

(2012) 07 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

Sbi Life Insurance Co Ltd

APPELLANT

Vs

Kambala Sandhya

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 401 : 2012 3 CPJ 463 : 2012 3 CPR 302

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : Kapil Chawla

Judgement

1. THE matter in this revision petition arises out of repudiation of a life insurance claim by the revision petitioner SBI Life Insurance Co. Ltd. on 17.6.2009. The claim of the Complainant, under the policy arose from the death of the insured (husband of the Complainant) on 14.9.2008 at Seven Hills Hospital, Visakhapatnam. The letter of repudiation stated that:- "On scrutiny of claim documents, we have noted that in the proposal for insurance dated 15.07.2006 Life Assured had answered the questions in the proposal form as follows: Question No. Question Answer Q 7 (iii) During the last 10 years have you undergone or advised to undergo hospitalization, an operation or any investigation or medical treatment? No Q 7 (xii) Are you suffering from, or did you suffer in the past from Digestive Disorder? No Q 7 (xxi) Do you have diabetes or were you ever diagnosed the same? No As per the records available with us, Late Masenu Kambala was diagnosed for Erosive Duodenitis and Diabetes prior to the date of commencement of policy." Thus, the deceased Life Assured had not disclosed the material facts at the time of signing the contract of insurance. The claim is hereby repudiated."

2. BEFORE the District Forum, the case of the Complaint was that the deceased has never suffered from any disease mentioned in the letter of repudiation. On the other hand, OP, SBI Life Insurance Co. claimed that in the proposal for insurance, the deceased has deliberately and fraudulently given wrong answers to the questions asked therein, regarding his pre-existing medical condition and hospitalization. The OP relied upon the records of Kanka Durga Hospital and

Seven Hills Hospital in support of their claim of pre-existing medical condition.

3. THE District Consumer Disputes Redressal Forum, Visakhapatnam dismissed the complaint with the following observations:- "After careful perusal of the case record, this Forum finds that as per Es.B4 , B5 and B6, it is clear that the deceased -Life Assured K. Masenu, the Complainant's late husband was having omitting, Haemoptysis as on 22.2.2005 on which date he approached the Kanaka Durga Hospital. But later on on 15.07.2006, the said deceased life assured presented the Ex. B1 proposal form wherein, he stated categorically that he did not ever undergone any medical investigation, suffered from disease or disorder, consumed alcohol or suffered from diabetes. All the same the said deceased life assured died of blood omitting with extensive Pulmonary TB, Haemoptysis and Diabetis Mellitus . Thus we can see that the deceased life assured was suffering from ailments since 2005, but suppressed the relevant information in his proposal form given in the year 2006 and died of the same ailments which were found in 2005 in the year 2008. Thus the deceased life assured died of a pre-existing decease the information of which he deliberately did not provide in the proposal form for insurance. As such, the Opposite Parties are well within their right to repudiate the claim of the Complainant. So, the claim put forward by the complainant is untenable and the Complaint becomes liable to be dismissed."

4. IN the appeal filed by the Complainant, the State Commission considered the evidence led before the District Forum and observed:- "We observe from the record that the policy was issued with the risk commencing from 27.7.2006 and the life assured died on 14.9.2008 and the investigation report is dated 24.3.2009 i.e. two years after issuance of the policy. Even the reports filed by Kanakadurga Hospital dated 22.2.2005 Ex.B5 only show that the life assured had diabetes since his glucose level is 4 +. The record of the Seven Hills Hospital Ex. B9 is dt. 1.9.2008 onwards which is more than two years from the date of issuance of policy and there is no documentary evidence filed by the opposite party to substantiate that the life assured had willfully and fraudulently suppressed haemoptysis. Infact Ex.B9 is the certificate of the hospital treatment filed by the opposite parties themselves stating that the duration of the complaint was only 7 days prior to the date of his admission i.e. from 26.8.2008."

The State Commission therefore, came to the conclusion that repudiation of the claim by the Insurance Company was unjustified.

5. WE have perused the record and heard Mr. Kapil Chawla, Advocate for the petitioner, SBI Life Insurance Co. Learned counsel argued that the State Commission has wrongly interpreted the provision in Section 45 of the Insurance Act, when it has observed that this provision prohibits the Insurance Company from raising questions regarding misstatement or incorrect statements by insured regarding his health, after expiry of two years from the date of commencement of the policy. This is the main ground of challenge raised by the revision petitioner.

6. WE find that the contention of the petitioner that the State Commission "has misled itself by stating that in each and every case where the claim has been repudiated after 2 years from the date of effecting insurance then in all such cases an insurer can not repudiate the claim." is the result of partial reading of the impugned order. The State Commission has cited the provision of Section 45 of the Insurance Act, 1938 and has thereafter held that "there is no documentary evidence to substantiate the contention of the opposite parties that the life assured had willfully suppressed haemoptysis prior to the issuance of the policy when EX.B-4 clearly states that he was suffering from this ailment only one week prior to the date of his admission, which is 1.9.2008." It is on this ground that the State Commission has held the repudiation of the claim to be unjustified.

7. ON behalf of the revision petitioner, reliance has been placed on the decision in *Satwant Kaur Sandhu Vs. New India Assurance Company Ltd.*, IV (2009) CPJ 8 (SC). This was a case of mediclaim policy taken on 7.5.1990. Two months later on 11.9.1990, the insured was hospitalized. On 7.12.1990, he was shifted to Nephrology Institute and died on 26.12.1990. Hon"ble Apex Court observed that:- "There is no dispute that Section 45 of the Insurance Act, 1938 (for short "the Act"), which places restrictions on the right of the insurer to call in question a life insurance policy on the ground of mis-statement after a particular period, has no application on facts at hand, inasmuch as the said provision applies only in a case of life insurance policy. The present case relates to a mediclaim policy, which is entirely different from a life insurance policy. A mediclaim policy is a non-life insurance policy meant to assure the policy holder in respect of certain expenses pertaining to injury, accidents or hospitalizations. Nonetheless, it is a contract of insurance falling in the category of contract uberrimae fidei, meaning a contract of utmost good faith on the part of the assured. Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment."

8. IN the case before us, it was a life insurance policy taken on 15.7.2006. The insured died on 14.9.2008, over two years later. The claim under the policy was repudiated on 17.6.2009. These facts are such that they would attract the second part of the provision in Section 45 of the Insurance Act.

9. DETAILING the provision in Section 45, the revision petition itself states that:- " No doubt Section 45 makes distinction between the two types of cases namely cases where the claim is repudiated within 2 years after effecting insurance and cases where claim is repudiated after 2 years from the date of effecting insurance. In case where claim is repudiated within 2 years the insurer has

simply to prove that Statement made in the proposal form is wrong. But in case the claim is repudiated after 2 years from the date of effective insurance, then not only the insurer has to prove that Statement made in the Proposal Form is wrong but it has also to prove that:- (i) Statement suppressed relates to material facts. (ii) The insured at the time of effecting insurance had full knowledge of the material facts which has been suppressed by the insured. (iii) That it was fraudulently made by the insured."

It is clear that the impugned order is addressing a situation where repudiation would require observance of these three conditions. We find no ambiguity in the impugned order in this behalf.

10. WHILE challenging the impugned order, the revision petition refers to the finding of the State Commission, cited earlier in this order and states that it is a wrong finding in view of the "voluminous documentary evidence brought on the record of the fora below by the petitioner". However, the revision petition does not give any details of the evidence which was produced before the fora below, which met the three requirements listed in the revision petition itself, and yet which have been ignored in the impugned order.

11. WE have earlier referred to the letter of repudiation dated 17.6.2009. This letter clearly states "As per the record available with us, Late Masenu Kambala was diagnosed for Erosive Duodenitis and Diabetes prior to the date of commencement of the policy." The date of proposal of this policy was 15.7.2006. Clearly therefore, the reference here is not to the hospitalization and treatment of the deceased from 1.9.2008 till his death on 14.9.2008 at Seven Hills Hospital. The reference is to his treatment at Kanakadurga Nursing Home in 2005. The report of the Investigator clearly records his discussion with one Dr. V.Manmadha Rao, which refers to the treatment of the deceased for Hepatitis and alcoholism. However, the list of documents before the District Forum does not show that any affidavit was filed to bring the evidence of this doctor on record. The record of Kanakadurga Hospital produced before the District Forum, pertains to the treatment of the deceased as an out-patient on 22.2.2005. These records include one sheet of random/fasting blood sugar figures of the deceased between 23.2.2005 and 26.2.2005. These figures range from 141 on 23.2.2005 to 426 on 25.2.2005, but they do not carry any assessment by a doctor, much less any diagnosis of diabetes.

12. IN our view, the above evidence on record does not support the claim of the revision petitioner/OP that the deceased suffered from pre-existing condition of diabetes mellitus and haemoptysis. Therefore, the question of his having deliberately concealed material information should not arise.

13. REPORT of the Investigator appointed by the OP, was itself produced as Ex. B-3 before the District Forum. The conclusion reached in his report merely says- "Considering the above facts and findings it is evident that LA is a known alcoholic and he died due to hepatitis."

14. IN view of the details considered above, we come to a conclusion that the revision petition No.1061 of 2012 has failed to make out any case against the impugned order passed by the Andhra Pradesh State Consumer Disputes Redressal Commission in First Appeal No.901 of 2010. The petition is therefore dismissed for want of merit.