(2004) 04 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. — APPELLANT

Vs

CH. VENKATESHAM — RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Citation : 2004 4 CPJ 533 : 2005 1 CPR 332

Hon'ble Judges : I.Venkatanarayana , M.Shreesha J.

Final Decision : Appeal dismissed

Judgement

1. OPPOSITE parties are the appellants. Aggrieved by the order of the District Forum, Nalgonda, in C.D. No. 68/2000 dated 5.3.2003, the present appeal has been filed. The facts in brief are set out hereunder: The complainant is an Advocate. The first opposite party is the Branch Office of the second opposite party at Suryapet. On 6.8.1998, he obtained Mediclaim policy for Rs. 2,00,000/- bearing No. 160/99 from the first opposite party for a period of one year effective from 6.8.1998 for himself and his wife, Vijayalaxmi by paying premium of Rs. 2,930/- by way of cheque. The first opposite party issued a policy after satisfying the health condition. In October, 1998 the complainant had motions and vomitings and on consultation of the doctor, he was advised to get himself admitted in a hospital. He ultimately got himself admitted in Satya Kidney Centre, Himayathanagar, Hyderabad on 24.10.1998 and was an in-patient. The doctors observed that both the kidnies were not functioning and stated that he required kidney transplantation of atleast one kidney. As he was ready to meet the expenses of kidney transplantation, the left kidney of his wife, which was found suitable, was fixed on 9.12.1998. He was discharged on 23.12.1998. He incurred expenses of Rs. 2,20,000/-. He submitted the bills and claimed Rs. 2,00,000/- only. It is the case of the complainant that he informed the first opposite party that he was admitted in Satya Kidney Centre for treatment. On 30.11.1998, the opposite parties asked him to send all the medical reports pertaining to his illness. On 31.12.1998, the first opposite party asked him to send cash bills, medical/diagnosis report, discharge summary and case sheet for taking further action under the policy. On 23.2.1999, the complainant sent the

required data and documents to the first opposite party. The opposite parties repudiated the claim. Hence, he approached the District Forum for appropriate relief.

2. THE first opposite party filed a counter which was adopted by the second opposite party. The District Forum conducted a detailed inquiry and based on the record, held that the opposite parties are liable to pay Rs. 1,76,305/- together with interest at 9 per cent per annum from 8.10.1999 till realisation and also costs of Rs. 500/-.

Aggrieved by the said order, the present appeal has been filed. The learned Counsel for the appellants, Mr. A. Anasuya contended that the District Forum did not look into the diagnosis report which will conclusively establish that on the date of obtaining the policy, the complainant was suffering from kidney problem, but the same was not disclosed.

3. THE District Forum has conducted a detailed inquiry and has gone into every document. We only address ourselves to the principles as to when the insurer can validly repudiate a contract of insurance on the ground of misrepresentation or suppression of material facts. THE Apex Court has laid down in LIC of India v. G.M. Channabasamma, (1991) 1 SCC 357, as follows: "It is well settled that a contract of insurance is a contract Uberimma Fides and there must be complete good faith on the part of the assured. THE assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted. Section 45 of the Act (Insurance Act) has made special provisions for a life insurance policy. If it cannot be called in question by the insurer after the expiry of two years from the date on which it was effected unless the insurer shows that such a statement was on a material matter or suppressed facts which it was material to disclose and 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." It was further held that "the burden of proving that the insured had made false representation and suppressed material facts is undoubtedly on the Corporation". In another decision LIC of India v. Smt. Asha Goel, I (2001) SLT 89=(2001) 2 SCC 160, the Apex Court held that Section 45 of the Insurance Act is restrictive in nature and depends upon the conditions. It lays down that the suppressed material must be of such material which ought to have been disclosed and that the insured must have played fraud. Based on the aforementioned judgments, we are of the opinion that the burden of proof is on the insurer to establish that there has been misrepresentation of facts, and that the death is on account of the result of those suppressed facts. In the present case, there is absolutely no evidence to show that the insured was suffering from hypertensive since six years prior to submitting the proposal, and that he took treatment for the same. Even Dr. Rambhoopal of Satya Kidney

Centre was not examined to show on what basis it was mentioned in the admission record that the patient was found to be hypertensive for the last six years. We are of the opinion that the District Forum was right in holding that the repudiation of the claim of the complainant by the opposite party is not bona fide and is unjustified. The District Forum was right in directing the opposite parties to pay a sum of Rs. 1,76,305/- together with interest at 9 per cent per annum etc. We do no see any ground to interfere with the order of the District Forum.

4. THE appeal, therefore, fails and is accordingly dismissed. Time for compliance six weeks. Appeal dismissed.

