

(2007) 04 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

T.S.PUSHPALATHA

APPELLANT

Vs

MANAGER, LIC OF INDIA, CHENNAI

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Citation : 2007 0 NCDRC 31 : 2007 2 CPR 274 : 2007 3 CPJ 19

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Final Decision : Petition is allowed

Judgement

1. L .I.C. with a laudable object floated a policy known as Asha Deep Policy to see that those who suffer from dreaded diseases like cancer, heart-by-pass surgery, renal transplantation, paralytic stroke, etc., were to be given benefits as a support for their survival or to their heirs. Deceased has taken Ashadeep Policy with a Asha (hope) that in case of serious disease his future would have an umbrella by way of insurance cover for years to come. That hope is frustrated due to a technical interpretation of the policy which is not easily understood by common man and which required serious interpretation.

2. BEFORE dealing with that question we would narrate the facts in short. It was the contention of the Complainant "Mr. T. Vijay Kumar (husband of the present Petitioner No.1), that he paid premium to the Agent of the L.I.C. (Life Insurance Corporation of India) on 1.1.1998 for taking an insurance policy. The Agent deposited the said amount with the L.I.C. partly on 3.1.1998 and the remaining on 27.2.1998. However, it is contended that the Complainant paid the entire amount of premium to the agent on 1.1.1998. In support of the said contention, reliance is placed on the schedule to the policy: The receipt for payment of premium indicates as under: "PROPOSAL DEPOSIT RECEIPT Date : 27.2.1998-12.39 Tr.No. 38059 (#Ver./4.02) Name : t.v. Cash Amt. : ****578.00 Cheque Amt.: NIL Dev. Officer : 902 Agent Code: 1043722 B.O.C. No. 3753 Type of Deposit: Individual"

Further, the proposal form is also signed on 1.1.1998. Thereafter, medical examination was conducted only on 26.2.1998. At that time his Blood Pressure

was noted to be 120/80, and, nothing adverse was indicated about his life and the Medical Officer signed the said form on the said day. At this stage, we would make it clear that it is the contention of the Complainant that he paid entire premium to the agent on 1.1.1998 and that the agent deposited the said amount with the Insurance Company on 3.1.1998 partly, and he deposited the remaining amount on 27.2.1998. Unfortunately, the Complainant suffered renal failure problem on 1.2.1999 and was removed to the hospital. He claimed the hospitalisation charges on the basis of the promised benefits as per the schedule of the LIC Policy. The Schedule is as under:

3. BENEFITS of the Policy are subject to Condition No. 11(a) and (b) which are as under: "11(a) Benefit (B) of the Policy Schedule is not applicable if any of the contingencies mentioned in Para 11(b) occurs (i) at any time on or after the date on which the risk under this Policy is commenced but before the expiry of one year reckoned from the date of this policy or (ii) one year from the date of revival. 11(b) Benefit (B) of the policy Schedule shall be available on the occurrence of any of the following contingencies. (i) the life assured undergoes open heart by-pass surgery performed on significantly narrowed/occluded coronary arteries to restore adequate blood supply to heart and the surgery must have been proven to be necessary by means of coronary angiography. All other operations (eg. Angioplasty and thrombolysis by coronary artery catheterization) are specifically edcluded. Or (ii). The life assured undergoes Renal Dialysis or Renal Transplantation as a result of an end stage Renal Failure presented as Chronic irreversible failure of both kidneys to function." Or (iii). The life assured suffers from cancer (Malignant) "" Or (iv). The life assured suffers from paralytic stroke ""

4. FURTHER , the insured was required to be operated for renal failure and kidney transplantation on 18.2.1999 and has incurred hospital expenses. For this, there is no dispute. That means, he was operated after a lapse of one year from the date of commencement of the policy. Thereafter, he preferred a claim to the L.I.C. for reimbursement of the expenses incurred by him. The Insurance Company repudiated the claim by contending that as the renal failure was noticed within one year from the date of the policy, the Complainant is not entitled to get the Benefit-B. For this purpose, reliance was placed on Condition No.11(a) of the policy, which is reproduced above. As the amount was not paid by the Insurance Company the Complainant filed O.P. No. 824 of 1999 before the District Consumer Disputes Redressal Forum, Chennai. The District Forum observed that by Exhibit A-3, the Insurance Company informed the Complainant that they were considering the claim under the Ashadeep policy. Because of that letter the Complainant had undergone kidney transplant operation hoping to get the benefit of the policy. But, to his surprise, the amount was not given and after 5 months, the LIC informed the Complainant that they have converted the policy into an endowment policy. The District Forum also observed that that condition of the LIC that the policy was back-dated was without any substance because the date of the proposal, the date of the policy, and the date of commencement are

all on one and the same date, i.e. 1.1.1998. Therefore, issuance of policy on 12th March, 1998 would be of no consequence for deciding the liability of the LIC by Ashadeep Policy.

5. THEREAFTER , by order dated 5.3.2002 the District Forum allowed the complaint and directed the LIC to pay Rs.50,000/- being the first instalment and Rs.10,000/- every succeeding year till the end of the policy with compensation of Rs.25,000/- for mental agony and costs of Rs.1,000/-. Due to the hard luck of the Complainant, the LIC preferred appeal A.P. No.478 of 2002, before the State Commission, Chennai. The State Commission, by its order dated 1.6.2004 allowed the appeal relying upon the decision of the Apex Court in the case of LIC of India Vs. Raja Vasireddy Komalavalli Kamba & Ors. AIR 1984 SC 1014. The State Commission also held that in view of Condition No. 11(b) of the policy, the date of the issuance of the policy is to be taken into consideration.

6. HENCE , this Revision Petition. As the Complainant died during the pendency of Appeal, Revision Petition is filed by his heirs, the wife and the daughter, who were brought on record during the pendency of the appeal. The learned counsel appearing on behalf of the Petitioner submitted that the common man who takes the insurance cover looks only at the attractive benefits which are sought to be covered by the policy. He normally does not read the conditions in detail, and, therefore, those conditions are not binding. He further submitted that, in any case, the condition is vague and requires serious interpretation. Secondly, he submitted that in any case, the Insurance Company has converted the policy as endowment policy for the benefit of the deceased and, therefore, at least the benefits under the policy should be given to the heirs, because of the death of the insured. As against this, the learned counsel appearing on behalf of the Insurance Company submitted that a similar term of the Insurance Policy is interpreted by the Apex Court, therefore, the LIC has no option but to repudiate the claim under the Asha Deep Policy. Secondly, he submitted that after the decision of the District Forum the deceased has not paid the premium for endowment policy and, therefore, heirs of the deceased are not entitled to get the benefits under the endowment policy.

7. EVEN though such cases are hard and requires some sympathetic consideration, we cannot help in view of the fact that similar policy condition was interpreted by the Apex Court in Life Insurance Corporation of India and Anr. Vs. Dharam Vir Anand, (1998) 7 SCC 348, wherein it is observed that the date on which the risk under the policy commenced was different from the date of the policy and that date is to be taken into consideration for applying the terms of the policy for giving benefit. In that case, the insured committed suicide within a period of one year from the date of the issuance of the policy and that the policy was given with retrospective effect. Despite the aforesaid interpretation of the policy, even in the said case, the Court observed: "". Even though we have construed the provisions of Clause 4-B as aforesaid but so far as the amount of compensation payable to the respondent is concerned, we find from the letter of

the Corporation dated 2.2.1995 that the Claims Review Committee has examined the facts of the case and had decided to pay a sum of rupees two lakhs on ex-gratia basis and we see no reason why the Respondent should not be entitled to receive the said amount together with the interest thereon. The said offer of the Corporation having been made on 2.2.1995, and more than three-and-a-half years having been elapsed since then, we think that the Appellant-Corporation should pay a total sum of rupees three lakhs to the Respondent-Claimant in full satisfaction of the claim of the Respondent and this amount should be paid within eight weeks from today. ". "

It is to be stated that in view of the decision of the Apex Court, it would be difficult for us to grant benefit as prayed for in the complaint, on the basis of the benefit-B of the Schedule to the Policy. However, considering the facts of the case, in the interest of justice, appropriate relief could be moulded in favour of the heirs of the deceased.

8. CONSIDERING the aforesaid facts of the Complainants" case, even the LIC had converted the policy as Endowment Policy with profits by making an endorsement to the policy as under: "Consequent upon the life assured under the within mentioned policy having undergone Renal Transplantation within one year from the date of commencement of risk of the policy, it is hereby declared and agreed that this policy will stand converted into an Endowment Policy with profits. It is to hereby declared that the following alterations are made in the policy. Quarterly premium from 1st January, 1999 to 1st October, 2022 inclusive, payable at Rs.1,081/-"

In view of the decision rendered by the District Forum in favour of the Complainant, the insured/Complainant refused to pay the premium even for the endowment policy. Secondly, as the Complainant succeeded before the District Forum, on the basis of the terms of the policy, he might not have paid the premium because Benefit-B specifically provides waiver of the premium, if any, due from the policy anniversary falling on or immediately after the date of eligibility for Benefit (B). Such conduct on the part of the insured was justifiable on the basis of the order passed by the District Forum. Therefore, the right of the insured should not be adversely affected because of judicial interpretation of the terms of the policy. We, therefore, thought that in such a hard situation, relief could be properly moulded by directing the Insurance Company to pay the amount on the basis of endowment policy with profits or as an ex-gratia payment. However, nobody was prepared to take decision on behalf of the LIC. Further, in our view, such an order would be in conformity with the object of establishment of the Life Insurance Corporation of India. It is to be remembered that Life Insurance Corporation of India is not established only for earning profits, but as a social welfare institution (re.LIC of India Vs. Anuradha (2004) 10 SCC 131); and, that the LIC policy should not be dealt in a mechanical manner (Life Insurance Corporation of India & Ors. Vs. Smt. Asha Goel & Anr. AIR 2001 SC 549 = (2001) 2 SCC 160. Considering this aspect and also operative portion

of the judgment rendered by the Apex Court in the case of Dharam Vir Anand (supra) wherein the Court has directed the Corporation to pay a sum of Rs.3 lakhs in full satisfaction of the claim even in case of suicide within a period of one year from the date of the policy, we direct the LIC to pay Rs.1 lakh to the Complainant, i.e. the sum assured with profits under the endowment policy or on ex-gratia basis.

9. WE hope that the LIC would pay, at least, the said amount because the sole object of the Ashadeep Policy was to help and assist the persons (assured) who are suddenly affected by the serious or deadly diseases like heart-by-pass surgery, cancer, renal failure, renal transplantation, etc. The Revision Petition is allowed accordingly. There shall be no order as to costs.