(2003) 03 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

S.LEELA KUMARI APPELLANT

Vs

L.I.C. of India RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Citation : 2003 2 CPJ 230

Hon'ble Judges : P.Ramakrishnam Raju , Mamata Lakshmanna J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant''s husband late Seemakurthi Penduranga Rao took out 20 years ''Jeevan Surbhi'' policy bearing No. 681321132 with accident benefit for a sum of Rs. 5 lakhs from the second opposite party branch which commenced on 1.5.1995 with annual premium of Rs. 48,834/- and the complainant was appointed as his nominee under the said policy. While so the insured died on 14.2.1997 due to ''Poems Syndrome and weakness of limbs''. When the complainant submitted a claim for payment of the policy amount the first opposite party repudiated the claim on 15.2.1996 stating that her husband made incorrect statements at the time of proposal. Hence she filed the complaint claiming the sum assured together with compensation of Rs. 50,000/- and costs of Rs. 10,000/-.

2. IN the written version filed by the opposite parties, it is admitted that the complainant''s husband made a proposal on 23.6.1995 for Rs. 5 lakhs under ''Jeevan Surabhi Plan''. As per the procedure of the Corporation if the proposal is not accepted within six months the Corporation would call for a fresh proposal along with fresh medical report. IN this case same thing happened. Accordingly her husbandsubmitted a fresh proposal dated 15.2.1996 requesting to date back the policy from 1.5.1995 collecting the balance of the consideration amount on 25.3.1996 vide SOC No. 014967 for Rs. 11,832/-, total premium being Rs. 48,340/- and first premium receipt was issued on 25.3.1996. The insured was having another policy for Rs. 50,000/- and on his death the said policy was settled but it investigated into the matter in respect of the policy in question as it

was an early claim. During the course of investigation it came to light that the policy holder was suffering from pain in limbs and took treatment at Nizam INstitute of Medical Sciences, Hyderabad on 28.12.1995. He also underwent treatment at National INstitute of Mental Health and Neuro Sciences, Bangalore where he died. The material gathered by the opposite parties clearly discloses that the policy holder was suffering with weakness and problem with both lower limbs before making the proposal. As the insured suppressed his health condition that he was suffering from pain in limbs and he was not able to get up from the sitting position nor could he climb steps, the Corporation rightly repudiated the claim of the complainant. The complainant filed Exs. A-1 to A-5 besides filing her affidavit. The opposite parties also filed Exs. B-1 to B-18 besides filing the affidavit of Assistant Secretary, Legal Cell of the Zonal Office of the opposite party Corporation.

The point that arises for consideration therefore is whether there is any deficiency in service on the part of the opposite parties, if so to what relief?

3. THE policy is marked Ex. A-5 which shows the proposal number as 69168F, the date of the proposal as 7.8.1995, policy number as 681321132 and date of commencement as 1.5.1995. THEse particulars are confirmed under Ex. A-2 also. It also shows that instalment/premium is Rs. 48,834/- and the next premium is shown as May, 1996. The learned Counsel for the complainant submits that Ex. B-1 is the first proposal where under the same proposal number and date is mentioned but the insured signed the proposal on 23.6.1995. As the proposal was signed on 23.6.1995 the learned Counsel submits that the date of the proposal should be taken as 23.6.1995. However the learned Counsel for the opposite parties submits that though the proposal was signed on 23.6.1995 the proposal number and policy number were issued on 7.8.1995. Hence for all practical purposes 7.8.1995 is taken as the date of the proposal.

4. HAVING regard to these facts the date of proposal has to be taken as 7.8.1995. Of course the complainant submits that though the proposal was submitted on 23.6.1995 the opposite parties moved the matter with undue delay and finally asked the insured to submit a fresh proposal and accordingly he filed Ex. B-2 proposal dated 1.2.1996 under the same terms and conditions. Though the second proposal is filed on 1.2.1996, the Corporation has not adopted this date of proposal but taken the date of proposal as 7.8.1995 basing on the first proposal only. It is relevant to have a look at the written version wherein the opposite parties stated that the policy was issued commencing from 1.5.1995 as desired by the insured after collecting the balance amount as premium which was received on 25.3.1996 and the premium receipt was issued on that day. Further the complainant''s husband never made any complaint about the procedure adopted by the opposite parties either in issuing the policy or fixing the date of proposal or issuing the receipt for the premium during his life-time. He aslo paid the second premium on 28.5.1996 as evident from Ex. A-1. The date of next premium as May, 1996 was also indicated in Ex. A-2 which was

obtained by him. It is also not the case of the complainant that the deceased has paid the first premium along with the proposal on 23.61995 and no proof is forthcoming other than the receipt Ex. A-2 dated 15.3.1994. Hence we do not find any deficiency in service on this score. The next question is whether the opposite parties are justified in repudiating the claim of the complainant. The thrust of the argument of the learned Counsel for the opposite parties is that the insured having made a declaration under Exs. B-1 and B-2 that he shall forthwith intimate any adverse circumstances connected with his financial status or the general health in writing to reconsider the terms of acceptance of assurance, has failed to inform the same before the policy was accepted. Admittedly the deceased died on 14.2.1997.

5. THE opposite parties filed case summary of National Institute of Mental Health & Neuro Sciences (NIMHANS), Bangalore marked Ex. B-6 wherein it is mentioned by Dr. Anisya Vasanth, Associate Professor of Neurology that the deceased was admitted in their hospital on 5.2.1997 and passed away on 14.2.1997. He had presented with progressive weakness of both lower limbs of one year four months duration and upper limb weakness of eight months duration. He had been investigated at another hospital for these complaints in December, 1995. Nerve conductions has revealed acquired demyetinating motor neuropathy. This one year four months according to the learned Counsel for the opposite parties takes us to October, 1995 and as such non-mention of this problem in the proposal is suppression of material information.

6. IN Ex. B-6 reference about the other hospital is NIMS. Ex. B-4 shows that the deceased was treated by NIMS on 28.12.1995 for the following problems i.e., pain in limbs, difficulty in walking, cannot get up from sitting position and climb steps, proximal muscle weakness in lower limbs. Therefore Exs. B-4 and B-6 show that from December, 1995 the deceased was having problem with the limbs. Ex. B-9 Certificate of Hospital Treatment shows that patient died on 14.2.1997 under the treatment at NIMHANS, Bangalore. It also shows that the patient was suffering from the disease approximately since 1 years before his death. Even accepting that he has signed the first proposal, the second proposal is the continuation of the first proposal which was signed on 26.5.1995 by the deceased where he agreed to show changes of his health before acceptance of the policy. As the proposal was accepted on 7.8.1995 by then the deceased was aware of his diseases. The deceased also consulted Dr. Ananth Kumar at Apollo Hospital when a doppler of peripheral action of both limbs were done as seen from Ex. B-7 Admission Register of NIMHANS under history of the patient. For the above reasons, we are of the view that the repudiation of the claim by the opposite parties cannot be held to be arbitrary or baseless. In the result, the complaint fails and is accordingly dismissed but in the circumstances without costs. Complaint dismissed.

