(1992) 08 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

PRAFULLA KUMAR BHUYAN — APPELLANT

Vs

P.S.R.DIVISIONAL MANAGER — RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : 1992 3 CPJ 228

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi J.

Final Decision : Complaint allowed

Judgement

1. COMPLAINANTS claiming to be consumers have filed this complaint alleging deficiency in life insurance service.

2. ON 4.6.1985 complainant No. 1 submitted a proposal for assurance on his own life in respect of a money back policy and deposited Rs. 786/- on 24.6.85 towards premium. ON 24.8.1985, he along with wife Bijoylaxmi (deceased) gave a proposal for a Jeevan Sathi policy covering risk of either lives for a sum of Rs. 35,000/- for 15 years. No. 1 requested on 31.8.1985 to cancel his earlier proposal and to adjust the premium already paid for that proposal towards the first premium of the subsequent Jeevan Sathi Proposal. This proposal for Jeevan Sathi policy for a sum of Rs. 35,000/- risk was covered respectively with effect from 28.7.85 by the opposite parties on 31.8.1985 adjusting the earlier premium for the new policy. While the policy was validly continuing Bijoylaxmi expired on 18.7.86. No. 1 informed about the death to opposit parties, complainants as legal heirs of Bijoylaxmi desired disbursement of the amount on the policy covering risk of life of Bijoylaxmi. Claim was repudiated on 31.3.89 by opposite parties which is claimed to be deficiency in service. Case of complainants is that on intimation of death of Bijoylaxmi by complainant No. 1, opposite party No. 2 entrusted the enquiry to Sri S.K. Das, one of the officers of the Life Insurance Corporation (in short ''Corporation''). On basis of report of Sri Das, claim was repudiated on 31.3.1989. Request for reconsideration was not favourably considered by authorities of the Corporation as communicated in their letters dated 2.5.1989 and 16.8.1989. Grievanced in the Grievance Cell of the

Corporation yielded no result Notice was served on the Corporation through lawyer on 8.8.91 but to no effect.

Case of opposite parties is that on enquiry it was found that while making the proposal for a Jeevan Sathi Policy proposers knowingly suppressed the fact that Bijoylaxmi was medically treated. Thus, on account of suppression of material facts the policy is invalid and insurer rightly repudiated the claim.

3. INSURANCE including life insurance is a service as defined in the Act. For deficiency in service by the insurer, it can be made liable and direction can be given by a redressal agency under the Act. Fault, imperfection short coming or inadequacy in quality, nature and manner of performance which is required to be maintained as has been undertaken to be performed by the insurer in pursuance of the terms of the policy which is a contract or otherwise in relation to the policy is deficiency in service of the insurer of lives. What would be fault, imperfection, short coming or inadequacy would depend upon facts and circumstances in each case and no hard and fast rule can be laid down nor such deficiency cannot be put in a straight jacket formula. When a proposal is accepted and policy becomes operative, a contract is complete. Persons insured for life are to pay the premiums regularly and insurer is to pay the assured amount on maturity of the policy or on death as the case may be, in case of death, on being satisfied that the insured died, insurer is to perform its part of the contract. This satisfaction is to be reached at an early date within a reasonable period. Though such period is not fixed, insurer is to be diligent in making the enquiry. Lack of alertness of the insurer 2 which causes delay in having satisfaction to pay the amount to the persons entitled to receive the same is a deficiency in service.

4. SIMILARLY, refusal to pay by repudiating the policy on ground which is unreasonable or conclusion to repudiate which is unreasonable is a deficiency in service. Where on materials on record, two views are possible and insurer has taken one view in good faith to repudiate the policy, the same would not be a deficiency in service. A redressal agency under the Act is not the appellant authority of the insurer to take another view and reverse the conclusion made in good faith of the insurer. National Commission in the decision in First Appeal No. 135 of 1991 decided on 26.2.1992 (Jagadish Prasad Dagar, Bangalore v. Senior Divisional Manager, Life Insurance Corporation of India, Bangalore) has held. "Once it is found that the insurer had duly considered all the relevant facts and circumstances and taken a decision in good faith as to whether the claim put forward by the insured or a nominee under the claim should be allowed to any extent, it cannot be said that there is any deficiency in service on the part of the insurer in relation to performance of its duties under the contract of insurance".

Only ground of repudiation of claim is that material facts known to the proposers were suppressed in the proposal for which policy was invalid and claim was repudiated. There is no dispute that complaints would be entitled to an amount for which risk is covered otherwise.

5. IN the background of the aforesaid discussion it is to be examined whether the decision was taken on good faith on relevant materials or consideration being unreasonable there was no good faith. It is submitted by Mr. A..S. Naidu, learned counsel that the questions reflected in the proposal form are material facts and any wrong answer to such question would amount to suppression of material facts. Reliance is put on the following question and answer. "Whether you have consulted a medical practitioner within the last five years for any ailment requiring treatment. No". There is no material that on 24.8.1985 when proposal was given Bijoylaxmi (deceased) had consulted any medical practitioner within five years before for any ailment requiring treatment. Mr. Naidu submitted that in the proposal there is a clause that any event which has occurred within the date of proposal and payment of the first premium is to be disclosed by the proposers. Bijoylaxmi admittedly consulted Dr. Hemalata Swain in the outdoor of obstetrics and Gynaechology Department of S.C.B. Medical College. This fact was not disclosed. Since Bijoylaxmi of cancer and in xxx xxx continuation of this consultation it was detected that she was suffering from cancer, a reasonable inference is that she knew that the ailment required treatment".

6. IN INdia health cards are not maintained by individuals It is well known that persons are not health conscious. Even cases are not rare where educated person do not appreciate that they suffer from any ailment. Gynaecological trouble in INdian Women is common and is not normally considered as ailment. At times, however, ladies have come forward to get checked up if they face any Gynaecological trouble. IN such circumstances when Bijoylaxmi consulted Dr. Hemalata Swain, on 30.8.1985, an inference cannot be drawn that she had knowledge of any ailment. Assuming that it is considered as ailment ordinarily, there is no evidence that she knew that it would require treatment IN fact, Dr. Swain also did not advise treatment. She advised further tests to be conducted and nothing untoward was found in such tests. From mere advice for test, to draw a conclusion that she knew that the ailment would require treatment and she frequently suppressed the same would be defeating the object of Life INsurance. There is no doubt that some persons may take advantage of liberal construction we intend to give. This should not be a reason to penalise a person who is innocent by attributing fraudulent suppression to her. She is dead. Corporation being creation of the statute carries on state activities which is for welfare of citizen. It is to be vigilant before accepting a proposal. Thorough probe should have been made to ascertain whether the statements in the proposal are correct. Bijoylaxmi was medically examined on or before 24.8.1985. Medical Officer of the insurer did not find any sign of ailment. When a technical person of experience selected by the insurer to assist it, has not marked any ailment, it is too much to expect the same from an average INdian lady anxious to have her life insured with her husband in Jeevan Sathi Scheme which is possible only with the corporation and there is no other organisation for the purpose, she ought not to be blamed after her death of fraud or even suppression which has the mark of criminal intention. No doubt her death would not deter us to come to such

conclusion if clear materials are available. Materials as available if considered with balanced approach without looking to interest of either the insurer or the claimant, a conclusion that there was suppression of material facts to knowledge of the proposer is not reasonable. We are inclined to come to conclusion that officers of the insurer having an approach to the problem to assist the insurer and to protect some officers and agents who might not be vigilant while accepting the proposal, have come to such a conclusion. Thus, there is a clear case of deficiency in service in not considering the claim impartially. There is no good faith in the consideration to repudiate the claim. On conclusion that there is deficiency in service, complainants are entitled to the amount under the policy. We direct that the same shall be calculated and paid within three months of the receipt of the order to complainant No. 1 who is father of other complainants and get absolved of its liability on such payment. Complaint is allowed to this extent. Complaint allowed.

