(2001) 10 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Senior Divisional Manager, LIC of India APPELLANT

Vs

Ansar Ahmad RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Citation : 2002 1 CLT 697 : 2002 1 CPJ 419 : 2002 1 CPR 396

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna , Senior , Rachna J.

Final Decision : Ordered accordingly

Judgement

1. BOTH these appeals have been filed against the judgment and order dated 29.12.1994 passed by District Consumer Forum, Mathura in Complainant Case No. 725/1993.

2. THE revision has been filed against the order dated 18.8.2000 passed by the same District Forum in execution proceedings. The facts of the case stated in brief are that the complainant Sri Ansar Ahmad got the insurance done of his wife Smt. Beena on 28.11.1989 for a sum of Rs. 2,00,000/-. The policy was issued to the insured. Suddenly the wife of the complainant died on 10.6.1990, the information of which was sent to the opposite party, Life Insurance Corporation of India. The complainant also submitted the claim on 8.10.1990 demanding a sum of Rs. 2,00,000/- but the same has not been given to the complainant till June, 1992. The complainant made several requests in writing as well as verbally but nothing has been done by the Insurance Company. The complainant had spent a sum of Rs. 3,000/-. By letter dated 14.12.1992 the Life Insurance Corporation of India had repudiated the claim of the complainant. The complainant has, therefore, filed this complaint for recovery of Rs. 2,00,000/- alongwith interest at the rate of 18% per annum and a sum of Rs. 3,000/- as cost of the proceedings.

In the written version the opposite party, Insurance Company has admitted the Insurance of Smt. Beena. The factum is also admitted. It is alleged that the claim has been repudiated on 14.12.1992. It is alleged that the District Forum had no jurisdiction to try this complaint at Mathura because the cause of action arose at

Agra.

3. IT is further alleged that the insured did not furnish the correct particulars and had suppressed the material facts. According to the Insurance Company, these informations which were given by the insured in the proposal form were intentionally given false which fact came to the light during the complete investigation of this case. The health of the insured was not good and she has taken a number of leaves on account of ill-health. She was doing service in Nirphad Growth Centre while this fact has not been mentioned in the proposal form. Before the taking of insurance policy, the insured was ill and she had a cyst in the ovary. This cyst was got operated upon by the insured and thereafter she died under suspicious circumstances. It is further alleged that the insured was previously married to one Sri Jagdish Prasad Verma at Jaipur. They took divorce on 15.4.1998. No marriage can take place before the expiry of one year after the divorce but the insured married second time with the complainant within a period of one year. On all these grounds the claim has been repudiated by the Insurance Company. The complicated question of law and facts arise in this case, hence it cannot be tried by the District Forum.

4. THE parties led evidence in support of their respective contentions before the learned District Forum. THE learned District Forum after considering the case of the parties, came to the conclusion that there was deficiency in service on behalf of the Insurance Company, hence it decreed the claim for a sum of Rs. 2,00,000/- along with interest at the rate of 18% per annum with effect from May, 1991. It also allowed a sum of Rs. 200/- as cost of the proceedings. THE amount was to be paid within a period of one month from the date of judgment. Aggrieved against this order, the Life Insurance Corporation of India has come in appeal and has challenged the correctness of the order passed by the learned District Consumer Forum. It is not necessary to mention the facts in the revision because the District Forum after pronouncement of the judgment directed for attachment of the property of the Life Insurance Corporation of India and against this order the revision has been filed.

5. WE have heard the learned Counsels for the parties. The first argument of the learned Counsel for the appellant, Insurance Company is that the learned District Forum had no jurisdiction to decide this matter as the cause of action arose at Agra while the complaint has been filed holding that it has jurisdiction to try the complaint at Mathura. The learned District Forum had passed an order dated 20.7.1994. Against that order no revision was filed by the Insurance Company, hence that order has now become final. No plea about the jurisdiction can be taken at this stage. In the case of M/s. Vikas Motors Limited v. Dr. P.K. Jain, II (1999) CPJ 44 (SC)=VII (1999) SLT 115=1999 (3) CPR 64 (SC), the Hon''ble Supreme Court had decided that if an objection regarding the jurisdiction had been taken up and decided by the District Forum and no appeal or revision was filed by appellant then it apparently appears to have become final. It was further held that after participating in the proceedings and after being satisfied with the

verdict regarding the jurisdiction, it is now too late for the appellant to urge, at this stage, that the District Forum had no territorial jurisdiction to entertain the complaint. The appellant is estopped from raising the plea of jurisdiction at this stage because the appellant has acquiesced to the territorial jurisdiction of the District Forum. Thus, in view of the Apex Court, now this plea cannot be raised by the appellant.

6. NOW it has been argued by the learned Counsel that the insured had suppressed the material facts regarding her illness. According to the learned Counsel for the appellant, the insured was having pain in the stomach for which she had taken leave but this fact was not disclosed by the insured in the proposal form. According to the learned Counsel the insured died on account of the formation of cyst in ovary which was operated upon but the insured could not survive. In order to appreciate this argument, it is necessary that the insured must know that the disease which she is having is material and it has to be disclosed in the proposal form. The appellant has filed certain documents in order to show that the deceased knew about the disease long before the filing of proposal form. In the present case, the proposal form was filled up by the insured on 28.12.1989. This is clear from the copy of proposal form which has been filed by the appellant along with memo of appeal. The insured died on 10.6.1990 on account of pain in the stomach. There is photocopy of certificate of hospital treatment which shows that the insured was admitted to the hospital on 2.6.1990. In the Column No. 4(b) the duration of the complaint as reported by the patient - the answer is written as four months. The nature of the complaint was pain in lower abdomen. In the column No. 6 the diagnosis arrived at in the hospital, it is written as Right Ovarian Cyst. In the column 6A it is mentioned that when the patient has first observed this symptom - the answer given by the patient was four months prior to the admission. Now, we find that the admission was done on 2.6.1990 and the pain was felt in the lower abdomen four months before this admission. Thus the period comes to February, 1990. The proposal was filled up on 28.12.1989. Thus the complainant was not having any knowledge about the Right Ovarian Cyst on the date of filling up the proposal form. For the first time she came to know of the Right Ovarian Cyst when she was admitted to the hospital on 2.6.1990 even that the pain in the stomach was from the last four months. Therefore, in view of the facts placed before the District Forum and this Commission, it cannot be said that the insured was aware of the presence of cyst in ovary on the date of filling up the proposal form. Thus, this argument of the learned Counsel for the appellant is false.

It has been further argued by the learned Counsel for the appellant that 36 days'' sick leave was taken by the insured. This is clear from a letter dated 12.8.1991 written by Nirphad Growth Centre to the Life Insurance Corporation of India. This was in response to a query made by the Life Insurance Corporation of India. The copies of leave applications submitted by the insured were also forwarded to the Insurance Company. In the first application dated 26.5.1988, it has been mentioned that she was not feeling well, hence she will not be able to attend the office and prayed for leave. In application dated 24.2.1989, it has been mentioned that she was having pain in her stomach, therefore, she has prayed for leave for 15 days. The next application is dated 15.3.1989. She has prayed for 15 days more leave. The last letter written by the insured to the Nirphad Growth Centre is dated 20.3.1989 by which she has stated that now she is not in a position to serve there, therefore, her resignation may be accepted. A perusal of these applications will go to show that the insured had some balance leave in her account and before resigning she wanted to avail all such leave. She might be having pain in the stomach but she availed the entire leave sometimes on the ground of pain in the stomach and sometimes without any reason. It is common in India that a person before retirement or before resigning from the office tries to exhaust all kinds of leaves to which he is entitled except the earned leave which can be encashed. Therefore, no adverse inference can be drawn from the fact that the insured had taken sick leave for 35 days. It has to be proved that actually the insured was suffering from the disease on account of which her death has taken place and she has suppressed the same. In the present case, it has been seen in the earlier part of the judgment that there was no suppression of the disease by the insured as she never knew on the date of filling of the proposal form that she is suffering from the disease of cyst in ovary. The appellant has, therefore, failed to substantiate this allegation.

7. THE learned Counsel for the appellant has placed reliance on certain letters written by the former husband Sri Jagdish Prasad to the Insurance Company. Reference has been made to the letter dated 28.9.1991. In this letter Jagdish Prasad has mentioned that Ansar Ahmad has no right to claim of this policy amount and he alone is entitled to claim the amount of policy. He has mentioned that the divorce between him and the insured took place on 15.4.1988 and if there was any relationship of husband and wife Beena with any other person then it is not legal. THE contents of this letter are wrong. THE marriage of Jagdish Prasad with Beena did not continue till 15.4.1988. As has been seen in the earlier part of the judgment, the divorce had already taken place between them on 21.11.1984. THE second letter does not bear any date which is Annexure-38 to the memo of appeal. By this letter he has mentioned that Smt. Beena was suffering from the disease of cyst in ovary and she knew about this fact at the time of taking the insurance policy and she has no hope of remaining alive. He has further mentioned that he is filing a copy of letter written by Smt. Beena Verma. THE copy of that letter is Annexure-11 to the memo of appeal. THEre is no date on this letter as to when it was written. THE stamp mark of the postal department on the envelope is also not clear to show on which date it was received or posted. In this letter, it has been written that she has cyst in the ovary and she has to be operated. THEre is no evidence on record to show that Jagdish Prasad has written the above two letters and Beena Verma has also written this letter to Jagdish Prasad Verma. THEre is no affidavit of Jagdish Prasad Verma in order to show that he has written these letters to the Insurance Company and he has received this letter from Smt. Beena Verma. Unless these

documents are proved it cannot be said that they were written by the person by which they are alleged to have been written, therefore, no reliance can be placed on this letter. However, the letter of Beena Verma does not disclose that she knew about the cyst in ovary before the date of proposal. In this letter, it has been clearly mentioned that there is a cyst in the ovary for which an operation has to be done. As seen in the earlier part of the judgment, the insured came to know of the cyst in ovary only four months before her admission to the hospital. She did not know about this disease at the time of filling up the proposal form. THErefore, even if it is accepted for the sake of argument that Beena Verma wrote this letter to Jagdish Prasad, then it must have been written after she was admitted to the hospital and was checked by the Doctor and it was diagnosed that she was having the cyst in right ovary, therefore, this letter could not have been written before 2.6.1990. It has been argued by the learned Counsel for the Insurance Company that the insured was previously married to Jagdish Prasad Verma and during the continuance of that marriage she again married Ansar Ahmad. This argument is not correct. This plea was not specifically taken in the repudiation letter but was taken in the written statement without disclosing full facts. However, this fact is being considered in the present case. The marriage of Jagdish Prasad Verma with the insured is admitted. There has been a decree of divorce between the parties on 21.11.1984 is on record. Thereafter an application was also moved by the insured against Jagdish Prasad Verma under Section 125 of the Criminal Procedure Code for maintainance. This application was compromised on 15.4.1988. Now the learned Counsel for the appellant has argued that when the compromise between the parties took place on 15.4.1988 how the marriage could take place between the insured Beena with the complainant Ansar Ahmad on 23.6.1985. This argument is fallacious and is not based on correct interpretation of law. The copy of the decree of divorce dated 21.11.1984 is on record which goes to show that the marriage was dissolved between the parties on 21.11.1984. Thereafter an application under Section 125 was moved which was compromised on 15.4.1988. The copy of this compromise is on record. A perusal of Section 125, Criminal Procedure Code will go to show that even a divorced wife can maintain an application for maintenance if she has not been married. In the present case the appellant has not filed the copy of application which was moved by the insured under Section 125. Only a copy of compromise which was effected between the insured and Jagdish Prasad has been filed. Even in this, it has been mentioned that the divorce decree dated 21.11.1984 is binding on the parties. Thus, we find that under Section 125, Criminal Procedure Code an application for maintenance can be continued even by a divorced wife. Mere pendency of application for maintenance will not mean that the relationship of husband and wife exists between the parties. This argument of the learned Counsel that the marriage of the insured continued with Jagdish Prasad till 15.4.1988 is not correct.

8. AN objection has been raised by the learned Counsel for the opposite party that Appeal No. 2283/2000 is barred by limitation. This appeal has been filed by

the Life Insurance Corporation of India while the Appeal No. 153/1995 has been filed by Senior Divisional Manager and Manager, Life Insurance Corporation of India. Two appeals cannot be permitted to file against the same order. Both these appeals are therefore on behalf of the Life Insurance Corporation of India even though one of the appeal has been filed by Senior Divisional Manager other one filed by Manager, Life Insurance Corporation of India. The second appeal was filed on 15.9.2000 against the order dated 29.12.1994. The Insurance Company had knowledge of the judgment when the previous Appeal No. 153/1995 has been filed by it. Thus, this appeal has been filed after a gap of about six years and is highly time barred. This appeal is, therefore, liable to be dismissed on the ground of limitation. As far as the revision is concerned, the revision has been filed against the order passed in execution proceedings. We have come to the finding that both the appeals filed by the Life Insurance Corporation of India and the Senior Divisional Manager and Manager of Life Insurance Corporation of India are devoid of merits and are liable to be dismissed, therefore, the revision is also liable to be dismissed. Thus, both these appeals as well as revision are liable to be dismissed. ORDER The Appeal Nos. 153/SC/1995, 2283/SC/2000 and Revision No. 120/SC/2000 are dismissed. The judgment and order of the learned District Forum are confirmed. The appellant shall pay a sum of Rs. 3,000/- as cost to the complainant. Let compliance of this order be made within a period of two months from the date of this order. Let the original judgment shall be kept in the records of Appeal No. 153/SC/1995 and a certified copy thereof shall be kept in the records of Appeal File No. 2283/SC/2000 and Revision File No. 120/SC/2000 which shall also be governed by this judgment. Let copy of this order be made available to the parties as per rules. Ordered accordingly.

