the proposal for insurance is the basic document upon which LIC undertakes to cover the risk of the life of the proposer. Therefore, the proposer is in boundan duty to give correct answers. If proposer, wilfully withholds the facts which are previously known to him the contract becomes vitiated. As the life assured died within two years from the commencement of the policy, the nexus between the facts suppressed and the cause of death is not material as any wrong statement of misstatement disentitled the claimant, the insurance sum, as per Section 45 of the Insurance Act. If the deceased would have disclosed the facts of his ailment, the LIC would have deferred the acceptance of the proposal or have charged extra premium after having seen all medical documents. Counsel cited the decision of Supreme Court in case of Mithoolal Nayak v. Life Insurance Corporation of India, AIR 1962 SC 814, and a decision of National Commission in case of Life Insurance Corporation of India v. Smt. Lily Rani Roy, I (1997) CPJ 46 (NC).

3. IT is well-settled that the contract of insurance, including the contract of life insurance are uberrimae fidei. They are founded upon utmost good faith. If one party fails to observe this utmost good faith, the contract may be avoided by the other. Therefore, the obligation is cast upon both the parties to deal fairly and honestly in equal degree. In these contracts, the contracting parties are placed under a special duty towards each other merely to refrain from the active misrepresentation, but to make full disclosure of all material facts within their knowledge. The policy was called in question by applying of Section 45 of the Insurance Act, which reads thus : "45. Policy not to be called in question on ground of mis-statement after two years-No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose : Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

4. A careful reading of Section 45 of the Insurance Act, indicates that it modifies the common law insofar as the policy sought to be challenged on account of mis-statement or suppression of facts. However this section does not confer any right on the insurer to repudiate a policy which has been enforced for less than two years on the ground of falsehood or inaccuracy of a statement, irrespective of its materiality and if the insurer wants to repudiate the liability under such a policy, he has to satisfy the requirements of the general law of insurance. The burden is cast on the insurer to show that the statement was on a material matter which was inaccurate from the point of view from the policy and not at the point of view of the assured, whether it was relevant or material or not. While accepting the contract of insurance, the contract can be repudiated for non-disclosure of material facts. What are material facts, that is every circumstance, which could

be relevant for a prudent insurer to fix premium or to decide whether he should take the risk. The text to determine materiality is; whether the fact has any bearing on the risk undertaken by the insurer. If fact has any bearing on the risk it is material fact if not it is material. In Life Insurance Policies where acceptance or rejection of risk depends upon the state of health a distinction must be drawn between illness and a simple disorder. In the present case, incorrect answer of the disease of the ailment of Diffuse Liver Parenchymal Disease with Australia Antigen Positive with Portal Hypertension does not relate to simple disorder but a serious ailment. If, true answer would have been given by the life assured relating to ailment and its treatment, probably, LIC would not have taken the risk, therefore, it cannot be contended that untrue answers in the facts of this case were not material from the point of LIC so as to call in question the policy to repudiate the claim. The repudiation of the claim in the circumstances was after due application of mind on the material collected related to the serious ailment of the life assured, hence, LIC cannot be said to be deficient in service as the repudiation of the claim was bona fide on justifiable ground after due application of mind. In the result, appeal fails and is dismissed with no order as to costs. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with record of the case. Appeal dismissed.

