(2004) 02 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

VASANTHA — APPELLANT

Vs

LIC of India — RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Citation : 2005 2 CPJ 426

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant''s case is as follows: THE husband of the complainant Ramalingam had taken a policy for Rs. 1,00,000/- on 28.6.1987 under policy No. 740182892. THE complainant is the nominee under the said policy. THE insured Ramalingam died on 19.4.1997. At the time of the death of the complainant''s husband, the policy was in force. THEre is another policy in Policy No. 061033166 for Rs. 25,000/- in favour of the said Ramalingam. On 2.7.1997, the complainant sent an application claiming the maturity amount due under the Policy No. 740182892 and 061033166. THE 4th opposite party ordered payment of the matured amount due under the Policy No. 061033166 but declined to order the amount due on the policy No. 740182892. THE 4th opposite party also sent a discharge form mentioning the low amount instead of the full amount. THE complainant approached his agent and requested him to claim the matured amount due under the policy. On 18.12.1997, the complainant received a letter from the 3rd opposite party stating that the revival of the policy was declared as void as it was revived by giving false information. THE policy was revived on 22.4.1996 on the strength of certificate issued by the doctor of the opposite party after following all the norms. At the time of revival Ramalingam had disclosed true and correct information to the LIC. Even if he had made any untrue statement and given wrong information, it was the duty of the officer to verify the records before accepting the policy. Once verified and accepted, it cannot be revoked or set aside. THE complainant feels that the opposite party has been dealing in a biased manner. THE attitude of the opposite parties causing much mental pain and suffering. THE opposite parties are under legal obligation

to honour the policy and they are not expected to commit any breach of duty but they have caused deficiency in service and committed breach of duty. THErefore, the opposite party Nos. 1 to 4 are jointly and severally liable to pay the matured estimated amount of Rs. 1,80,000/- and compensation of Rs. 1,00,000/- and damages.

2. THE opposite parties filed version contending as follows: THE complaint is not maintainable. THE complaint relates to Policy No. 740182892. THE complaint is unsustainable in law. THE Honourable Commission is not competent to deal with the matter of this nature as per the ruling of the National Commission. THE insurer had on 18.12.1997 sent a detailed communication to the complainant declaring the revival of the policy made on 22.4.1996 as null and void and entertained the claim for paid-up value secured under the policy on the date of its lapse on the ground that the revival of the policy was obtained by fraudulent means and making incorrect statements regarding the state of health and concealing material information thereof at the time of revival of the policy. THE claim of the complainant was considered on all aspects and decision was taken in good faith and by applying their mind. THE National Commission has held that if insured or nominee or legal heir is not satisfied with the decision of the insurer, they have to seek redressal by resorting to arbitration. THE complainant''s husband at the time of reviving the policy gave wrong answers as to his state of health and also concealed the fact of illness suffered by him. THErefore, it means wilful and fraudulent suppression of fact. Hence, the ruling of the National Commission and reported in 1997 (1) CPR 40, would squarely apply. THErefore, the complaint is not maintainable. THE sum insured was Rs. 1,00,000/-. It would be payable to the life assured on the stipulated date of maturity had the assured been alive or to assignees or nominees. THE date of commencement of the policy was 28.6.1987 and the policy matured on 28.6.2011. THE complainant is the nominee of the said policy. A death intimation was received on 15.5.1997 from the complainant informing that Ramalingam died of heart attack. THE said intimation not only referred to Policy No. 740182892 but also the Policy No. 061033166. THE Policy No. 061033166 was settled as early as on 31.5.1997 by disbursing the amount to the nominee since the premiums thereunder were paid continuously without any default for more than 3 years since its commencement. THE claim was considered as a non-early one. THE insurer upon being satisfied with the nature of the claim and after seeking that it was not vitiated by any fraudulent suppression of material fact admitted the claim. But the position regarding Policy No. 740182892 is different. THE complainant was compelled to consider the claim as an early one. THEre was no prompt payment of premiums and the assured allowed the policy to lapse with effect from 28.9.1992. However, on a request made by the life assured for revival of the said policy on submission of proof on continued insurability besides payment of all arrears of premium together with interest thereon. THE policy was revived on 22.4.1996. THE policy had run for 11 months since its revival on the death of the assured. Hence, the claim was considered as an early claim and investigation was caused to be made.

It was found that the insurer had suffered from paralysis for which he took treatment at Dr. Jeyasekaran''s hospital from 24.9.1994 to 9.10.1994 and the same was not disclosed in his personal statement submitted at the time of revival of the policy. On the other hand, he gave untrue answers to the relevant question and made a declaration that the statements and answers are true and complete in every particular. It is, therefore, patent that the life assured had made incorrect statement and withheld vital information from the opposite party regarding his state of health at the time of reviving the lapsed policy. THE revival, therefore, operates as a new contract and the rights and liabilities of the parties according to the ordinary principles do not begin until the new contract has started to run. THE life assured even though had a knowledge of his ailments and the treatment thereof he had as an in-patient, nevertheless answered in the negative to the questions and had thus acted in mala fide manner while reviving the policy and it has been obviously with ulterior motive as the insurance contracts are founded upon utmost good faith. If one party fails to observe this utmost good faith, the other party has no other option but to avoid the contract. Hence, it was properly and rightly rejected. THE revival was obtained from fraudulent means. A discharge form for Rs. 54,475/- was, therefore, sent to the complainant on 14.10.1997 to effect the payment. THE said action is fully in order in view of the fact that the policy prior to its lapse had acquired only such paid-up value. A communication was sent to the complainant on 18.12.1997 stating that the claim will be entertained only for paidup value as the revival was null and void. It is not true to say that the revival was made on the strength of the certificate issued by the medical examiner of the opposite party. THE medical certificate is only an ancillary document which is nothing but an extract containing the replies furnished by the life assured to specific questions put by the medical examiner. THE medical examination is only general in nature and no clinical examination is done and it would reveal only patent illness and not latent illness. It is not true to say that the revival was made only after following all the norms, rules and regulations. THE contract of insurance being one entered into on "uberrima fides" on the basis of good faith. THEre ought not to be any suppression of material information. THE facts on record would clearly reveal that the assured has mis-stated the facts in the personal statement and as a consequence the opposite parties invoked the provisions in Condition No. 5. THE entire averments in para 6 of the complaint are at variance with the facts of the case. THEre is a legal obligation cast upon the party proposing the insurance to communicate not only every fact which he thinks material but also facts which is immaterial in the eyes of the insured. Being a public sector organization catering to the insurance needs of the crores of citizens, without the verification of records, etc., it is not feasible and not warranted in the peculiar nature of insurance business. It cannot be stated that once verified and accepted, it cannot be revoked or set aside. It is only the life assured would have the knowledge of health and habits. THE insurer decides only upon what is disclosed in the DGH. Further, the facts of health not disclosed, it is always open to the insurer to declare the revival as null and void if any of the statements in the DGH are found

to be untrue. As the trustees of millions of policy holders, the opposite parties have the bounden duty to ensure that equity among policy holders is maintained. It also becomes necessary to ensure that no false claim is made. THE action of the opposite party is fair and it cannot be termed as a biased one. THEre is no deficiency on the part of the opposite parties. Mental agony alleged to have been suffered by the complainant is fictitious. THEre is no cause of action and the opposite party, therefore, submits that the complaint be dismissed with cost. The lower Forum by its order dated 1.9.1999 dismissed the complaint.

Aggrieved by the same, the complainant has preferred this appeal.

3. THE admitted facts of this case are as follows: Ramalingam, the husband of the complainant had taken a policy for an assured sum of Rs. 1,00,000/- on 28.6.1987 under policy No. 740182892. He held another policy under Policy No. 061033166 for Rs. 25,000/-. We are not concerned about the Policy No. 061033166 in this claim since the said claim has been accepted in full and disbursement has been made by the opposite party to the complainant. THE trouble has arisen only with regard to Policy No. 740182892 dated 28.6.1987 which was for an assured sum of Rs. 1,00,000/-. THE date of commencement of the said policy was 28.6.1987. THE date of maturity is 28.6.2011. THE complainant is the nominee under the said policy. But the said policy was allowed to lapse and it was revalidated only on 22.4.196. By filing a declaration as required and after paying the arrears of premium it was revived. On the death of the assured when a claim was made by the complainant, the Life Insurance Corporation only offered to pay the paidup sum and declined to pay the assured sum. Consequently, rather aggrieved by the said repudiation of the claim, the wife of the deceased as the heir and nominee of the policy, has rushed to Court. Ex. B1 is the policy in dispute. Ex. B2 is the personal statement regarding the health submitted by the husband of the complainant for revival of the policy that had lapsed. He has signed the same in English. THE relevant column is whether he is at present in sound good health. He has answered it as ''Good''. THE other relevant questions incorporated in the form are: ''since the date of your proposal for the above mentioned policy'' "have you ever suffered from any illness/disease or taking treatment for a week or more", "Had you ever had any operation, accident or injury", "Had you ever undergo ECG, X-Ray, Screening, blood, urine or stool examination". To all these questions, he has given answer stating "No." He has further answered in the affirmative that he has good health at present. Ex B3 premium receipt for the payment of arrears of premium amounting to Rs. 23,155.60. Ex. B4 is the certificate issued by Dr. Jeyasekaran on 17.7.1997 certifying that Thiru. Ramalingam was admitted on 24.9.1994 for hypertension and hemiplegia. Ex. B5 is the admission chart stating that he was admitted in the hospital on 24.9.1994. Ex. B6 is the discharge certificate stating that he was admitted for left side hemiplegia due to right thalamic and intra-ventricular haemorrhage. Thus, even in 1994, the complainant''s husband suffered a stroke due to haemorrhage and right thalamic intra-ventricular leading to hemiplegia. But, on the date of the revival of the policy, i.e., on 22.4.1996, he has stated his

present condition as "in sound health" and had stated that he never suffered from any illness or diseases requiring treatment for a week or more whereas we find that he was admitted in the hospital on 24.9.1994 and discharged on 9.10.1994 and was treated for the ailment caused by right thalamic and intra-ventricular haemorrhage resulting in left hemiplegia. Thus, the complainant''s husband had suffered an ailment for which he had to admitted in the hospital and underwent treatment in the hospital for a period of more than a week. He suffered haemorrhage in the right thalamic area of the brain which ultimately resulted in a stroke affecting his left limbs thereby causing hemiplegia of the left side. Yet, when he made a declaration at the time of revival of the policy, he proclaimed his health to be in a sound state and further answered in the negative when it was posed whether he was suffering from any illness that required him to be treated in a hospital for more than a week. Learned Counsel appearing for the complainant would submit that the complainant''s husband was an illiterate person and that he knew only to sign and does not known what was written in the declaration from and that the particulars in the declaration form were only filled up by the agent and, therefore, there is no suppression of material fact. The other limb of his contention is that even assuming that a representation has been made and that representation is shown to be not correct, even then, the LIC cannot evade payment since the death of the insured was not due to the said ailment but due to cardiac arrest and when nexus between the death and the illness is not established, the complainant is entitled to claim the amount and the repudiation is not good in law.

4. TAKING the first point, it is not stated in the complaint that the complainant''s husband was an illiterate and that he did not know to read or write but only knew to sign. The complaint has been filed on 3.7.1998. The complainant was aware of the fact that the claim has been repudiated by the opposite party on the ground that the revived policy was declared as void and it was revived by furnishing false information. Therefore, on the date of filing of the complaint, they were aware of the stand that has been taken by the Insurance Company. Yet, they have not chosen to say that the complainant''s husband knew only to sign and he signed the declaration form without knowing what it has been written since he did not know to read or write. In fact, in the proof affidavit also it is merely stated in para 5 that it was revived through one Madasami agent of LIC a distant relative of the complainant who is residing near the complainant''s house and by getting the signature of the complainant''s husband on revival. It is not stated here also that Madasami wrote or filled up the columns in the form. On the other hand, in para 9, it is stated that Madasami obtained some signatures of the complainant''s husband in blank paper for that correspondence. Nothing is mentioned about the printed forms being filled up by Madasami on his own and that her husband merely signed the same. For the first time in para 14 of the proof affidavit, it is stated that her husband knows only Malayalam and cannot read or understand Tamil and English and affixed his signature in the form given by the LIC agent Madasami. Here also, it is not stated as to who filled

the column in the revival policy. Therefore, this argument of learned Counsel for the complainant that the complainant''s husband was an illiterate and the columns were filled up by some other people cannot at all be accepted as a tenable argument at all. Even assuming it to be true, even then, having signed the revival form and having given a declaration in the revival form to the effect that the statements and answers are true and complete in every particular and after having signed it, it is not possible to accept the contention of learned Counsel for the complainant. The agent who filled it up had only acted as his agent. Here, one other point to be noted. The form has been signed in English. Of course, merely it has been signed in English, it does not follow that the person was well versed in English. But the fact it has been signed in English would go to show that he was a literate person and the signature does not show as though it is by an uneducated person. On the other hand, the manner and flourish with which has been written and the strokes all show that the person who signed the signature is a literate person and had knowledge of English alphabets and had practice of signing in English alone. The other contention of learned Counsel for the complainant is that even assuming certain informations furnished by the complainant''s husband are not correct and are wrong, they can at best be termed only as innocent representation or mis-information and they cannot affect the contract of insurance entered into between the parties. Further, he would contend that here the death had taken place not on account of the illness mentioned in Exs. B4 to B6 but he died due to heart attack and, therefore, as there is no nexus between the illness and the cause of death, it would follow that the claim is in order and it cannot be a disputed or rejected by the opposite party. We have gone through the records produced by the complainant. There is the certificate issued by one Dr. Chithambara Kuttalam Pillai stating that Ramalingam died on 19.4.1997 at his house and the cause of death being mio-cardial infarction. Of course, the said doctor has not been examined nor any proof affidavit has been produced. We do not know on what grounds he has stated that he died due to cardiac problem. Even otherwise, assuming that he died of cardiac problem, it cannot be ruled out that the cardiac problem could have been caused by the illness with which the complainant''s husband was suffering from. The records produced on the side of the opposite party would show that the complainant suffered right side thalamic haemorrhage due to hypertension and which has led to hemiplegia. We do not know nor we have any information to conclude that hypertension was under control, and that the complainant''s husband had been taking treatment regularly for the hypertension he was suffering from. In the admission chart, certain medication has been prescribed. In the discharge chart, it is shown that the deceased was required to maintain B.P. at 140/90 and he was also prescribed certain medicine and was advised to come for review after 15 days. The complaint is silent as to what happened after his discharge, whether he was regularly going for check-ups and he was taking the drugs regularly without any letup. It is also not alleged or proved that the complainant was maintaining B.P. at the normal level or at 140/90 thereafter. Therefore, in such circumstances, it is quite possible that the

death could have taken place due to hypertension of which he was suffering from and which had led to the hemiplegia. Medical Journals do say that high blood pressure can bring about cardiac problems and may also result in cardiac arrest. Therefore, the contention of Counsel for the complainant that the illness with which the complainant''s husband was suffering could not have been the cause of death cannot be accepted at all for it could have been the cause of death and which fact cannot be ruled out. Coming to the contention that nexus is not established, the contract of insurance is one based upon good faith. Therefore, a person entering into a contract is expected to reveal true information about his state of health. When the policy is sought to be revived, it is incumbent upon the proposer to show his continued insurability. Therefore, if he makes any declaration suppressing certain material facts, such declaration cannot be brushed aside as innocent mistakes or mis-information but should be taken note of seriously as to hold that it would go to the root of the matter and thereby render the entire contract invalid. Therefore, a contract of insurance being one based upon utmost good faith, if there is any suppression of material fact, it would go to vitiate the entire contract. Here, it cannot be stated that what has been omitted to be mentioned by the proposer were not material facts. The complainant''s husband had had a stroke which was the result of high blood pressure and this high blood pressure had resulted in the haermorrhage of right thalamic and thereby affected the left limbs. It is a serious ailment. It is not innocuous ailment. Therefore, it is a material fact that has been suppressed. Hence, the contention of learned Counsel for the complainant that what was omitted to be stated was not material and was not of any significance cannot at all be countenanced. Hence, there is no need to establish nexus.

5. THE National Consumer Disputes Redressal Commission, New Delhi, has held in LIC-Consumer Case-Appeal No. 153 of 1991 that if a claim is repudiated on the ground of suppression of material facts, no deficiency in service would arise therefrom. It has been further held that the insured has to seek his redressal either by resorting to arbitration under the relevant clause in the policy or by instituting a suit before a Civil Court. To the same effect is yet another decision of the National Commission reported in I (1997) CPJ 46 (NC), where it has been held that "if a claim has been repudiated by the Insurance Company on the ground of concealment of fact about health on revival of policy and if the claim is repudiated in good faith after due application of mind, there cannot be any deficiency in service. To the same effect is yet another decision reported in Revision Petition No. 162/94 that suppression of material facts concerning health on revival of policy would justify repudiation of a claim and it cannot amount to deficiency in service. When in a case correct answers were not given regarding the health and repudiation was made, the National Commission in R.P. No. 1416/96 upheld the repudiation and observed that it was for the deceased to understand what he was signing in the proposal form and if the deceased had given wrong answer about her being not pregnant, it would amount to concealment of material facts.

6. LEARNED Counsel for the complainant would submit that the complainant''s husband had been examined by a doctor of the opposite party and if really there was something wrong and there were doubts about the continued insurability of the deceased, he would have noted the same and the fact that it has not been noted by the doctor would show that the revival was accepted after proper and complete examination of the complainant''s husband and after being satisfied with the health condition of the complainant''s husband. We do not know what the doctor has stated. Of course, there ought to have been an examination of the complainant''s husband by the doctor deputed by the opposite party at the time of revival of the policy. If the doctor attached to the opposite party had acted negligently or had failed to discharge his duties properly, on that account, no liability can be fastened upon the LIC. The LIC have a panel of doctors. It is not shown that they have got any administrative control or right of superintendence over those doctors. Merely, because a doctor from the panel examines a proposer and certifies to be of good health, it does not mean that the person had good health and even if really he had been suffering from any serious ailments or sickness that should be ignored or taken as non-existence as on the date and the claim should be accepted and honoured. The LIC is in the position of trustee of the public money. They have to take care of it and manage it prudently as a trustee would do. If they are to accept the claims without investigation, then it will be opening the Pandoras box. Therefore, merely because a doctor of the panel has checked and verified, it does not follow that it is binding upon the LIC. It is not the case that any thorough clinical examination of the proposer was done by the doctor at the time of acceptance of the proposal or acceptance of the revival of the proposal. Certain diseases may be latent and some diseases may be patent. Of course, in this case, the complainant had a stroke and had been suffering from hemiplegia of the left side. It is possible that this condition would be feasible when examination is done by the doctor because it is a patent physical condition. But, if either by mistake or due to negligence or in collusion with the agent Madasami, a relative of the deceased or in a mechanical fashion, the doctor had done the examination or if it was an arm-chair examination done without seeing the patient actually, then should the public be penalized for the same. Therefore, merely because it has been okeyed by a panel doctor, it does not become an impeccable claim. The authorities who are invested with powers to investigate and accept the claim can at all times do so if on application of mind, they are of the view that the claim is not bona fide. Lastly, it is contended by learned Counsel for the complainant that no proof affidavit has been filed from the doctor who has issued the certificates Ex. B3 to B5 and, therefore, no importance can be attached to the same. If that argument is to be accepted, simultaneously, no significance can be attached to the complainant''s Ex. A5 which is a certificate issued by Dr. Chithambara Kuttalam Pillai stating that Ramalingam died of mio-cardical infarction. The complainant has not examined the said doctor.

Therefore, an analysis of the case would show that the repudiation of the claim

by the LIC of India is justified and that the reasons given by the lower Forum for rejecting the complaint cannot be faulted with and, therefore, there is no merit in this appeal.

7. CONSEQUENTLY, the appeal is dismissed. But, considering the nature and circumstances of the case, the parties are directed to bear their own costs. Appeal dismissed.

