(2001) 10 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

SENIOR DIVISIONAL MANAGER — APPELLANT

Vs

RAKSHA GOYAL — RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Citation : 2002 2 CPJ 92 : 2003 1 CLT 75

Hon'ble Judges : D.P.Wadhwa , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Petition allowed

Judgement

1. IT is Life Insurance Corporation of India, petitioner who is aggrieved by the order of the State Commission allowing complaint of the respondent which complaint had been dismissed by the District Forum.

2. COMPLAINANT was the nominee in the insurance policy taken by her husband Krishna Prakash Goyal on 13.8.1989 for Rs. 30,000/-. Goyal died on 30.12.1990. He suffered heart attack. Petitioner repudiated the policy on the ground that insured Goyal had concealed material fact regarding his illness. In the proposal form he stated that he had never been admitted in the hospital nor had he any type of ailment. He also stated that he did not take any medical leave from his office. Goyal was working as Junior Engineer in the Office of the Executive Engineer IPH, Nahan and was found to be suffering from heart ailment for the last two years prior to the date of his taking the insurance. It is also found that he had taken leave on medical grounds on number of occasions. District Forum found that these documents were not disputed by the complainant/respondent. Plea of the complainant that before insurance policy was taken, Goyal was examined by Dr. D''Souza of the petitioner who certified that Goyal was hale and hearty, was negatived by the District Forum. District Forum was of the view that because of various documents that insured was in fact suffering from ailment and he had taken leave on medical ground, certificate of Dr. D''Souza should not be relied upon. District Forum, therefore, dismissed the complaint. Appeal against the order of the District Forum was filed by the complainant before the State Commission. Here State Commission took the view that there was nothing to

show that the documents produced by the petitioner had been admitted by the complainant. This was certainly not a correct approach adopted by the State Commission. As noted by the District Forum there was no denial by the complainant of the genuineness and authenticity of the documents produced by the petitioner. It was, therefore, not necessary for the petitioner to lead any evidence on that account. State Commission, therefore, allowed the appeal and directed the petitioner to pay Rs. 30,000/- with interest @ 18% from the date of death of the insured. There was however, no order as to costs. We do not think State Commission was right in its conclusion. Official record of the insured showing his leave on medical ground could not be disputed. Then there were certificates from doctors. Insured, in fact, was suffering from heart ailment. Perhaps it was more on account of sympathy for the widow that State Commission found loopholes in the evidence of the petitioner. Compassion that is a concern for the sufferings or misfortune of the complainant is one thing but that cannot overturn the law. We will, therefore, allow this petition and set aside the order of the State Commission and uphold that of the order of the District Forum dismissing the complaint. There will be no order as to costs.

Now comes the compassion for the petitioner to exercise. If any amount under the order of the State Commission has been paid to the respondent one-half may not be recovered from her. However, this is for the petitioner to exercise its discretion showing compassion and taking sympathetic view in the matter. Petition allowed.