**(1996) 05 NCDRC CK 0038**

**In the National Consumer Disputes Redressal Commission**

SHANTILATA MUKHERJEE — APPELLANT

Vs

L.I.C.I. — RESPONDENT

**Date of Decision :** 28-05-1996

**Acts Referred:**

**Citation :** 1996 2 CPJ 399

**Hon'ble Judges :** A.K.Bhattacharyya , Sunil Kanti Kar , S.Dutta J.

**Final Decision :** Appeal allowed

## Judgement

1. THIS appeal is against an order of the District Forum, Burdwan disallowing a claim of Life Insurance Policy which was earlier repudiated by the Life Insurance Corporation of India. The complainant before the Forum was one Shantilata Mukherjee, a widow-nominee of her husband Ranjit Kumar Mukherjee who was the policyholder for an amount of Rs. 25,000/- (Rupees twenty-five thousand). The complainant''s case was that her husband had submitted a proposal for Life Insurance to the Branch Office of the Life Insurance Corporation of India at Burdwan on 15.2.86 which was accepted by the Corporation and a policy was duly issued. The relevant premia were all duly paid and the assured, an employee of the Railways, unfortunately expired on 3.10.86 due to cardio respiratory failure. The complainant-appellant as the nominee of her late husband preferred a claim for the payment of the assured sum but the L.I.C.I. after a long series of correspondence repudiated the claim on the ground that there was a material mis-statement in the proposal form. The learned District Forum after hearing both parties upheld the contention of the L.I.C.I. that the policy was vitiated by the relevant misstatement of fact and dismissed the claim. The complainant thereafter has filed this appeal challenging the correctness of the District Forum''s order.

2. THE Life Insurance Corporation of India, the contesting respondent before us has put forth the self-same arguments which were advanced before the District Forum. THEir case is that in reply to specific question in the policy form, namely, "Have you remained absent from place of your work on ground of health during

 

the last five years ?" answered "No" which is a false statement. The only point that calls for determination in this appeal is if the District Forum was correct in its finding and if not, if its order should be set aside. DECISION

As pointed out above, a short point of controversy has been raised here, but it strikes at the eternal point of dispute raised in similar innumerable cases that a fraudulent suppression of a material fact in the proposal form vitiates a claim under the policy. In the instant case no allegation has been made about the suppression of any fact relating to any disease. The suppression involves a negative reply to a matter-of-fact short question - "Have you remained absent from place of your work on ground of health during the last five years"? The only ground of repudiation of the claim is the alleged false reply to this short question. Some smoke appears to have been created over another controversial fact whether it was a non-medical policy i.e., if the policy was issued in good faith only on the basis of the answers given in the proposal form without a medical examination which is a must in other cases. There is, however, no sufficient evidence on this point and we are of opinion that suppression of a material fact in the proposal form-whether followed by a medical examination or not - is a sufficient consideration for repudiation of a claim, if the suppression is fraudulent and material.

3. MR. N.R. Mukherjee, the learned Advocate for the respondent-L.I.C.I. in his usual manner is eloquent about the Corporations right of repudiation in a case where there is material suppression of a fact in the proposal form having bearing on a possible disease. He refers to the provisions of Section 45 of the Insurance Act, 1938 and the judicial decisions made by the Court on this section to support his argument that this case was vitiated by fraudulent mis-representation of fact. He particularly refers to a decision of the Supreme Court reported in AIR 1962 S.C. 814 (Mithoolal Nayak v. L.I.C.I.) in which the above provisions of the Insurance Act have been examined and discussed extensively. So far as the legal point emphasised by Mr. Mukherjee is concerned, there is no doubt that the same is correct. It is a well-settled law that the contract of life Insurance being one of utmost good faith, uberrima fides as it is known in legal circle, the proposer of a policy is required to furnish the most faithful information against the quaries made by the Insurance Company. In the instant case no allegation has been made by the L.I.C.I. regarding the suppression of any disease having bearing on the death of the assured. The only suppression of fact involved is a negative information about he absence of the proposer from office on medical grounds. There is no doubt that such an information is of vital nature, as a correct answer to this question might have influenced the decision of the Corporation whether a policy should be issued or not. I, therefore, accept the principle of law which has been strenuously stressed by Mr. Mukherjee before us.

4. THERE is, however, an interesting controversy over the actual absence of the proposer from office on medical grounds. Both parties have adduced evidence to prove their case in respect of the cause of absence of the proposer prior to the

 

submission of the proposal. The Lawyer of the L.I.C.I. relies on a statement of the Railways regarding the leave and the sickness of the deceased Ranjit Kr. Mukherjee. It appears from Ext. ''C that he was sick from 26.5.85 to 2.2.86 for about 80 days. The L.I.C.I. lays stress on this statement and submits that in view of this statement of the Railways the assured''s claim that he was not absent on medical ground during five years prior to the signing of the proposal form is not correct. On the appellant''s side, however, reliance is made on Ext. ''H'' wherein it has been reported by the Railway that the deceased Ranjit Kr. Mukherjee availed 15 days casual leave in each year and availed 20 days E.L. during the last three years not on grounds of health. Ext. ''H'' was certified by the Railway on 20.12.86. How to reconcile these two statements? If appears that an attempt was made by the Railway to explain the nature of sickness. In a xerox copy of a letter dated 20.1.89 the Railway Its given an explanation of the sickness of the deceased to the following effect - "Reference to your above quoted letter, it is regretted to let you know that this office does not keep the record of nature of sickness of staff who are reporting sick since such information is not being furnished to this office. The procedure involved in granting leave is only on the basis of medical certificates issued by medical practitioners/ doctors."

From the above it would be seen that the Railway has not been able to explain the sickness of the deceased. It further appears that a medical certificate is required only while granting leave on medical grounds. As no medical certificate has been produced in respect of the sickness reported above, it is difficult to hold if the deceased employee was actually absent on medical grounds on the relevant dates. No evidence has also been adduced to explain the matter further and the combined effect of the Exts. ''C & ''H'' is that deceased Ranjit Kr. Mukherjee took full casual leave in each year and availed of 15 days E.L. during the last three years preceding 20.12.86 not on grounds of health. It is also not understood if on the dates when sickness was reported the employee concerned was on duty or on leave. He was not on leave as no leave was taken as would appear from Ext. ''H''. It is thus difficult to follow whether he was absent on medical grounds for those days on which he reported sick. The above analysis of facts leads us to the conclusion that the policy holder''s statement that he was not absent from office on medical ground for the last five years preceding the date of proposal cannot be said to be untrue. Thus it must be held that the suppression of material facts has not been proved in this case. It is, however, argued on behalf of the L.I.C.I. that the Corporation having repudiated the claim on cogent grounds after considering the evidence, the repudiation does not constitute any deficiency in service. It is true that when the L.I.C.I. rejects a claim of the policy holder after considering the evidence it is not a bad repudiation. Although this is the law, it should be simultaneously considered if repudiation is made on an improper appreciation of the evidence it cannot be said to be a proper consideration and such repudiation is liable to constitute a deficiency in service. Otherwise if proper evidence for disposing of the matter is placed before the Consumer Disputes Redressal Agency, to push the parties to

 

Civil Court for a further adjudication by the said Court on the self same evidence is not supportable.

5. FOR all the above reasons we think that the finding of the District FORum cannot be supported. In this case there is no allegation of suppression of any material disease. The cause of death of the deceased Ranjit Kr. Mukherjee is primarily cardio respiratory failure and this disease could not be prevented even if any other information was furnished by the deceased in his proposal. We also take into account the fact that no serious illness of the deceased has been reported from any quarters during the period he is stated to be sick.

6. IN a recently decided case by the National Commission reported in 1996 (1) C.P.R. 129 (Life INsurance Corporation of INdia v. Sanjeev Mahendralal Shah, the Commission has pointed out that in life insurance policies, an assured is not required to disclose casual ailments not requiring any treatment or consultation with a medical doctor. It has been further held that the sickness, ailment which is required to be disclosed is with reference to serious disorders in health only. Such a view may be adopted in this case also. This appeal is, therefore, allowed. The order of the District Forum dated 22.6.95 passed in D.F. Case No. 51 /93 is hereby set aside and the aforesaid case is allowed on contest. The Opposite parties are directed to make payment to the nominee of the assured the dues payable under the policy with an interest at the rate of 18% p.a. from the date on which the same became payable to the nominee of the assured. There will be no order for costs in this appeal. Appeal allowed.

 