(1997) 11 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

SAVITRI C.PILLAI APPELLANT

Vs

Life Insurance Corpn. of India RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Citation : 1998 1 CPJ 72

Hon'ble Judges : Saroj Rajwade , N.K.Vaidyas J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal filed by the complainant against the order dated 21.6.1995 passed by the District Consumer Disputes Redressal Forum, Bhopal in their Case No. 321/93, wherein, the Forum has dismissed the complaint of the appellant stating that the Life Insurance Corporation of India has rightly repudiated the claim.

2. HEARD the arguments of both the parties and perused the records of the case. The undisputed facts of the case are as under : (a) That the complainant and her deceased husband had taken joint Life Insurance Policy No. 3511440545 for Rs. 50,000/- on 19.8.1989. (b) That the husband of the complainant, Late Shri B. Chandrashekhar Pillai expired on 7.3.1991 at J.P. Hospital Bhopal and the cause of death as recorded in the Discharge Certificate was "Cardiac Respiratory Arrest". (c) That the complainant is a nominee of Late Shri B. Chandrashekhar Pillai. (d) That the Life Insurance Corporation of India repudiated the claim of the complainant vide their Letter No. Claim/D/R/78 dated 30.10.1991.

(e) That while repudiating the claim of the complainant, the Divisional Office, Bhopal, wrote to the complainant as under : - "With reference to your claim under the above policy on the life of deceased Shri B. Chandra shekher Pillai, we have to inform you that we have decided to repudiate all liability under the policy on account of the deceased having withheld material information regarding his health at the time of effecting the assurance with us. In this connection we have to inform you that in the proposal for assurance dated 19.8.1989, Personal Statement signed by the deceased, assured on 19.8.1989, at the time of his medical examination had answered the following questions as under noted : Questions Answers 18. Have you ever suffered from or are you suffering from : (h) Any disease of the ear, nose, throat or eyes, including defective sight or hearing and discharge from the ears ? No 20. Have you consulted a medical practitioner, within the last five years for any ailments requiring treatment for more than a week ? No 21. Have you remained absent from place of your work on ground of health during the last 5 years ? No 22. (a) Did you ever have any operation, accident or injury ? No (c) Have you ever been in any hospital, asylum or sanitarium for check-up, observation, treatment or any operation ? No We may, however, state that all these answers were false as we hold indisputable proof to show that about three years before he proposed for the above policy he had suffered from following diseases and ailments for which he had consulted medical men in hospital and was on medical leave as following : (1) 29.11.1986 to 2.12.1986 : 4 days - Viral Fever (2) 11.12.1986 to 27.12.1986 : 17 days-Operation for Rhinos Pordiosis. (3) 27.5.1988 to 16.6.1988 : 21 days - Typhoid Fever (4) 10.12.1988 to 16.12.1988 : 7 days - Fever (5) 16.3.1989 to 25.3.1989 : 10 days - Respiratory Allergy. He did not however, disclose these facts in his Proposal/Personal Statement. Instead he gave false answers therein as stated above. It is, therefore, evident that he had made deliberate mis-statements and withheld material information from us regarding his health at the time of effecting the assurance and hence, in terms of the policy contract and the declarations contained in the forms of proposal for assurance and personal statement. We hereby repudiate the claim and accordingly we are not liable for any payment under the above policy and all moneys that have been paid in consequence thereof belong to us."

A perusal of the above Letter No. Claim/ D/R/78 dated 30.10.1991 of the Life Insurance Corporation of India indicates that the claim has been repudiated on the ground that in reply to the question Nos. 18(h), 20, 21, 22(a) and (c) of the proposal the deceased had replied "No", whereas in between 1986-89, he had taken medical leave on grounds of illness like Viral Fever, operation for Rhinos Pordiosis, Typhoid, Fever and Respiratory Allergy.

3. THE policy in question was issued by the LIC on 19.8.1989 and this letter of repudiation of the claim was despatched to the complainant on 20.10.1991 i.e. more than 2 years later. For policies to be repudiated after expiry of two years, the provisions of Section 45 of Insurance Act are to be followed which are as under : "No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that 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."

4. THUS, it is not every false statement or suppression, that can ipso-facto enable the insurer to avoid the policy when it is repudiated after the expiry of two years from the date of the insurance contract being effected. After the expiry of two years, the three necessary conditions, as explained by the Hon''ble Supreme Court must be established. The Hon''ble Supreme Court in Mitthoolal Nayak v. Life Insurance Corporation of India, (1962 SC 814 : 1962 Supp. 2 SCR 571) has held that when the claim is repudiated by the insurer after the expiry of the two years'' period, three conditions are necessary for the applicability of Section 45 of the Insurance Act, namely : (i) That statement must be on a material matter, or must suppress facts which it was material to disclose; (ii) Suppression must be fraudulently made by the policy-holder and (iii) The policy-holder must have known at the time of making the statement that it was false, or that it suppressed facts which it was material to disclose.

Section 45 of the Insurance Act places the burden of proof on the insurer to establish the above circumstances and unless the insurer is able to do so, there is no question of the policy been avoided simply on the ground of mis- statement of facts. The onus probandi, in all such cases, rests heavily on the party alleging fraud. The insurer cannot avoid the consequences of the insurance contract by simply showing inaccuracy or falsity of the statement made in the proposal for insurance of in any report of the Medical Officer, or in any other document leading to the issue of policy (1LR (1961) Punj. 353; 1962 Assam 65,1959 Pat. 540; 1964-2 MLJ 213). The expression "fraudulently" cannotes deliberate and intentional falsehood and some strong material is required before concluding that the policy holder had played a fraud on the LIC. Mere failure to mention some minor ailment cannot be construed as fraudulent suppression of material facts so as to repudiate the contract of insurance (1991 ACJ 813).

5. THE word "material" imports things that are likely to influence prudent insurer qua the question of acceptance of offer and the rate of premium (1972 ACJ 444). A matter is regarded to be material when it has some relation with the longevity of the assured. (ILR 1975 Cut. 442).

6. THE repudiation letter sent by the LIC nowhere mentions as to which were the material facts which were not disclosed or which material facts were fraudulently suppressed. This letter simply says that he made deliberate mis- statements and withheld material information from us regarding his health. Simply giving incorrect answers on minor points does not mean withholding material information. THE LIC has not included ailments like "fever", "viral fever", "respiratory allergy" and "rhinospordiosis" in its list of ailments requiring detailed investigation. And for "typhoid" the instructions to the LIC agents are "wait for six months and ignore". Late Mr. Pillai had suffered with typhoid more than 14 months prior to taking policy and had recovered fully in June, 1988. Since

"Rhinospordiosis" is not a commonly known disease. We would like to elaborate here that it is just a fungal infection of mucosae of cavity of the nose and nasal part of the pharynx and is not a fatal or major ailment. In simple words, it is a fungal disease of the nasal part of the body requiring surgical treatment, with hardly 3-4 days hospitalisation. Thus none of the ailments quoted in the repudiation letter required any kind of detailed investigation and were not material facts as defined in Para 10 of this order.

Non-disclosure of the facts of having suffered with these minor ailments does not amount to suppression of material facts. In 1996 (1) CPR 129, the Hon''ble National Commission has held "repudiation of insurance claim ground of fraudulent concealment and suppression of material facts - assured not required to disclose casual ailments-ailment which is required to be disclosed is with reference to serious disorders in health - no basis for repudiation"

7. WHERE the insurer has failed to discharge the burden of proving its story about the serious illness of the insured at the time of taking out the insurance policy and suppressing material information, it cannot escape the liability; (1991 SC3 92). Had the employer''s statement dated 25.4.1991 and hospital discharge certificate dated 7.3.1991 been scrutinized simultaneously, it would have been noticed that the deceased Late Mr. Pillai was on duty upto 4.3.1991. Next day i.e. 5.3.1991 was a holiday. On 6.3.1991 at 12.30 p.m. he was admitted in J.P. Hospital and he expired on 7.3.1991 at 4.20 p.m. These two documents establish that he was fit enough to perform his duties upto 4.3.1991. On 6.3.1991 he applied for only two days casual leave for treatment of Rhinospordiosis, but expired on 7.3.1991 due to "Cardiac Respiratory Arrest". Cause of death was not "Rhinospordiosis".

8. IN II (1994) CPJ 77 (NC), the Hon''ble National Commission has held that in the absence of any medical finding that the cardiac arrest was a consequence of the operation conducted upon, the contention of the respondent-LIC that the death of the deceased was as a result of operation cannot be accepted. On a perusal of entire record before us, we notice that whenever Late Mr. Pillai, after availing of leave on medical grounds reported on duty, he submitted medical fitness certificate in his office. Except photo-copies of these certificates, LIC has furnished nothing to corroborate their contention of fraudulent suppression of material facts. Investigator''s report dated 23.9.1991 is also based only on following documents- (i) Photo-copies of Medical Fitness Certificates obtained from the office of the deceased. (ii) Employer''s Certificate in Form "E" Medical Attendant''s Certificate in Form ''B'' and Hospital''s Certificate in Form ''B-I'' furnished to the LIC by the complainant.

9. ON a perusal of investigation report dated 23.9.1991 furnished in prescribed proforma, we find that contents of paras 8, 12, 13, 15, 16, 18(5), 18(6), 18(7), 27 and 28 are ditto copies from Medical Fitness Certificates and contents of paras 10, 11,18(i), (ii), (iii) & (iv), 19 and 23 are noted from Medical Attendant''s Certificate furnished to LIC by the complainant. No independent and detailed

investigation as expected, appears to have been done, else following querries in LIC''s own investigation proforma would not have remained unreplied : Q. 1(b) Give a summary of specific questions you asked and answers you received or attach written statements of the persons obtained with their signatures. Q. 2(a) Peculiarities, etc. in the health and habits of the deceased. Q. 10. Give a short history : (a) Illness of the deceased. (b) Cause of death. (c) Date when symptoms were first observed. (d) Actual cause of illness. (e) Doctors who attended with respective dates. Q. 15. Case No. Q. 16 (b) Date of admission. (c) Whether outdoor or indoor. Q. 17. Please obtain the necessary particulars in writing from the Doctors. Q. 24. Whether X''Ray, Blood, Urine Test, ECG, etc. were taken.

10. NOT only the investigation is incomplete. We have noticed following discrepancies also in this report. (i) In Column 10 and also in 18(iii) the cause of death has been recorded as "Nasopharyngeal Rhinospordiosis" whereas the cause of death as recorded in discharge certificate dated 7.3.1991 and medical attendant''s certificate is "Cardiac Respiratory Arrest". Nasopharyngeal Rhinospordiosis was the ailment with which he was suffering, and not the cause of death.

(ii) In Column No. 12, the deceased''s usual medical attendant has been mentioned as Dr. G.S. Saxena, whereas there is absolutely nothing on record to show that Dr. G.S. Saxena was his usual medical attendant. Dr. G.S. Saxena gave Mr. Pillai only medical fitness certificate dated 28.12.1986 that he was fit to join duty after the operation of Rhinospordiosis. The certificate does not say that Dr. Saxena treated him or operated him. He only certified that Mr. Pillai was fit to join his duty. Besides this certificate, there is nothing on record from Dr. G.S. Saxena. On the other hand we find that probably Mr. Pillai was frequently taking leave on medical grounds and every time was obtaining medical certificate from a different doctor. The photo copies of medical certificates furnished by LIC itself indicate that each time the doctor was a different person and the list of doctors who gave him Medical Certificates for medical leave is as under : (1) Dr. R.P. Agrawal. (2) Dr. P.N. Johri. (3) Dr. H.A. Insaf. (4) Dr. M. P. Sinha. (5) Dr. Radha krishanan. (6) Dr. N.D. Gagan. (7) Dr. S.M. Raza, Homeopath. (8) Dr. G.S. Saxena.

(iii) In Columns 12 and 15, it has not been mentioned as to when he was admitted in the hospital, on which date and by which Surgeon he was operated upon, in which ward he was kept, what was his bed No. and when was he discharged from the hospital. The Investigator has not fulfilled the requirements of the Column Nos. 12 & 15. There is nothing on record to give these in formations. Medical Fitness Certificate issued by Dr. Saxena does not contain any of these details nor these details were required in fitness certificate to join duties on return from leave.

(iv) In Column 12 of the report the deceased has been further shown as having suffered with arthiritis for more than a month from 23.11.1987 to 24.12.1987.

This is wrong. According to medical fitness certificate issued on 25.11.1987 he was on medical leave on this ground for two days only - from 23.11.1987 to 24.11.1987. That is why probably disease ''arthiritis'' has not been mentioned in repudiation letter. This disease neither develops in two days nor can be cured in two days. There is nothing on record to show that he ever suffered with arthiritis except for these two days.

Lastly, we do not find anything on record to substantiate the following contentions as given in the last para of reply dated 2.11.1993 filed by Senior Divisional Manager, LIC and repeated in the last para of the affidavit of the Manager (L & HPF) LIC filed separately, on 5.3.1994. xxx xxx xxx xxx

Such comments involve three points for consideration : (i) Alcoholic since 1975. (ii) ntinued illness due to alcoholism. (iii) uppression of diseases which if were disclosed, he would not have been insured. So far as alcoholism is concerned, we do not find as to what has been the basis for stating so. From whom and by whom, this information was collected is not known. On the other hand in the investigation report, in para 9, deceased Mr. Pillai''s habits have been recorded as "sober and temperate". Coming to second and third parts of the above comments, it is to be noted that fever, viral fever, typhoid, respiratory allergy, and Rhinospordiosis with which he is reported to have been suffering, in the repudiation letter are not caused due to alcholism. It is also wrong to say that he was continuously ill. According to repudiation letter, he remained on medical leave for five times in three years on grounds of different kinds of five ailments as quoted above. Total length of medical leave in three years is less than two months and according to LIC''s records before us in the whole year of 1987 he remained on medical leave for 2 days only. So also it is wrong to say that had he disclosed these ailments he would not have been insured because as explained earlier, none of these ailments were of such a nature where insurance would have been refused on account of these ailments,

11. THUS, we find that neither investigation was done properly, nor the senior officers of the department scrutinized the investigation report and supporting documents properly. The documents produced are not sufficient to prove that material facts were suppressed fraudulently. There has been gross negligence and deficiency in service. The burden lies on the LIC to establish that the repudiation was made in good faith on valid and justifiable grounds. I (1996) CPJ 13 (NC)=1993 CCJ 534 NC. The repudiation of the claim by the officers of LIC cannot be said to be decision taken in good faith after due exercise of care and proper application of mind rather it was arbitrary and oppressive. The act of repudiation was not bonafide and the widow deserves to be adequately compensated. We, therefore, allow this appeal and set aside the order of the District Forum and order that the respondent-LIC shall pay to the appellant Mrs. S.C. Pillai, the assured sum of Rs. 50.000/- alongwith interest on this amount @ 15% from the date of repudiation of the claim by the LIC, The respondent-LIC shall also pay Rs. 2,000/- to the appellant as cost of proceedings. Appeal allowed.

