(1995) 07 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

SENIOR DIVISIONAL MANAGER — APPELLANT

Vs

ALI HASAN AFROZE — RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

Citation : 1995 3 CPJ 596 : 1996 1 CPC 257

Hon'ble Judges : A.P.Chowdhri , S.Brar , Desh Bandhu Aggarwal J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against order of District Forum I dated 3rd June, 1993. The respondent Ali Hasan Afroze obtained life insurance policy for his 14 years old son Faizan Afroze for a sum of Rs. 50,000/- with the risk dated being 1.11.87. The premium was payable in half yearly instalments in May and November. He paid the premium in November, 87 and May, 88, whereafter he committed default and the policy lapsed. He then applied for the revival of the policy. He paid the premium which became due in November, 88 and May, 89 alongwith interest on 8.8.89. His son unfortunately died in All India Institute of Medical Sciences on 19.10.89. He claimed the amount due under the policy. His claim was, however, repudiated. Having failed to get any relief through representation to higher authorities, he filed the complaint before the District Forum.

2. THE stand of the opposite party before the District Forum was that the lapsed policy was revived on the basis of personal statement regarding health in Form No. 700 dated 1.8.89. THE deceased as well as the aforesaid claimant as proposer had suppressed the material information regarding the state of health of the insured. This fact came to light during the investigation which was carried out while processing the claim. It was found that the deceased had remained seriously ill from 12.4.89 to 19.6.89 and the said material information was suppressed while replying relevant questions in the aforesaid Form 700 dated 1.8.89. THE claim was, therefore, repudiated by letter dated 25.2.91. On a consideration of the material on record the District Forum took the view that the acceptance of premium for November, 88 and May, 89 alongwith interest itself

indicated that the opposite party was satisfied regarding insurability furnished by the complainant and accordingly it was held that there was deficiency in service. The amount of the policy together with interest @ 18% per annum was directed to be paid. Aggrieved by the order the opposite party has preferred this appeal.

We have gone through the record and have heard Mr. S.K. Taneja, Counsel for the appellant and Mr. M.Z. Chowdhry, Counsel for the respondent. It is necessary to read Condition No. 3 prescribed by the appellant for revival of discontinued policy which is in the following terms:- "If the policy has lapsed, it may be revived during the life time of the Life Assured, but within a period of 5 years from the date of first unpaid premium and before the date of maturity, on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be fixed by the Corporation from time to time compounding half yearly. The Corporation reserves the right to accept or decline the revival of discontinued policy. The revival of discontinued policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the Life Assured."

3. A perusal of the above condition shows that there are two distinct requirements. These are, one, proof of continued insurability to the satisfaction of the Corporation and two, payment of arrears of premium together with interest compounded half yearly. It is on the fulfilling of both these requirements that the Corporation is supposed to revive the discontinued policy. According to the respondent, only condition regarding payment of arrears of premium and interest have been fulfilled. The other condition regarding proof of continued insurability could not possibly be inferred from mere payment of arrears of premium etc. The District Forum has erred in concluding the payment of the arrears of premium and interest warranted the conclusion that the Corporation was satisfied about the continued insurability of the insured. With regard to the repudiation, we are of the view that the same was bona fide in the present case. The letter dated 25.2.91 repudiating the claim sets out detailed and precise reasons for repudiating the claim. The repudiation is based on investigation and purports to be supported by the documentary evidence in the Form of personal statement of the deceased and record of the Hospital.

4. IN his affidavit filed before the District Forum the complainant had taken a categorical stand that he never signed statement in Form 700 and the same must, therefore, be a forged or fabricated document. This is a matter which can be properly gone into in a regular suit. IN view of what has been stated above, we are clearly of the view that the respondent should be relegated to his remedy by a Civil Suit. We, therefore, allow the appeal, set aside the order of the District Forum and leave it open to the respondent to establish his claim in a regular suit. The parties are left to bear their own costs throughout. Copy of the order be communicated to the parties. Appeal allowed.

