(1994) 02 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

UMA RASHMIKANT PATEL — APPELLANT

Vs

L.I.C. of India — RESPONDENT

Date of Decision : 15-02-1994

Acts Referred:

Citation : 1994 2 CPJ 327

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Advocate : D.M.Shah , M.M.Desai

Judgement

1. THE short question that arises for our consideration is as to whether the rejection of the claim of the policy holder''s wife amounts to deficiency in service so as to invite our jurisdiction. THE Complainant is wife of deceased policy holder Rashmikant Patel who had taken a Life Insurance Policy of the amount of Rs. 1 lakh. THE proposal was made on 15.11.88 and it is not disputed that before the policy could be issued and amount of premium accepted by the Insurance Company his family Doctor advised him for a medical check up. It appears that the patient was admitted in the hospital of Dr. Devendra Patel who performed an operation on 19.11.88 for cancer and ultimately the insured died on 7.12.89 i.e. after one year and 1 month. THE complainant filed a claim with the opponent and the claim was repudiated by the Insurance Company vide letter dated 24.1.91 on the ground that the insured has given false answers to the questions in the proposal form. That he was suffering from cancer of rectum for which he had consulted a medicalman and had taken treatment from him in a hospital and was on medical leave for 12 days from 19.11.88 to 30.11.88 and was operated for cancer on 19.11.88. He did not however disclose these facts in his personal statement. THE second ground on which the claim appears to have been rejected is that he did not inform the Corporation about the sickness, medical leave, hospitalisation and operation performed on 19.11.88 before first premium receipt issued by Corporation on 30.11.88.

2. THE contention of the claimant is that the answers which were given in the proposal form were correct in the sense that till the insured was diagnosed by Dr.

Devendra Patel that h was suffering from cancer, neither the insured for his wife - the present complainant had no knowledge about this ailment of the insured. When the proposal form was filled in, neither the insured nor any of the members of the family was aware that he had any ailment/sickness and as argued by Mr. Shah, learned Advocate for the complainants that if the insured is not aware of the fact about the sickness, the answers which were given in the proposal form cannot be said to be wrong or false. We are not disputing the argument of Mr. Shah. If the insured is not aware of the sickness and all of a sudden it is diagnosed, it cannot be said that the answers given by the insured were false. THE Insurance Company had produced one certificate and, therefore, the complainant had to examine the Doctor who had given the certificate and the Doctor has also stated that he was not aware that the insured was suffering from cancer. However, to our opinion it is not necessary to decide in this case whether the insured was aware of the sickness or not or whether the answers which were given by him were false because the case of the complainant directly falls under the second ground wherein the conditions contained in the proposal form directs him to report regarding the change of health before the proposal is accepted. That being very material is reproduced as under: "And I further agree that if after the date of submission of the proposal but before the issue of first premium receipt (i) any change in my occupation or adverse circumstance connected with my financial position or the general health of myself or that of any member of my family, occurs; or (ii) if a proposal for assurance or an application for revival of a policy on my life made to any office of the Corporation has been withdrawn or dropped, deferred or declined, or accepted at an increased premium or subject to a lien or on terms other than as proposed, I shall forthwith intimate the same to the Corporation in writing to reconsider the terms of acceptance of assurance. Any omission on my part to do so shall render this Assurance invalid and all moneys which shall have been paid in respect thereof forfeited to the Corporation."

It has now not been disputed that the insured was operated on 19.11.88 for cancer i.e. within a week from the date of the proposal. THE premium has been accepted on 30.11.88 and, therefore, under this clause the insured was obliged to intimate the Insurance Company regarding the change of his health which is very material. If this change had come to the notice of the Corporation, the Corporation might not have accepted the policy. However, Mr. Shah, the learned Advocate for the complainants states that it was not physically possible for the insured who had undergone a very major operation to inform the Insurance Company before 30.11.88 and, therefore, this clause cannot be made to operative against the insured; atleast against the wife of the insured who was not in any way responsible. We see some force in the argument of Mr. Shah. However, we cannot say that if the Insurance Company has relied upon this clause and on investigation they have found that the insured was suffering from cancer and was operated, it cannot be said that this is a false excuse or that the Insurance Company is guilty of deficiency in service. We have no jurisdiction to

award any relief under Section 14 of the Consumer Protection Act. If the complaint can be disposed of on the second ground it is not necessary to decide whether the insured had knowledge that he was suffering from cancer when the proposal was filled in by the insured. We are, therefore, not inclined to accept the submissions and grant any relief. However, we may say that the insured was only 32 years and was working as Manager in a Private Factory and had never taken leave prior to the operation. It may be possible that he may not be aware that he was suffering from cancer because cancer is such a type of disease whose presence come to know only when diagnosed by specialists. The widow was 26 years of age when the insured died. There is also some force in the argument of Mr. Shah that the insured was not in fit stage of mind to remember and inform the Insurance Company that he had undergone operation. The wife of the insured may not be able to know the contents of the proposal form which is in English. Taking all these circumstances into consideration, we feel and we are of the opinion that the Insurance company should consider this case for ex-gratia payment which the Insurance Company grants in very appropriate cases and to our opinion this is a very appropriate case where the Insurance Company should extend the benefits to the young widow of 26 years having a minor child. With these observations, we dismiss the complaint. In the circumstances, there will be no order as to costs. Complaint dismissed.

