

(2024) 02 NCDRC CK 0010

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 2953 Of 2016

Divisional Manager, Life Insurance
Corporation Of India

APPELLANT

Vs

Shriraj Amar Mahagaonkar

RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: Anoop K. Kaushal, Seema D

Final Decision: Disposed Of

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. The present Revision Petition has been filed by the Petitioner under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 07.07.2016, passed by the learned State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Kohlapur, (hereinafter to be referred as the 'State Commission') in FA No. A/14/1021, whereby the Appeal filed by the OP (Appellant herein) was dismissed and affirmed/ upheld the Order dated 29.09.2014, passed by the District Consumer Disputes Redressal Forum, Kolhapur (hereinafter to be referred as the "District Forum") in Consumer Complaint No. 192 of 2012.

2. For ease of reference, the parties are referred to as stated in the original Complaint filed before the District Forum. Mr. Shriraj Amar Mahagaonkar is referred to as the Complainant who is the nominee of his father namely Late Mr. Mahagaonkar Amar Nana Saheb. Meanwhile, Life Insurance Corporation of India is referred to as the

Opposite Party Insurer (OP) in this matter.

3. Brief facts, as per the Complainant, are that the Complainant's father had obtained policies from the OP for saving, risk coverage, and future Policies Nos. 947558627, 947735717 and 947788896 respectively with respective sum assured amounts of Rs. 5,10,000/-, 1,50,000/- and 1,25,000/- were effective from 01.01.2009, 14.01.2009, and 01.10.2009. At the time of policy inception, the health condition of his father was comprehensively examined by LIC Medical Examiner, Dr. Sanjay A. Kandare and thereafter the policies were issued. The health of his father remained normal prior to obtaining policy. However, on 15.10.2010, he was hospitalized due to abdominal pain and vomiting under the care of Dr. Kothiwale. Later, on 20.10.2010, he experienced breathing difficulties and received treatment at KLE Hospital, Belgaum, and recovered on 04.11.2010. Again, on 07.11.2010, he underwent treatment at KLE Hospital, for abdominal pain and urinary retention and was discharged on 12.11.2010. Unfortunately, on 16.11.2010, he exhibited symptoms of body pain, weakness, yellowed eyes, and reduced liver efficiency, with a diagnosis of pneumonia. Tragically, he passed away on 27.11.2010 due to **"septicemia and multiple organ dysfunction"**. Allegedly, on 13.09.2011, the claim made by the Complainant was repudiated, purportedly due to discrepancies in his responses regarding his diabetes and cardiac conditions, despite the diseases being unrelated to the causes of his demise. The Complainant asserted that the treatment provided to his father solely addressed the conditions he was afflicted with. He contended that the OP's repudiation of the claim signifies deficient insurance services and unfair trade practices.

4. Being aggrieved, the Complainant filed Complaint No. CC 192 of 2012, seeking claim of Rs.9,33,500/- from the OP, inclusive of insurance amounts, interest, and additional costs.

5. In reply, OP denied the allegations of the Complainant and contended that the Complainant's father was fully aware of his illness and deteriorating health status at the time of obtaining the policies. Despite the known health issues, Dr. Kandare provided a certificate indicating his normal health condition. Notably, the deceased individual had been grappling with long-standing ailments including diabetes and cardiac disease from the outset and suffered complications such as multiple organ dysfunction stemming from pneumonia, as well as heart enlargement due to diabetes. Additionally, severe complications due to diabetes resulted in gangrene affecting the sole of the right foot, while dyspnea manifested due to cardiac weakening and compromised immunity. Given these circumstances, the underlying illnesses of diabetes and cardiac disease were attributed as primary contributors to the deceased's deteriorating health. The OP highlighted that the deceased concealed his prolonged diabetic condition for about 7 to 8 years before filing the proposal form, thereby rendering the insurance agreement void under the principle of (Utmost Good Faith).

Consequently, the insurance contract was deemed null and void due to the provision of false information. The OP underscored that the Complainant cannot assert that the OP assumed the risk associated with the deceased's health. The medical practitioner's assessment corroborated the presence of additional ailments such as cardiac disease and heart enlargement, affirming that diabetes, hypertension, and heart conditions collectively led to the demise. The OP further asserted that the Complainant's father engaged in fraudulent conduct by withholding crucial information in the proposal form, which subsequently prompted the OP to repudiate the claim a lawful action. Therefore, the OP maintained that no deficiency in service had occurred, warranting the dismissal of the Complaint.

6. The learned District Forum vide Order dated 29.9.2014, partly allowed the complaint with the following Order:

“ORDER

1. Complainant s Complaint is allowed in part.

2. Opponents to pay for Policy No's 947558627, 947735717, 947788896 Rs.510000/- Rs, 150000/-, Rs. 125000/- respectively and interest @ 6% p.a. on the said amount from date of filing of Complaint i.e. 19/05/2012 till the payment of entire amount.

3. Opponent Insurance Company to pay to the Complainant Rs.2000/- (in words Rupees two thousand only) towards mental agony & Rs.1000/- (in words Rupees one thousand only.) towards costs of complaint.

4. The Opponents have to comply with above mentioned order within 30 days of receipt of certified copy of the order.

5. Certified copies of the instant order be provided to both of the parties free of cost.”

(Extracted from True Translated Copy)

7. Aggrieved by the District forum order, the OP Insurer filed the present Appeal before the learned State Commission. The State Commission vide order dated 07.07.2016 dismissed the Appeal and upheld the Order of the District Forum with the following findings: -

“[3]. It is for the insurer before entering into the policy contract to ensure that the insured is not suffering from such serious ailments which may in near future or after some period may result into death. The insured was certified that he is fit for entering into insurance contract and proposal was accepted after observing all formalities. Therefore, considering the cause of death as mentioned above, in our view, there is no error of law or facts in the impugned judgment and award

while awarding assured sums with interest @6% from the date of complaint. Compensation awarded for mental agony and costs of the complaint are also very reasonable and need no any interference at our hands in appeal. That being so, the Forum below by well reasoned judgment passed an award and it needs no interference by us. Hence, we pass the following order:-

ORDER

1. Appeal stands dismissed with no order as to costs.
2. One set of appeal compilation be retained. Rest be returned to the appellant forthwith.
3. Certified copies of the order be furnished to the parties forthwith."

8. Dissatisfied by the Impugned Order dated 07.07.2016, the OP/ Petitioner filed the instant Revision Petition No. 2953 of 2016.

9. In his arguments, the learned Counsel for the Petitioner/ OP Insurance Company reiterated the facts of the case and contended that it is amply clear from the proposal forms in Clause 11 of personal history in which the Complainant's father gave all the answer in negative including hospitalization, diabetes, heart disease, etc. Therefore, the fora below have totally misinterpreted the documents issue by the hospital, the same has not been denied by the life assured. The summary sheet issued by the hospital dated 27.11.2010 which clearly stated that the life assured was suffering from Type II diabetes mellitus with hypertrophic cardiomyopathy with gangrene right second toe. The cause of death stated to be septicemia with multi-organ die function syndrome. To support this argument, the counsel placed reliance upon the latest judgment of Hon'ble Supreme Court titled as **Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175.**

10. In his arguments, the learned Counsel for the Respondent vehemently contended that the State Commission did not commit any jurisdictional error or miscarriage of justice warranting a different view. He relied on Hon'ble Supreme Court order in **Mrs. Rubi (Chandra) Dutta vs M/s. United India Insurance Co. Ltd., 2011 (3) SC 654.** He further argued that the present Revision Petition was based solely on the contention that the Complainant's father failed to disclose requisite information and suppressed material facts at the time of obtaining insurance policies. The State Commission addressed correct and in detail and finding was concurrent in both across all forums, implying that no new ground was introduced in the current revision petition.

11. The learned Counsel further argued that the cause of his death differed from the alleged concealment of diseases by the insured. He emphasized that the insured did not conceal ailments such as Septicaemia, Multi-Organ Dysfunction, Gangrene of the

right toe, and bilateral pneumonia. Instead, the contention was that the insured concealed conditions such as Diabetes and Cardiac disease, which were not the direct causes of death. To bolster this argument, he relied on judgment by this commission in **LIC of India Vs. Sarojini & Anr.** RP No. 3454 of 2016 decided on 02.05.2017.

12. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

13. The central issue and objection of the Petitioner/ OP Insurance Company is that it had rightly repudiated the claim on the ground of non-disclosure of material facts and that the insured died due to septicemia and multiple organ dysfunction, which has direct link with undisclosed disease i.e. Diabetes Mellitus". The Medical Certificate dated 02.12.2010 submitted by the Complainant, that his father was indeed suffering from Type-II Diabetes Mellitus with Gangrene in the Right Toe. The relevant excerpt from the death summary unequivocally states the cause of death, reads as under:

"This is to certify that the patient by AMAR NANASAHEB MAHAGAONKAR Aged 52 yrs (I.P.NO.392830) was admitted in this hospital on 16-11-2010 and expired on 27-11-2010. His cause of death is SEPTICEMIA WITH MULTI ORGAN DYSFUNCTION WITH BILATERAL PNEUMONIA WITH ATRIAL FLUTTER WITH IHD WITH HYPERTROPHIC CARDIOMYOPATHY WITH TYPE II DIABETIC MELLITUS WITH GANGRENE OF RIGHT TOE. Endorsement as per Death Report.

Sd/-

For MEDICAL DIRECTOR & CHIEF EXECUTIVE"

14. The Respondent/Complainant argued by citing the case of this Commission titled as LIC of India Vs. Sarojini & Anr, RP No. 3454 of 2016, dated 02.05.2017 wherein it this Commission in Para No. 14 discussed the same point. However, unlike in this case, where the circumstances were different, in the instant case the Medical Certificate dated 02.12.2010 clearly indicates the presence of Type-II Diabetes Mellitus in the insured. Additionally, the proposal forms, particularly Clause 11 of personal history, show that his father provided negative responses regarding hospitalization, diabetes, heart disease, etc.

15. The objection raised in this regard by the learned Counsel for the Insurer regarding the connection between the disease, i.e. Diabetes Mellitus, and the cause of death of the insured is indeed noteworthy. In this context, reference is made to the observations made by the Hon'ble Supreme Court in the case of **Manmohan Nanda v. United India Assurance Co. Ltd.**, (2022) 4 SCC 582: 2021 SCC OnLine SC 1181, decided on 06.12.2021. The observation is as follows:

“Therefore, the respondents were not right in stating that as per the terms and conditions of the policy “all the complications arising out of preexisting condition is not payable.” As already noted, acute myocardial infraction can occur in a person who has no history of diabetes mellitusII. One of the risk factors for the aforesaid cardiac episode is diabetes mellitusII. The fact that the appellant had diabetes mellitusII was made known to the insurance company. Therefore, it is observed that any complication which would arise from diabetes mellitusII was also within the consideration of the insurer.”

16. It is imperative to highlight that in the case of Manmohan Nanda (Supra), the insured individual was directed to be indemnified by the Insurance Company solely on the grounds that he had duly disclosed his disease to the Insurance Company. It is evident that if the insured individual in the present case had disclosed his disease, he would have also been entitled to the claim. This underscores the significance of full and accurate disclosure of pre-existing medical conditions by the insured individual, as it directly impacts the assessment and coverage under the insurance policy. Therefore, the argument presented by the Petitioner/Insurance Company is supported by the legal precedent set forth by the Hon’ble Supreme Court. Hon’ble Supreme Court in **Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175** decided on 24.11.2019 has held that suppression of the facts made in proposal form will render Insurance Policy voidable by the Insurer.

17. Further, the Hon’ble Supreme Court in **Bajaj Allianz Life Insurance Company Ltd. v. Dalbir Kaur, 2020 SCC OnLine SC 848** decided on 09.10.2020 wherein it was observed as under:

“A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk.”

18. Based on the discussion above, I am of the considered view that Order of both fora below are not legally tenable. There is no doubt to the fact that the Insured i.e. Complainant’s father has failed to disclose his known medical condition in the proposal form. Therefore, the Revision Petition is Allowed and the Orders of both the learned fora are set-aside. Consequently, Complaint No. 192 of 2012 filed before the District Forum is dismissed.

19. All other pending Applications, if any, stand disposed of.

20. There shall be no order as to costs.

21. The Registry is directed to release the statutory deposit amount, if any in favour of the Appellants.