(1992) 08 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

SENIOR DIVISIONAL MANAGER, L.I.C. — APPELLANT

Vs

KOUSALYA BAI — RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : 1992 2 CPR 380 : 1992 3 CPJ 178

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi , J.Patnaik J.

Final Decision : Appeal dismissed

Judgement

1. - INSURER is the appellant.

2. DECEASED Parsumal Bajaj gave a proposal for insuring his life for an amount of Rs. 50,000/- on 15.1.1987. On the basis of the statement in the proposal it was accepted and Policy No. 590350614 was issued. Complainant is wife of Parsumal who was the nominee. On account of non-payment of half-yearly premium in January, 1988 policy lapsed. However, the same was revived on 14.9.1988 on personal statement regarding health given by the Parsumal. Three years thereafter, on 7.4.1990 Parsumal expired while he was undergoing medical treatment. Information of death having been given to the insurer, claim was made to settle the contracted amount with bonus. After making inquiry insurer found that deceased withheld material information regarding his health at the time of effecting the assurance and also at the time of revival of the policy. By a reasoned letter insurer intimated the complainant that the deceased insured made deliberate mis-statement and withheld material in- formation from insurer regarding his health at the time of effecting the assurance and also at the time of revival of policy and hence the declaration in the proposal and declaration of good health for revival of policy are void. The money paid towards premium for revival of policy and subsequent thereto was also forfeited. This letter was sent by registered post to the complainant on 28.8.1991. This is stated to be deficiency in service and compensation has been claimed. Insurer stated its case asserting that deceased made deliberate mis-statement and with- held material information regarding his health in serial Nos. 17(a) and 18(b) of the proposal

and made deliberate mis-statement regarding his health in serial No. 2(ii) and serial No. 4 of the statement of health for revival of the policy. It obtained certificate of hospital treatment from Tata Memorial Hospital where the deceased expired during treatment. In serial No. 7 of the certificate it is stated that deceased made a statement that his ailment is about six years old at the time of admission to the hospital. Thus, deceased knowing fully well about his illness at the time of effecting assurance and at the time of revival of the policy, withheld material information regarding his health for which there is no liability of the insurer and as per terms of the policy, he is not entitled to refund of the premium.

Complainant filed an affidavit that the statement in the medical attendant certificate given by Dr. Sanjay Sharma of Tata Memorial Hospital that deceased stated that he was suffering since six years, is not correct and it is only six months. Letter of Dr. Sanjay Sharma with a medical attendant certificate and Biopsy report of Tata Memorial Hospital and letter dated 28.8.91 repudiating the claim were filed by the complainant. Insurer filed copy of the proposal where the questions have been answered by the proposer medical examiner''s confidential report, personal statement of complainant regarding health and a copy of the certificate of hospital treatment in support of their case.

3. CONSIDERING the aforesaid materials, District Forum held mat complainant is entitled to the assured amount with bonus. This is grievance of the insurer in this appeal. Certificate of hospital treatment in profor- ma of opposite party given by Dr. Sanjay Sharma of the Tata Memorial Hospital, Bombay indicates in Column-4 that the duration of the complainant as reported by the deceased was 6 months. In col.7 the date when first observed by the patient was stated to be 6 years back. A copy of the medical attendant''s certificate in prorforma of opposite party was forwarded by a letter of Dr. Sanjay Sharma in Tata Memorial Hospital pad addressed to the opposite party where in answer to serial No. 5-c it was stated that the deceased had been suffering from the disease before 6 months of his death and in answer to 5-c it was stated that the deceased first observed the disease 6 months before 27.11.90, on which day the doctor was consulted. Against question in serial No. 7 it was stated that it was observed 6 months before. First it was written 6 months. Then ''month'' was corrected and it was written ''years'' thereafter. The same was again corrected and was written 6 months and was signed on 14.8.81 by the doctor by putting his seal. Insurer did not produce the medical attendant''s certificate before the District Forum, though the same is put in Form No. 3784 claim Form No. B. Form No. 3816 (Rev.) claim Form B-l which is certificate of hospital treatment was produced by he insurer. There is no explanation for not filing this Form No. 3784 by the insurer. The letter from Tata Memorial Hospital where a doctor himself has written that it is not 6 years as mentioned earlier fiut is 6 months, has not been produced by the insurer though the same has been produced by complainant In case the insurer has received the same and suppressed it, adverse inference is to be drawn. In case insurer has not received Form No. 3784 copy of which was produced by the com- plainant, investigation by the insurer is defective and repudiation is a

deficiency in service. In either case the only ground on which mere is repudiation being on account of lack of proper application of mind, there is deficiency in service. In Form No. 3784 it was stated to be death in Tata Memorial Hospital. This indicates that in case of survival, Form No. 3816 is given and in case of death Form No. 3784 is given. In this background we are inclined to hold that there is no material to come to conclusion that deceased had known about the disease and suppressed the same in the proposal or in the statement for revival of the policy. Accordingly, there being deficiency in service, com- plainant is entitled to the assured amount

4. WE would have awarded further compensation for unreasonable repudiation of the claim, if the complainant would have preferred an appeal. In absence of the appeal, we direct that the direction given by the District Forum is to be confirmed and payment is to be made by the appellant within 2 months from the date of receipt of this order, failing which interest @ 18% per annum shall be paid from the date of repudiation of the policy till date of payment. In result, there is no merit in this appeal, which is accordingly dismissed. Appeal dismissed.

