(2016) 08 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Case No : 2271 of 2011

SMT. PHOOLA DEVI — APPELLANT

Vs

LIFE INSURANCE CORPORATION OF INDIA — RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:
Consumer Protection Act, 1986,, Section 21(b)

Citation : 2016 3 CPR 642

Hon'ble Judges : B.C.Gupta

Advocate : Kamal Chowdhary, Rajat Bhalla

Final Decision : Petition Dismissed

Judgement

1. This revision petition has been filed by the complainant , Smt. Phoola Devi under Section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 7.4.2011, passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (hereinafter referred to as the State Commission) in appeal no.2537/2005, Life Insurance Corporation of India vs. Smt. Phoola Devi, vide which, while allowing the said appeal, the order passed by the District Consumer Disputes Redressal Forum, Sirsa on 17.11.2005 in Consumer Complaint no.412/2004, filed by the present petitioner, allowing the said consumer complaint, was set aside and the consumer complaint was ordered to be dismissed.

2. The factual matrix of the case says that the petitioner, Smt. Phoola Devi is the wife of Late Nagarmal Modi, who filed proposal form with the respondent Life Insurance Corporation of India (LIC) for obtaining two insurance policies of Rs.5 lakhs each in his name. The LIC issued one policy, bearing no.173132560 for an assured sum of Rs.5 lakh and anther policy bearing no.173132559 for an assured sum of Rs.2.75 lakhs. During the subsistence of the said policies, the said Nagarmal Modi died on 26.7.2003, due to heart attack. The complainant being nominee under the policy and wife of the deceased, gave due intimation regarding his death to the LIC and submitted the claim form, after completing

the required formalities. The claim was however, repudiated by the LIC on the ground that the insured had been suffering from diabetes and kidney

problems for the last 22 years, but the said facts were concealed from the LIC at the time of obtaining the insurance policies. The consumer complaint in question was then filed, seeking directions to the LIC for payment of the assured sum under the policies of all permissible benefits alongwith interest @ 18% per annum. In addition, a compensation of Rs.50,000/- against mental harassment and Rs.6,000/- as litigation cost was also demanded through this complaint.

3. In the written statement filed before the District Forum, the LIC took the stand that the contract of insurance was a contract of good faith ((uberrima fides) and hence, it was the duty of the insured to disclose true information about his medical condition at the time of filling the proposal form. Due to suppression of true and material facts, the contract of insurance was void ab initio . The LIC also stated that the medical check-up was usually conducted by the Medical Officer of the LIC, based on the information supplied by the insured. The Investigator after the receipt of the claim revealed that the assured was suffering from diabetes for the last 22 years and he also remained under treatment at Haryana Naturopathy Hospital, Bhiwani. He remained admitted as indoor patient in the hospital two times, first on 24.12.2002 vide admission No.179/09 and then on 15.7.2003 vide admission No.97/45. Prior to that, he had been admitted at National Kidney Centre at Chandigarh, as per the disclosure in column no.3 of the claim form F3816, as made by the complainant herself. The LIC further stated that another policy no.170206475 for Rs.50,000/- had been purchased by the insured on 28.10.1999 and the payment under that policy had been released to the claimant, since it was not an early death claim case in respect of the said policy. The LIC took the stand that there was no deficiency in service on their part, because the contract of insurance was null and void due to non-disclosure of material information by the insured. The District Forum after considering the averments made by the parties, allowed the consumer complaint vide their order dated 17.11.2005 and directed the LIC to pay the sum assured under the two policies i.e., amounting to Rs.7.75 lakhs alongwith interest @ 9% per annum form the date of repudiation letter i.e. 21.4.2004 till realization. The District Forum also allowed a sum of Rs.20,000/- for mental harassment and Rs.3,300/- as litigation cost. Being aggrieved against the said order, the LIC challenged the same by way of appeal before the State Commission. The said appeal was accepted by the State Commission, vide impugned order dated 7.4.2011; the order passed by the District Forum was set aside and the consumer complaint was dismissed. Being aggrieved against the impugned order, the petitioner/ complainant is before this Commission by way of the present revision petition.

4. It was averred by the learned counsel for the petitioner during arguments that the insured had obtained three policies from the LIC at different times. However, the LIC had released payment of claim under one policy only, but refused to entertain the claim under the other two policies. The learned counsel argued that

the basic issue to be contested in the present case was whether the insured was aware that he was suffering from the said diseases at the time of filling the proposal form. The learned counsel stated that the policies were issued after the medical examination was performed upon the insured by the medical officer of the LIC. The OP, LIC should, therefore, have refused to issue the policies in the first instance only. Moreover, the LIC had not led any evidence to prove their allegations against the insured. The District Forum had rightly observed that the burden of proof was on the LIC to prove that the insured was suffering from the diseases in question.

5. Per contra, the learned counsel for the LIC has drawn attention to a copy of the proposal form placed on record, saying that in response to the questions regarding his health condition, the insured had categorically declared that he had not suffered from any disease or received treatment for more than one week during the last five years. He had also declared his health condition to be good. The learned counsel argued that while filing claim form no.3816, the petitioner had

declared that the insured was suffering from diabetes for the last 22 years and he had also been suffering from chronic renal failure for the last three months. The learned counsel stated that the order passed by the State Commission was in accordance with law and should be upheld. The OP, LIC also filed their reply to the revision petition in which they stated the same facts, regarding the suppression of material information on the part of the insured and had drawn attention to the orders passed by Hon?ble Supreme Court and this Commission in similar cases and stated that the claim had been rightly repudiated by the insurance company.

6. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

7. From the factual position brought on record, it is very clear that the petitioner/ complainant stated in the claim form no.3816 that the deceased was suffering from diabetes for the last 22 years. A perusal of the copy of the proposal form, however, indicates that the insured did not disclose this fact at all, while filling the proposal form, rather he declared that he was not suffering from any disease, and that he had not got any treatment for more than one week during the last five years. It is very clear, therefore, that the contention of the OP LIC that the deceased had made a material suppression of information about his health condition, is true.

8. While passing the impugned order, the State Commission have rightly relied upon the orders passed by the Hon?ble Supreme Court in Satwant Kaur Sandhu Vs. New India Assurance Company Ltd., (2009) 8 SCC 316 in which it was stated that the assured was under a solemn obligation to make a true and full disclosure of information about his health condition. It has also been mentioned in the said order that the OP was fully justified in repudiating the insurance

contract, if there was clear suppression of material facts in regard to the health of the insured. In reply to the revision petition, also the OP, LIC have referred to a number of orders passed by the Hon?ble Supreme Court and this Commission in which the same issue had been discussed, saying that a contract of insurance was a contract of utmost good faith and it was the duty of the insured to make true disclosure in the proposal form about his health condition.

9. Further, it was held by the Hon''ble Supreme Court in P.C. Chacko and another Vs. Chairman, Life Insurance Corporation of India and others, (2008)1 Supreme Court Cases 321 , that a deliberate wrong answer which has a great bearing on the contract of insurance, if discovered, may lead to the policy being vitiated in law.

10. The OP, LIC in their reply before the District Forum, mentioned about the treatment taken by the insured from Haryana Naturopathy Hospital, wherein he was admitted two times and also at National Kidney Centre at Chandigarh. In the claim form filed by the petitioner, it has been stated that the insured took treatment at National Kidney Centre.

11. Based on the discussion above, it is held that the claim has been rightly repudiated by the OP-LIC on the ground of suppression of material information about his health condition by the insured. The order passed by the State Commission, therefore, does not suffer from any material illegality, irregularity or jurisdictional error of any kind. There is no merit in this revision petition, therefore, and hence, the order passed by the State Commission is upheld. The present petition is ordered to be dismissed with no order as to costs.

