(2003) 05 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

P.S.AGARWAL — APPELLANT

Vs

Life Insurance Corporation of India — RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Citation : 2003 3 CPJ 579

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the order of the learned Forum dated 23.10.2002 passed by the District Forum, Hardwar whereby the complaint of the appellant was dismissed.

2. SH. P.S. Agarwal is a practising doctor at Roorki. He has got two Life Insurance Policies in the name of his wife who was medically examined before issuing of the policy and E.C.G., B.S.T., X-ray etc. of his wife was done and thereafter on an additional premium of Rs. 3.35 per thousand the insurance was accepted. SHe was issued policy one for Rs. 1,00,000/- and other for Rs. 2,00,000/-. The policies were issued after thorough examination and medical check up on payment of additional premium. Smt. Manju Rani died on 19.12.1999 due to heart failure. The complainant lodged the claim with the Life Insurance Company but it was repudiated on the ground that material facts were suppressed by the insured and the complainant and thereafter the complaint was filed. The Insurance Company filed a written statement. The Insurance Company admitted the two policies and also the fact that the complainant was the nominee in the two policies. On 10.1.2001 by a reasoned order, the claim of the complainant has been rejected because he had suppressed material facts. It is alleged in para 14 of the written statement that the complainant himself is a doctor and being a doctor, he has suppressed material facts about the earlier disease of the deceased. She was ill for the last two or three years and she was medically treated at Delhi, Chandigarh, Roorki and also at the dispensery of Dr. Beena Gupta. It is further alleged that once the insured has stopped breathing in

December 1998 and she was medically treated by Dr. Beena Gupta in her nursing home where Manmohan and Nand Kishore were getting treatment and they have given written statement that insured was ill for last number of years. It was further alleged that before a few years, the insured has got accident in the chest and since then, she was keeping ill. These are all material concealment of facts. It is further alleged that on 1.4.1999, the insured was admitted in Apolo Hospital for treatment and it is clear on the basis of certificate issued by them that the complainant was ill for the last 2 or 3 years.

In his affidavit dated 27.1.2001, the complainant has alleged, for the first time on 19.12.1999, Smt. Manju Rani felt pain in the chest and difficulty in breathing. She started sweating. The complainant being a doctor, found it a symptom of heart attack. Dr. Vinay Gupta, M.D., Heart Specialist was called on telephone. He tried to save the victim but she died. He has alleged that before this Smt. Manju Rani was never ill. He has denied that she was medically treated at Delhi, Chandigarh, Roorki etc. It is alleged that in March, 1999 Manju Rani has got cough and some pain in the knees. The complainant thought it better to get her medically diagnosed in some hospital and, therefore, in April, 1999 she was taken to Delhi for her check up for one day only. But there was no question of any treatment. It is again alleged that on 1.4.1999 she was not admitted in Apolo Hospital for any treatment, but she was admitted there for investigation for one day only. It is alleged that normally she kept a good health. Dr. Vinay Gupta has filed his affidavit and has also alleged that he is authorised doctor for Life Insurance Corporation as well. He alleged that Manju Rani died out of heart attack on 19.12.1999. Earlier she has got no disease at all. The complainant filed the affidavit of Manmohan who is said to be in the hospital of Beena Gupta and he has alleged that he never knew Manju Rani, he has not seen her and he doesn''t know anything about her illness. He has given in writing to the Life Insurance Corporation that Smt. Manju Rani died out of heart attack. An affidavit has been filed by Shri Mahesh Kumar Goel who is the brother of Manju Rani Agarwal. He has stated that Manju Rani died out of heart attack on 19.12.1999. She has earlier got no disease. Shri Nand Kishore is also said to have given in writing that he was never treated by Dr. Beena Gupta and Smt. Manju Rani Agarwal was never admitted there.

3. THE opposite party has also filed the affidavit of Shri V.K. Sudan, Administrative Officer to support his allegations. Relevant papers have also been filed by both the parties. After hearing the learned Counsel for the parties, the Forum has rejected the complaint. THE complainant filed this appeal. We have heard the learned Counsel for the parties and gone through the records. As the facts of the case go, the insured got the policy in March, 1999. Her both the proposal forms were filled in, in November, 1998. She died on 19.12.1999. Ordinarily policies are issued within 15 days or a month but in this case, the Insurance Department has taken complete 4 months in issuing the policy. It is said that this time was taken because the insured was under-weight and the Insurance Department has got some doubt that the complainant was not

medically fit to issue a policy. It is, therefore, that the Insurance Company, itself, got the insured medically examined by its authorised and expert doctors. Copy of the B.S.T. Report, copy of the E.C.G. Report all are on record. Thus, it cannot be said that before the issuance of the policies, the insured was keeping ill and this fact was not disclosed to the Insurance Company and the policy was adopted by merely filling the form taking signature of authorised doctor on a proforma as usually the agents of the Insurance Department do. If there was any illness for the last 2 or 3 years particularly of breathing, tuberculosis, hear trouble or any disease which regularly persisted, this could have been very well examined and reported by the doctors of the Insurance Company. By blood-test, the breathing problems, the under-weight problem could have been very well examined. It is true that if there was earlier heart attack and at the time of the E.C.G. there was no such attack. Ordinarily heart attack symptoms cannot be had in the E.C.G. but admittedly this is not the case of the opposite party also that the complainant was having heart problems for the last 2 or 3 years. The doctor of the Insurance Company has also reported that the insured was suffering from cough, expectoration, breathlessness, harshness of voice. There is nothing that she was suffering from any heart ailment and to our basic knowledge, cough, expectoration etc. if it was for the last 2 or 3 years, it could have very well be detected by the blood report. Bronchiectasi is such a disease that it is apparent on the face of the victim. Thus, it cannot be said by the Insurance Company that the complainant has hidden the material facts before getting the policies. The insured was there. She was thoroughly examined and she was found fit for issuance of a policy and as admitted case is, at an enhanced premium of Rs. 3.35 per thousand and this was not for any other disease but for only being under-weight. Admittedly being under-weight, in itself, is no illness, after these examinations by the Insurance Company, it cannot be said that insured has suppressed anything.

4. IT is apparent that the Insurance Company has got to its zenith of its falsehood and such should not be the conduct of a reputed company which is established for social service. Insurance is always taken for security purposes. But in this case, the Insurance Company has gone to its height. In para 15 of the written statement, it was alleged that the complainant has got herself treated in Delhi, Chandigarh, Roorki, Hospital of Beena Gupta and has also got two witnesses Manmohan and Nand Kishore to say that actually she was ill and she was hospitalised there. IT is further alleged that before few years of the insurance, the insured has got some accident and got injury in the chest. Since then, she was keeping ill. Thus the root cause of the illness is said to be the accident and injury in the chest before few years. Thus 5 places of medical treatment have been given in the written statement. One at Delhi, second at Chandigarh, third at Roorki, 4th at the Hospital of Beena Gupta and 5th at the time of accident. But to our utter surprise when the Company was asked at the time of arguments, where is the evidence that she was admitted in Chandigarh, Roorki and the hosptial of Beena Gupta or got accident before few years, the

learned Counsel for the Insurance Company stated honestly that there is no such evidence. The complainant has vehemently denied these allegations. Insurance Company have got their Surveyors, their investigating agencies but they could not get even an iota of evidence about these allegations. Thus, it is totally a false case that the insured was treated at Chandigarh, Roorki or got some accident which resulted in her regular illness or at the Hospital of Beena Gupta. To take a treatment at the hospital of Beena Gupta, there is nothing on record whether this is a lady hospital or male hospital or nursing home. If it was a lady hospital, Manmohan and Nand Kishore could not have been admitted there. At any rate, if they gave something in writing to the Insurance Company, they gave an affidavit in the Forum to the contrary. The result is that they did not support the Insurance Company. They have become hostile witnesses, if any. Admittedly, no reliance can be placed on their testimony. The best witness could have been Dr. Beena Gupta but the Insurance Company did not appear to have recorded her statement or file her affidavit to show that the insured was ever ill and she was treated by her. All these allegations are false, furzi and only cooked up for the purpose of the case. No reliance can be placed on such a pleading. Now there remains the case of treatment of the insured at Delhi. According to the complainant, She was taken to Apolo Hospital for investigation and not for treatment. Admittedly, she was under-weight. Admittedly she was wife of a doctor. Presumably he must have some contacts with some good doctors. Therefore, being a doctor, if he wanted investigation of his under-weight wife by a renowned reputed hospital like Apolo Hospital, Delhi, it cannot be presumed that she was admitted there for treatment. The discharge certificate is there. It is true that originally the complainant wanted to supress this fact at the time of complaint or filing affidavit. But he had ultimately admitted that she was admitted there. But by this, itself, it cannot be proved that the insured was admitted there for any treatment. This has to be proved by the opposite party and for that the discharge certificate of the Apolo Hospital is there. The paper shows that she was admitted there on 1.4.1999. She was discharged from there on 2.4.1999 for only one day. Diagnosis was bilateral intestinal disease, that too under investigation. It shows that she was having cough, expectoration etc. for the last 2 or 3 years. Her investigation has also been given. Examinations have also been given and she was discharged on satisfactory condition. Results of investigation were awaited. She may be ill, she may not be ill. But that was only for investigation and when it was done, it was done on 1.4.1999. The proposal form was already submitted in November, 1998. How it could have been disclosed at the time of filing the proposal form for insurance. But in this period, the policy was issued in March, 1999 and it is after this, the insured was admitted for investigation and for check up. Naturally when she was feeling some cough, medicines have to be provided and these medicines were not at all for any heart ailment. If she was suffering from any Bronchiectasi, that was not the cause of her death. There is nothing on record that the victim died out of Bronchiectasi. Even if she was suffering, the Insurance Company has got full opportunity to examine her and if they could not detect her illness out of their

medical examination, it can be safely presumed that Bronchiectasi was not so acute that it was necessary to be disclosed at the time of filling the proposal form. The learned Counsel for the Insurance Company argued that the complainant had got not even a single policy before this, but all of a sudden, he got two policies and there appears to be greedy intention of the complainant to get money after her death. The complainant being a doctor fully knew that the days of his wife are near, there should be insurance to get money. There is no pleading like this. The circumstances do not justify any such interference.The complainant is a doctor. His wife was under-weight. Even for increasing the weight, one will like to have the check up in good hospital and some treatment. The complainant was a doctor. There is no evidence of any earlier heart disease. Nobody knows when heart ailment will occur and when in future the victim shall die. Ordinarily, there is no immediate death by Bronchiectasi. Had the complainant got easy money out of insurance of his wife, he could have very well insured her for several of lacs. His status is not said to be so poor that he could not have been able to pay the premium. Secondly also, if the doctor was aware of this fact that he has to get easy money out of insurance, he could not have taken his wife to Apolo Hospital for check up only to create evidence against him. He could have easily allowed her to stay at the house after getting the policies and to see her death as early as possible. This is without any plea and no such reference can be raised from the evidence or arguments of the parties.

5. FROM the discussion above, it is clear that there was no suppression of material facts. Every fact was known to the Insurance Company and the repudiation of the claim is totally on inadequate ground without any reason.

6. THE learned Forum has rejected the complaint on the ground that the Insurance Company was not informed of the breathing difficulty of the insured at the time of the Insurance. THEre was no such illness as alleged. Illness, if any, was known to the Insurance Company. THE presumption as raised by the learned Forum is that the conduct of the complainant is suspicious in having got two policies in the name of the insured. THEse arguments have already been replied above. This is beyond record. The learned Counsel for the respondent referred the ruling reported in III (2002) CPJ 56 (NC), Sr. Divisional Manager, LIC v. Smt. Gangama. In this case the deceased had malignancy, obtained treatment which was proved by documents on record. There is no such proof in this case. He further referred the ruling reported in II (1994) CPJ 114 (NC), Krishna Devi Dekia v. Chairman, LIC of India, in which, too, it has been held that whether any suppression of material facts, the repudiation is justified. There is no such suppression in this case. So is the case with the ruling reported in I (1994) CPJ 3 (NC), Divisional Manager, LIC of India v. Sunita Sharma, and I (1995) CPJ 122 (NC), Marketing Manager, LIC of India v. Smt. S. Vijaya.

It has been held in the ruling reported in III (2001) CPJ 49=2001 (45) ALR 11 (Consumer) (UP State Consumer Disputes Redressal Commission Lunknow), Life Insurance Corporation of India v. Smt. Sushila Saxena, that if liver disease was

developed after taking the policy and where when the LIC Medical Officer verified that the life insured was not suffering from any disease, there is no material concealment. In the ruling reported in AIR 1985 Bombay 192, Smt. Dipashri v. Life Insurance Corporation of India, it has been held that mere failure to disclose in proposal form trivial ailments like influenza, dysentry, bleeding piles and fever on some occasions cannot be construed as fraudulent suppression of material facts so as to repudiate contract of insurance. In this particular case, the insured was examined by a number of doctors. All tests were conducted, and found satisfactory. Then only the policies were given. There is no question of any fraudulent suppression. In the ruling reported in I (2001) SLT 89=AIR 2001 Supreme Court 549, Life Insurance Corporation of India v. Smt. Asha Goel, it has been held that : "In the course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policy-holders in particular look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it should be one of extreme care and caution. It should not be dealt with in a mechnical and routine manner. Repudiation of claim by Corporation merely on grounds that insured who died of acute myocardial infarction and cardiac arrest had not disclosed correct information regarding his health at the effecting insurance with Corporation, is not proper."

7. WE cannot overlook the ruling reported in II (2003) CPJ 341 (Jammu & Kashmir S.C.D.R.C.), Smt. Haza Begum v. Life Insurance Corporation of India, wherein, the deceased was got examined by the doctor of the Insurance Company three days before issuance of the policy. She was found hale and hearty. Subsequently, deceased died due to cardiac arrest as in this case. In this ruling as well, deceased was said to have suppressed earlier diseases of diabetes and blood pressure. It was held that when the opposite party doctor found the deceased hale and hearty only before three days of the issuance of the policy, repudiation of the claim was said to be unjustified. On the discussion above, it is clear that the judgment of the learned Forum is not correct and is to be set aside. The appeal deserves to be allowed. The claimant is put to unnecessary harassment, mental agony and torture by the refusal of his justified claim. Therefore, he should get a compensation of Rs. 5,000/- on that account. ORDER

8. THE appeal is hereby allowed. THE judgment and order dated 23.10.2002 passed by the District Forum, Hardwar is hereby set aside. THE complaint is hereby allowed. THE opposite party is hereby directed to pay the entire policy money of the two insurance policies of insured Smt. Manju Rani along with all bonus and profits earned by her within a period of one month from today failing which the complainant will get interest at the rate of 12% on her entire claim after expiry of one month. THE complainant shall get a compensation of Rs. 5,000/- from the opposite party. However, in the circumstances of the case, cost

of the entire proceedings shall be easy. Appeal allowed.

