(1999) 10 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

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

Vs

K.C.Vijayan — RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Citation : 2001 1 CPJ 483

Hon'ble Judges : L.Manoharan , K.M.Latha , R.Vijayakrishnan J.

Final Decision : Appeal dismissed

Judgement

1. THE opposite parties, namely the Senior Divisional Manager, LIC of India, Calicut and the Branch Manager, LIC of India Branch II, Kannur are the appellants. Dissatisfied with the order dated 13.11.1997 in O.P. No. 463/96 on the file of the Kannur District Forum, the said opposite parties have filed this appeal.

2. THE complainant''s case is that he alongwith his wife had availed a joint life insurance policy on 20.12.1993 for a sum of Rs. 25,000/-. THE complainant''s wife died on 30.10.1993 at Kasturba Medical College Hospital, Manipal after a brain surgery. This fact was immediately reported to the opposite parties but on 8.3.1996, the opposite parties repudiated the claim on the ground that the assured had suppressed material facts. On this the complainant sought relief through the Forum by filing O.P. No. 463/1996. The opposite parties appeared and filed version. Their main contention was that the death of one of the assured happened within two years from the commencement of the policy and she suppressed the fact of her ailment from the Insurance Company.

The District Forum considered the evidence and directed the opposite parties to pay the policy amount and excess premium realised from the complainant with interest @ 9% per annum from 1.11.1993 till payment. Forum also awarded Rs. 250/- as costs to the complainant. Aggrieved by the above award this appeal has been filed.

3. WE called for the records from the District Forum. WE went through the

records and heard arguments of the learned Counsel. The main argument of the appellant before us is that continuous of insurance is a contract of uberrimae fidei. In this case, the deceased was suffering from abdominal tuberculosis and was under treatment at the time of taking the policy. This is proved by the fact that she had taken 54 days of leave within an year for treatment. The death occurred within two years of signing the policy and the cause of death occurred due to right intracranial tension with transtentoriam as a result of herniation, tuberculosis and septicemea with acute respiratory distress syndrome and also due to Mysthania grains. The clear condition in the terms of the policy is that if death occurs within two years, the burden is on the insured to prove that, he or she was not suffering from any disease. There is a questionnaire filled up by the assured that they were not suffering from any disease and they have not met any doctor for treatment previous to the date of commencement of the policy. The evidence in this case consists of A1 to A5 and B1 to B4 and the oral evidence of P.Ws. 1 and 2 and O.P.W. 1. P.W. 1 is the husband of the deceased. His case is that even some years after the marriage his wife did not conceive and the medical leave taken during the period was for meeting the doctors seeking treatment for infertility. It may be noted that there is no independent evidence to corroborate this. No doctor who treated the patient for infertility has been examined.

4. P.W. 2 is the LIC agent who canvassed for policy. He says that he had canvassed only two policies during his short career as agent. He corroborates the case of P.W. 1 that P.W. 1 and his wife, the deceased signed blank forms which was later filled up by the Development Officer. O.P.W. 1 is Premarajan, the LIC Administrative Officer who was dealing with the file of the impugned policy. He proves the declaration submitted by the deceased alongwith the policy. The declaration is found to be false on every aspect of her health subsequently on investigation. She was on leave on medical grounds many times. The death certificate also shows the cause of death and the fact that the deceased was suffering from several ailments even before the commencement of the policy. He admits the premiums were accepted for a few months even after the death of the said Nirmala. This was because the arrangement was to deduct the monthly premium from the salary of her husband. O.P.W. 1 admits. The District Forum found fault with the opposite parties in not examining the doctor who treated the deceased for proving that she was suffering from tuberculosis before and at the time of commencement of the policy. As the death occurred within two years and as insurance is a contract of uberrimae fidei the burden is on the complainant to prove that the deceased was not suffering from tuberculosis. The burden is wrongly cast on the opposite parties by the Forum. There is deficiency of service in delay on the part of the opposite parties insofar as they repudiated the claim only on 8.3.1996 even though the death of Nirmala was informed to the opposite parties on 30.10.1993. This long delay in repudiating the claim is unpardonable in the light of decisions.

5. BECAUSE of the long delay in repudiating the policy the burden shifts from the

complainant to the opposite parties to disprove the complainant''s case. This proposition is supported by the decision reported in Aboobacker v. LIC of India, 1983 KLT 492. This decision considered the scope of Section 45 of the Insurance Act. The Division Bench of the Kerala High Court held that the duty of disclosure thus attaches to material facts. A material fact has been defined as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk. The Court discusses with the scope and ambit of Section 45. Section 45 is a statutory recognition of what are described as indisputable clauses that used to be inserted in insurance proposals by Insurance Companies. The conditions are, (a) the statement of the policy holder must be on a material matter of must suppress facts which it was material to disclose by the suppression must be fraudulently made by the policy holder and the policy holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. As the repudiation of the policies was made more than two years after they were effected the burden of proof is on the Corporation to establish the above three conditions.

6. IT is also to be noted that the Kerala State Consumer Disputes Redressal Commission in a decision reported in C.P. Kacheebi v. Manager (Claims) L.I.C. of India & Anr., I (1999) CPJ 320, held that the burden is heavily on the insurer to prove that there is suppression of material facts and that the policy holder knew at the time of making the statement that it was false. The policy in this case was called in question after 2 years from the date on which it was effected. In the present case, we have already found that the repudiation was after about 28 months. We are of the view that the opposite parties have not succeeded in proving with definiteness that the deceased was suffering from abdominal tuberculosis prior to 20.12.1991. Admitting that she was suffering from the said disease there is no proof to establish that either she or her husband P.W. 1 was aware of this at the time of filling the proposal form and the complainant had wilfully suppressed material facts. IT also remains a fact that the doctors who issued Exts. B2 and B4 were not examined by the opposite parties. IT may also be noted that before the proposal was signed the deceased was examined by a doctor approved and deputed by the opposite parties. We hold that there is no evidence to conclude that the deceased Nirmala was suffering from abdominal tuberculosis during September, 1991. The complainant claimed the policy amount of Rs. 25,000/- with interest @ 18% from 1.11.1993. He also claimed the return of the excess premium collected from the complainant. The District Forum rightly granted the above reliefs. In the circumstances of the case we do not see any reason to interfere with the order passed by the District Forum. There is no merit in the appeal. We direct that the opposite parties shall pay the policy amount Rs. 25,000/- and the excess premium collected from the complainant with 9% interest per annum from 1.11.1993 till payment. The costs of Rs. 250/- awarded by the District Forum will stand. The appeal is dismissed however without costs. Appeal dismissed.

