(2016) 11 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Case No : 2445 of 2015

SBI LIFE INSURANCE COMPANY LIMITED — APPELLANT

Vs

NIRMAL SINGH S/O GHUKAR SINGH — RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Code of Civil Procedure, 1908, Section 11 - Res Judicata

Citation : (2016) 11 NCDRC CK 0047

Hon'ble Judges : K.S. Chaudhari

Advocate : Kapil Chawla, Vikas Nautiyal

Final Decision : Petition Allowed

Judgement

1. This revision petition has been filed by the petitioner against the order dated 11.08.2015 passed by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh (in short, ''the State Commission'') in Appeal No. 1139/2014 - SBI Life Ins. Co. Ltd. & Anr. Vs. Mr. Nirmal Singh by which, appeal was dismissed.

2. Brief facts of the case are that Smt. Kamlajit Kaur wife of the Complainant / Respondent was holding an Insurance Policy bearing no. 93000000105 issued under SBI Dhan Raksha Plus LPPT Loan Scheme LAN-31464176067 issued on 27.10.10 valid upto 26.11.26 of the OPs/Petitioner. The complainant is having the said death claim policy since long and time to time renewed it from the OPs company. At the time of getting the said policy renewed and at the time of taking the said death claim policy the OPs got medically examined the wife of the complainant. At the time of the said insurance policy the OPs assured that all the benefits are included in the said policy. During the said period i.e. in the month of November, 2011 the wife of the complainant Smt. Kamaljit Kaur suffered some severe heart attack and was got admitted in Pruthi Hospital, 301, Lajpat Nagar, Near Nakodar Chowk, Jalandhar and she unfortunately died. Thereafter, the complainant lodged a claim with the OPs vide letter dated 19.4.2012 which was

duly received by the OPs. As per the demands raised by the OPs from time to time the complainant submitted all the requisite documents with the OPs and they always assured the complainant that within short period they will get the claim regarding the death of his wife Smt. Kamaljit Kaur. The complainant was astonished to receive the letter dated 15.12.11. with the reference that the claim of the complainant has been rejected. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that the complaint was filed by the complainant before Insurance Ombudsman which was a quasi-judicial body, therefore, the present complaint was hit by Section 11 CPC under the principle of res-judicata; the complaint before the District Forum was not maintainable as the matter was already pending before the Insurance Ombudsman; the insurance contract was a contract of utmost faith and the DLA while taking the policy breached this principle as she was suffering from and was under treatment of diabetes mellitus Type II and hypertension, whereas he had submitted a declaration of good health along with other details in the membership form. Otherwise the DLA was bound to disclose every factual declaration of good health; there was no deficiency in services on the part of the OPs. The DLA had taken the policy by suppressing the history of pre-existing disease which was very well within her knowledge and fraud is an act of deliberate deception, therefore, the complaint was liable to be dismissed. Learned District Forum after hearing both the parties, allowed complaint and directed OP to pay as per terms & conditions of policy along with Rs.15,000/- as compensation and Rs.2,000/- as cost of litigation. Appeal filed by OP was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed.

3. Heard learned Counsel for the parties finally at admission stage and perused record.

4. Learned Counsel for the petitioner submitted that inspite of proof of suppression of disease in the proposal form, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside and complaint be dismissed. On the other hand, learned counsel for the respondent submitted that detailed order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. It is not disputed that deceased obtained insurance policy from OP by filling proposal form on 13.10.2010 and replied to medical questions as under:

i) Have you consulted any doctor for surgical operation or have been hospitalized for any disorder other than minor cough, cold or flu during the last 5 years? - No

ii) Have you ever had any critical illness/injury, major surgical operation or received any treatment for any medical condition for a continuous period of more than 14 days? (Except for minor cough, cold, flue, appendicitis & typhoid) - No

iii) Have you ever been treated for or told that you have diabetes or raised blood sugar , high blood pressure, heart attack, chest pain or any heart disease, stroke/ paralysis or any other disorder of the circulatory system, HIV infection or a positive test to HIV? - No

He has also given declaration as under:

I hereby declare and agree that the foregoing declaration has been given after fully understanding the same and is true and complete to the best of my knowledge and that I have not withheld any information that may influence my admission into the Group Insurance Scheme of SBI Life Insurance Co. Ltd. and agree that this form including the declaration shall form the basis of my admission into the Group Insurance Scheme and if any untrue statement be wanted herein, I, my heirs, executors, administrators and assignees shall not be entitled to receive any benefits under the Group Insurance Scheme, I also agree that the Company shall not be liable for any claim on account of illness, injury or death, the cause of which was known prior to approval of my request for insurance or withheld or concealed in the above statements".

6. Perusal of record reveals that deceased got her blood sugar tested from public clinical laboratory on 7.5.2003 and was found having blood sugar 123 mg% whereas normal range was 72-110 mg. Again on 28.7.2005, she got tested from same laboratory and was found having blood sugar 120 mg. Again on 7.2.2006, she was having blood sugar 267mg. against normal range of 70-110 mg%. All these documents containing name of the deceased. Learned State Commission has discarded all these documents on the ground that these documents do not contain name of the respondent and address of the patient whereas complainant has not denied all these tests in the complaint or in the evidence which was filed after repudiation of claim and in such circumstances, it can very well be presumed that all these test reports pertain to deceased Kamaljit Kaur.

7. Certificate dated 8.6.2005 issued by Sidharth Scan & Diagnostic Centre contains name of Kamaljit Kaur along with her age and name of her husband who is the complainant in which it was observed that patient Kamaljit Kaur needs surgery of Gall Bladder. Estimate is Rs.20,000/- and she needs urgent surgery. Certificate issued by BBC Heart Care runs as under:

"It is certified that Kamaljeet Kaur W/o Nirmal Singh age 50 years r/o Jagram Kacha Malak Road, Ditt. Ludhiana was admitted as a case of ACs, AMUL, DKA, HT/ DM-II, she was treated for ACS and she was given up with. She was taken on TPJ since she was have intermittent CHB. Her angiography was done and she was found to have DVD but due to her impared renal function her angioplasty was avoided. Today at 6 a.m. patient developed cardiac arrest & was taken for CPR and emergency drugs were given. Inspite of best efforts she could not be revived hence she was declared dead at 6:30 a.m."

which clearly reveals that deceased was admitted as a case of ACs, AMUL, DKA, HT/DM-II and angiography was done but due to impared renal function, angiography was avoided and due to cardiac arrest, she collapsed. Certificate issued by hospital further reveals that she was having DM and HTM since last 6 to 7 years. Thus, it becomes clear that at the time of filling proposal form, she was aware about raised blood sugar and was having DM and HTM since last 6-7 years, but she did not disclose all these facts and she collapsed after 13 months of obtaining insurance policy.

8. Learned State Commission has on flimsy grounds discarded aforesaid documents pertaining to tests taken by deceased at various hospitals and dismissed appeal on the ground that OP has not placed on record medical examination conducted at the time of issuing policy. This Commission in R.P. No. 930 of 2008 - The Chairman, Birla Sun Life Insurance Co. Ltd. & Anr. Vs. Smt. Asha while allowing revision petition and dismissing complaint observed as under: Learned Counsel for the Petitioner placed reliance on (2008) I SCC 321 - P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India in which it was observed that :

"Misstatement by itself is not material for repudiation of the policy unless the same is material in nature. But, a deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law. The purpose for taking a policy of insurance is not very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered".

Thus, it becomes clear that policy can be assailed on the ground of deliberate wrong answer on material issue. We have also observed in R.P. No. 2313 of 2008 - Life Insurance Corpn. of India & Anr. Vs. Smt. Vinod Devi that on the basis of suppression of material facts regarding health conditions, repudiation of claim does not come within the purview of deficiency.

9. Hon''ble Apex Court in IV (2009) CPJ 8 (SC) - Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd . observed that insured is required to give correct information in the proposal form regarding his health and when insurance policy is taken by suppressing material disease by supplying false information, Insurance Company does not commit any deficiency in repudiating claim.

10. Learned Counsel for the petitioner submitted that there was no proximity between the disease suppressed and cause of death, so, complainant was entitled to get assured amount. This argument is devoid of force because firstly, proximity between cause of death and suppressed disease is not material and policy can be repudiated on the basis of suppression of material facts and secondly there was proximity between suppressed disease and cause of death.

11. In the light of aforesaid discussion, it becomes clear that as deceased obtained insurance coverage from OP by suppressing material information and giving false answers, OP has not committed any deficiency in repudiating claim, but learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal and revision

petition is to be allowed.

12. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 11.08.2015 passed by the learned State Commission in Appeal No. 1139/2014 - SBI Life Ins. Co. Ltd. & Anr. Vs. Mr. Nirmal Singh and order of District Forum dated 24.06.2014 passed in Complaint No. 461 of 2013 - Nirmal Singh Vs. SBI Life Insurance Co. Ltd. is set aside and complaint stands dismissed with no order as to costs.