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(2011) 02 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

Panchal Ramabhai Motibhai APPELLANT

Vs

L.I.C. of India RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 138 : 2012 1 CPJ 223

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Petition is dismissed

Judgement

1. THE present revision petition has been filed by one, Panchal Ramabhai Motibhai (hereinafter referred to as the Petitioner) being aggrieved by the order of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the State Commission) in favour of Life Insurance Corporation of India (hereinafter referred to as the Respondent).

2. THE facts of the case according to the Petitioner was that he had taken an insurance policy in the name of his wife, Geetaben from the Respondent Insurance Company for Rs.50,000/- on 15.05.1995. THE wife of the Petitioner suddenly died on 18.12.1995 when the policy was still in force. Since, this was a natural death and covered under the insurance policy, the Petitioner filed a claim before the Respondent Insurance Company along with necessary documents. But the claim was not settled despite a legal notice. Petitioner thereafter filed a complaint before the District Forum requesting that the Respondent be directed to pay Rs.50,000/- of the insurance policy along with interest @ 18% from the date of presenting the claim as well as other admissible benefits. The Respondent on the other hand stated that since the Petitioners wife died within six months of her taking the insurance policy, as per the required procedure an inquiry was conducted into the cause of death and it came to light that at the time of filling the proposal form, the life assured had concealed the facts about her health and physical condition in response to questions at Para 11(e) and 13(a) of the policy which sought information as to whether she had T.B. and had undergone a caesarean section respectively to which the reply given was No. On the other

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hand, investigations revealed that she had T.B. and that she also had undergone three caesarean operations prior to filling the insurance form. This was confirmed by an affidavit of the doctor who had performed the caesarean operations on the deceased. It was also stated that the patient was suffering with Cox (T.B.) with Anaemia for which she was treated as an indoor patient by Dr.Dilip Shah, M.D. from 11.10.1995. According to medical science, patients with T.B. and anaemia for which the patient was treated as an in-patient two months prior to her death, are long existing diseases and, therefore, it would be reasonable to presume that she was suffering from these diseases at the time when she took the insurance policy. Under the circumstances it is clear that apart from suppressing material facts, the death of the deceased was not due to natural causes but due to old diseases. This makes it clear that Petitioner had not come with clean hands before the Forum and therefore, the claim was rightly repudiated.

The District Forum after hearing both parties and considering the evidence filed before it, accepted the complaint on the grounds that there was no concrete evidence to confirm that the life assured was suffering from T.B. at the time of her filling up the proposal form and also that anaemia is a common symptom in many women in India and cannot be treated as a serious disease per se. Thus, there was no nexus between the death of the Petitioners wife and her having T.B. and anaemia. Regarding the caesarean operations, the District Forum observed that this was conducted not because the life assured had any disease but because normal delivery was not possible because of her narrow physique. The Respondent was directed to pay the Petitioner Rs.50,000/- with interest @ 12% from the date of petition till the amount is paid, Rs.5,000/- as compensation for mental agony and Rs.2,500/- as costs.

3. AGGRIEVED by this order, Respondent filed an appeal before the State Commission which accepted the appeal on the ground that the life assured had suppressed material information pertaining to specific queries regarding her caesarean operation by replying in the negative. The operative part of order of the State Commission reads as follows: The main presentation of the learned Advocate of appellant is such that the insured has written NO in questionnaire of proposal question No.13(A) that whether caesarean delivery has taken place? While the husband of the insured has written one letter dated 11.04.1996 to the appellant insurance company, wherein he has written that the children which have born to my wife for those children the caesarean operation was carried out by Dr.Ghanshyambhai Shah. Thus, taking into consideration, the above evidence, that proves clearly that the facts furnished by the insured; in the proposal form has concealed or has given reply in wrong manner. In this regard, the advocate of respondent could not present any other presentation, nor is able to present any other evidence before us in this regard. To support the above fact, the insurance company has produced the certificate of Dr.Ghanshyambhai Shah wherein caesarean has been done to the insured on 14.06.1985 and 22.11.1989 certificate has been issued in this regard. Taking into consideration all the above stated facts and evidences, as per our honest opinion, we believe that, the facts

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which have been presented by the insured in his proposal form, has been wrongly filled up and has been concealed. Hence the present revision petition. Learned counsel for both parties were present and made oral submissions. Learned counsel for Petitioner while admitting that the life assured had undergone caesarean operations and that she had replied in the negative to a specific query in Column 13 of the proposal form seeking this information stated that this was not a material suppression of fact and further the life assured being an illiterate woman did not understand the full import of the information sought in the insurance policy. The fact of her being illiterate is confirmed by her thumb impression on the insurance policy. We have heard the learned counsel for the parties and have gone through the evidence on record.

4. IT has been admitted through credible evidence including an affidavit of a doctor and not denied by the Petitioner that the life assured had indeed undergone three caesarean operations. IT is also not in dispute that the life assured replied in the negative to the specific query seeking this information in the Insurance Policy form. The very fact that this information was sought in the insurance policy indicates that it was considered an important and material information to which a correct reply should have been given. There are several rulings of the Honble Supreme Court as well as of this Commission that an insurance policy is a contract entered into between the two parties in utmost good faith and concealing any information or giving incorrect information amounts to violation of its terms and conditions and in such cases the Insurance Company is entitled to repudiate the claim. Respectfully, following these judgments, which is now settled law, we see no merit in the present revision petition. The order of the State Commission is upheld and the revision petition is dismissed with no order as to costs.

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