(2007) 04 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

SANTOSH DEVI GUPTA — APPELLANT

Vs

Life Insurance Corporation of India — RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Citation : 2007 4 CPJ 66

Hon'ble Judges : R.C.Kathuria , Banarsi Das , Shakuntla Yadav J.

Advocate : B.J.Singh , Vinod Gupta

Judgement

1. -IN order to decide the controversy involved in the present complaint the facts stated have to be noticed therein in detail. Mahavir Parshad Gupta, now deceased, husband of the complainant had taken Life Insurance Policy bearing No. 97061995 for Rs. 5 lacs on 27. 9. 1995 issued by the opposite party No. 2. The premium of Rs. 9,544 was payable quarterly. The last premium paid by him was on 14. 6. 1997. According to the complainant her husband felt minor pain in stomach and was treated by a Doctor at Chanderpur where he was residing. Thereafter, he was shifted to P. G. I. Chandigarh but he died there on 22. 6. 1997. The complainant submitted the death certificate with other documents to the opposite parties for release of the insured sum to the complainant. The opposite parties rejected the claim on the ground that the husband of the complainant had suffered from Carcinoma Pancreas before taking the policy as per letter dated 17. 8. 1999 issued by the opposite parties. Aggrieved by the action of the opposite parties, the complainant invoked the jurisdiction of the District Forum by filing the present complaint alleging that at the time her husband had taken the policy, he was medically examined and was found fit of health by Doctor of the opposite parties and for that reason there was no justification for rejecting the claim. Accordingly, it was prayed that the direction be given to the opposite parties to pay the sum assured of Rs. 5 lacs along with interest @ 24% per annum from the date of the death of the insured along with other benefits and compensation on account of mental agony and harassment caused to her amounting to Rs. 15 lacs and Rs. 10 lacs as double of the amount as per policy including bonus and interest @ 24% per annum from the date of

death till realization.

2. IN pursuance of the notice, the opposite parties contested the complaint. In the written statement filed it was pleaded that underwriting decision for issuance of the policy was taken on the basis of proposal dated 10. 10. 1995 and personal statement regarding health of the deceased dated 6. 2. 1996 submitted at the_time of taking the policy but the deceased had furnished wrong answers with regard to state of his health and had, rather, stated that he was keeping good health, in the proposal form as well as personal statement regarding his health, though he was suffering from disease of Carcinoma Pancreas which fact he had concealed and suppressed at that time. During the investigation conducted, it was found that he had given wrong declaration with regard to his health as well. It was further stated that the deceased had concealed the factum of earlier dropped proposal dated 31. 3. 1995 and for that reason the opposite parties were fully justified in repudiating the claim. They further raised objections with regard to the pecuniary jurisdiction of this Commission to entertain the complaint as the total amount claimed exceeded Rs. 20 lacs and that this Commission had no territorial jurisdiction to entertain the complaint. Both the parties were afforded opportunities to file evidence in support of their respective claims. The complainant has filed her affidavit and produced on record document Ex. C-1 to Ex. 4. From the side of the opposite parties affidavit of Shri Prabhakar Gopal Rao Pittule, Manager, Divisional Office, Nagpur and other documents Ex. O-1 to Ex. O-13 have been placed on record.

Learned Counsel representing the parties have been heard at length.

3. AT the threshold of arguments, learned Counsel representing the complainant contended that the total amount claimed in the complaint exceeds Rs. 20 lacs and for that reason this Commission has no pecuniary jurisdiction to entertain the complaint. In support of this stand taken reference was made to Para Nos. 8, 9 and 10 of the complaint which read as under: "8. That the husband of the complainant was insured of Rs. 5,00,000 and, therefore, the com-plainant is entitled to get the insured money along with the interest @ 24% from the date of death along with other benefits and compensation in the head of mental agony due to the delay by the respondents and other compensation which comes near about Rs. 15,00,000. Therefore, this Hon''ble Commission has jurisdiction to entertain the present complaint.

9. That the complainant is entitled Rs. 10,000,00 as double the amount of the insured amount as per the policy, the amount paid by the husband of the complainant and the bonus on the policy and interest @ Rs. 24% per annum from the date of death till realization.

10. That the Mahabir Prashad Gupta, husband of the complainant, is a permanent resident of Barwala, District Hisar (Haryana). Therefore, this Hon''ble Commission has jurisdiction to entertain this complaint as amount involved in the case is more than Rs. 5 lacs and less than 20 lacs. "

The reading of the above averments made in the above paras would indicate that the claimant has claimed Rs. 5 lacs, the basic sum insured under the insurance policy Ex. P5. At the same time she has claimed double of the sum insured along with interest @ 24% per annum and while claiming interest have clubbed the amount as Rs. 15 lacs and it is for that reason in Para No. 8 of the complaint it has been clearly mentioned that the claim falls within the jurisdiction of this Commission. Under the circumstances of the case the observation made in case Quality Foils India Pvt. Ltd. v. Bank of Madura Ltd. and Anr. , II (1996) CPJ 103 (NC). would render no assistance to the opposite parties. it has been clearly laid down in the above mentioned case that pecuniary jurisdiction of the District Forum is to be determined on the aggregate value of services as well as that of compensation claimed. In this case the total amount claimed does not exceed Rs. 20 lacs and for that reason this Commission has jurisdiction to try the complaint.

4. ON merits the rejection of the complaint has been sought by the opposite parties on two grounds. Firstly, that the insured had concealed that he had submitted a proposal dated 31. 3. 1995 for Rs. 3 lacs of his life which was still pending on account of some requirements while he submitted another proposal dated 10. 10. 1995 for Rs. 5 lacs and thus he had withheld the material facts from the opposite parties. Secondly, that he had made mis-statement with regard to his good health in the proposal form and suppressed the factum of his ailment which he was duty-bound to disclose and thereby committed fraud with the opposite parties. Opposing the submission made it was contended by the learned Counsel for the complainant that the record relating to the proposal dated 31. 3. 1995 was available with the opposite parties which could have been verified after due care taken in this regard and secondly that the factum of ailment so alleged from the side of the opposite parties was non-existence at the time when he had submitted the proposal dated 10. 10. 1995, personal statement about his health dated 6. 2. 1996 and for that reason there was no such reason for the opposite parties to deny the claim of the complainant. The original proposal dated 31. 3. 1995 Ex. O-1 placed on record, reveals that the deceased wanted the life insurance cover for Rs. 3 lacs. The second proposal statement dated 10. 10. 1995 for Rs. 5 lacs with accident benefits was submitted to the opposite parties but in this proposal form the insured had not mentioned with regard to the earlier proposal submitted to the opposite parties for taking policy for Rs. 3 lacs with the accident benefits on 31. 3. 1995. In the complaint itself not a word has been stated from the side of the complainant in order to explain as to why factum of proposal dated 31. 3. 1995 has not been disclosed. The insured was duty-bound to disclose this fact because a specific column in the performa has been provided in this regard requiring him to do so. No doubt, it is not a case where the opposite parties had issued the policy in respect of the proposal dated 31. 3. 1995. A controversy with regard to having obtained policy earlier was not mentioned in the proposal form taking second policy had arisen in case LIC of India and Anr. v. Kanchanbala Badu, III (2006) CPJ 386 (NC), and while rejecting the claim this ground was also taken into consideration besides

other circumstances on record. In other case Vasantiben Haresh Kumar Thakur and Ors. v. Life Insurance Corporation of India, III (2006) CPJ 440 (NC), the factum of rejection of earlier proposal was not disclosed and it was taken as suppression of the most crucial information and repudiation of the claim on that account was upheld. The principle which flows from the observations of the above mentioned cases is that insured is duty-bound to disclose the information sought from him in the proposal form because on the basis of information supplied a decision has to be taken by the opposite parties as to whether the risk involved in the second policy should be undertaken keeping in view the same circumstances under which insured had submitted earlier proposal which had not matured and was kept pending. Needless to say, that the contract of insurance is one of uberrima fides, i. e. to say the contract of utmost good faith. Under the circumstances of the case it has to be taken that the insured had not disclosed about the pendency of the first proposal dated 31. 3. 1995 for Rs. 3 lacs at the time when he had submitted the second proposal dated 10. 10. 1995 and had suppressed the material facts from the opposite parties. Coming to the other submission made, the proposal statement dated 10. 10. 1995 Ex. O-2 and personal health statement Ex. O-3 placed on record clearly established that insured while giving answer to Para No. 11 in respect of his personal history had answered the question in negative and in respect of his having suffered any of the ailments mentioned in Para No. 2 of the personal statement has also replied in the negative. He had not given any details with regard to the duration of his previous ailment or consultation of the Doctor on that account. The opposite parties have placed on record Medical Attendant''s Certificate Ex. O-10 and another certificate Ex. O-11 in order to establish the period of ailment of the disease and nature of his ailment. In Ex. O-10 the Medical Attendant in P. G. I. M. S. Chandigarh had recorded as under: "his illness started 10 months before-he first showed us in OPD on 2. 8. 1996, Patient was admitted between 8. 8. 1996 and 30. 8. 1996. as showed common bile deed dilation. CT scan showed mass in body + fail. He was operated on 27. 8. 1996 - TNAC fuss umbelum showed metaslatu adenocamma. A metallic stent was put while treated his jaundice. He was last seen on 30. 5. 1997. " in the certificate of the hospital treatment Ex. O-11, the diagnosis of ailment has been stated as Carcinoma Pancreas. This certificate has been issued by Additional Professor and Head of Hepathology, PGIMER, Chandigarh dated 5. 7. 1999. It is also mentioned that he was admitted in the hospital on 8. 8. 1996 and was discharged on 30. 8. 1996. In column No. 10 with regard to the nature of ailment, it has been stated that, "he came for followup with features of abdominal distension (aretes) possibly due to spread of his basic disease last on 30. 5. 1997. " These documents have also been certified as per affidavit filed by Shri Prabhakar Gopal Rao Pittule, Manager (SSS), Nagpur Divisional Office of the opposite parties. It is also mentioned in his affidavit that the claim of the claimant was investigated and the rejection of the claim was intimated to the claimant as per order dated 17. 8. 1999 Ex. O-12 and on an appeal filed by the claimant, Zonal Claims Review Committee which is headed by a Retired Judge of the High Court, the decision of

repudiation was upheld and communicated to the complainant as per letter dated 30. 12. 1999 Ex. O-13. From the above stated documents it is clearly established on record that at the time when the deceased had submitted the proposal on 10. 10. 1995 as well as at the time when he had submitted personal health statement on 6. 2. 1996, he had not disclosed about the above stated ailment and had deliberately suppressed the factum of his ailment in order to mislead the opposite parties. By now it is well settled that history of the hospital certificate can be relied upon. Reference in this regard may be made to the case Draupadi Devi S. Chaudhari v. United India Insurance Co. Ltd. , I (1993) CPJ 94 (NC). It is also equally settled that non-production of the Doctor who had submitted the medical attendant certificate is not fatal to the case of the opposite parties. Reference in this regard may be made to Revision Petition No. 1935 of 1999, Life Insurance Corporation of India v. Krishan Chander Sharma, II (2007) CPJ 51 (NC), decided on 23. 1. 2006 (NC). The primary burden of the opposite parties is to prove that the deceased had concealed the material facts with regard to his ailment at the time he had submitted the proposal and health statement and the concealment has no co-relation with cause of death. In Shankuntla Kumari v. Life Insurance Corporation of India, 2004 (3) Con. LT 8, it was stated that the nexus of the cause of death is not to be seen with reference to the disease suffered prior to the taking the policy of insurance and it has to be seen and considered as to whether the deceased had suffered from the illness which has been taken into consideration while repudiating the claim which was not disclosed in the proposal form while taking the policy of insurance and such a suppression has been made in respect of the true state of health at the time of filing the proposal form, then it vitiates the contract entered into between the insured on one hand and the insurer namely the Life Insurance Corporation of India on the other hand. In this case the opposite parties have able to discharge the burden of proving the suppression of material facts by the insured at the time of taking policy.

5. IN fairness to the Counsel for the complainant it was submitted by him that the policy in question has been made operation with retrospective dated 27. 9. 1995 while date of the proposal was mentioned as 26. 10. 1995 in policy itself and, therefore, the period of ailment on the basis of above stated evidence would not be covered under this period of policy. The submission so made cannot be accepted because for determining the liability of the opposite parties it is dated 26. 10. 1995 which is to be taken as the basic date for the commencement of the policy. This principle has been settled in Life Insurance Corporation of India and Anr. v. Dharam Vir Anand, III (1998) CPJ 3 (SC). It was also contended by him that the opposite parties were duty-bound to establish that the assured was aware about the onset of ailment in the beginning of the month of October, 1995 and as evidence is lacking in this regard, the stand taken by the opposite parties on the basis of data made available in the above stated certificates should not be taken into consideration to deny the claim of the complainant. There is absolutely no merit in the stand taken from the side of the complainant because the

opposite parties have been able to establish that the assured had suppressed the factum of his ailment at the time he had submitted the proposal form and personal health statement to the opposite parties. Therefore, there is no merit in the stand taken from the side of the complainant in this regard.

6. FOR the aforesaid reasons, we have come to the conclusion that the opposite parties have rightly repudiated the claim and the complaint is accordingly dismissed. Complaint dismissed.

