2009 4 CPJ 300

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Life Insurance Corporation Of India And Anr. — APPELLANT

Vs

Anil Kumar Rastogi — RESPONDENT

Date of Decision: Sept. 11, 2009

Citation: 2009 4 CPJ 300

Hon'ble Judges: K.S.GUPTA , RAJYALAKSHMI RAO J.

Advocate: MOHINDER SINGH , DIKSHA AHUJA , Rajesh Mehra , SURINDER GOEL , RAMANAND ROY

Judgement

1. MRS . Rajyalakshmi Rao, Member -This revision petition is filed by the Life Insurance Corporation of India aggrieved by the order dated

25.8.2008 passed by the State Commission, Lucknow, U.P. in First Appeal No. 1837 of 2006, which confirmed the order dated 24.3.2006

passed by the District Forum, Bahraich in Complaint No. 99 of 2003.

2. THE brief facts of the case are that:

The respondent -Anil Kumar Rastogi had taken an L.I.C. policy ""Ashadeep Policy with Accidental Benefits"" bearing No. 210864640 on

28.9.1993 for a sum of Rs. 1,50,000 from the petitioner. He made payment of premiums regularly, but owning to some financial difficulties, he

could not pay the premium amount due on 28.9.1997, and hence, the policy was lapsed. Thereafter, he deposited all the premiums having fallen

due, along with requisite amount on 23.4.1999, where upon the policy was revived.

3. IN the last week of July 2002, the respondent suffered chest pain and consulted his doctor, who referred him to Gandhi Memorial and

Associated Hospital, Lucknow. The doctors of this hospital advised him to consult a specialized hospital, and hence, he consulted Escort Heart

Research Centre, New Delhi. His treatment in Escort Centre continued for over two months and an amount of Rs. 3,00,000 was spent by him.

Thereafter, he made a claim to the opposite party, who did not respond to the same, and hence, filed a complaint in the District Forum.

The arguments presented by the petitioner in the District Forum, State Commission and also now at the revision stage are on the basis that the

respondent was suffering from Diabetes, High Blood Pressure and heart disease and did not disclose these facts at the time of revival of the lapsed

policy. The said Ashadeep Policy'' was revived under Endowment Policy with all benefits at the time of revival. The terms and benefits of the

policy in question are under Clause 11(b)(1) of the policy, which are here as under:

11(b) Benefit (b) of the policy schedule shall be available on the occurrence of any of the following contingencies - (i) The Life Assured under

goes open heart bypass surgery performed on significantly narrowed occluded coronary arteries to restore adequate blood supply to heart and this

surgery must have been proven to be necessary by means of coronary angiography. All other operations (e.g. angioplasty and thrornbelyets by

coronary artery catheterization) are specifically excluded.

4. ACCORDING to the terms of the policy, if the policy holder undergoes open heart surgery, benefit as provided in para 11(b) of the policy will

be available, but if any casualty happens within a year from the date of enforcement (revival of policy), in such a case, the aforesaid benefit shall not

be available.

5. LEARNED Counsel for the petitioner showed us the documents of Escorts Hospital, wherein in discharge summary under ""Diagnosis"" it is

stated as under:

Coronary Artery Disease; Inferior Wall Myocardial Infarctions Old; Triple Vessel Disease; Hypertension and Type 2 Diabetes Mellitus

(NDDM).'''' Under ''''Resume of History'''', it is stated as under: ''''Mr. Anil Rastogi, a 48 years old gentleman is hypertensive, diabetic, reformed

smoker and has positive family history of ischaemic heart disease. He sustained inferior wall myocardial infraction in 1995 not thrombolysed.

CART done on 8.8.2002 revealed triple vessel disease. He was admitted to his hospital for CABG.

6. LEARNED Counsel also showed the document of professor V.S. Narain, Department of Cardiology, Lucknow, under whose signature the

claim form has been submitted, in which it is noted that diabetes, hypertension for 7 years and chest pain for 7 years. It is submitted by the learned

Counsel for the revision petitioner that while reviving the policy, the petitioner had converted Ashadeep Policy'' to Endowment Policy'' not knowing

about the heart disease which the respondent was suffering from and that he suppressed the same at the time of submitting the personal statement

regarding health'' form on 23.4.1999.

7. THE District Forum noted that when the respondent got his policy revived on 23.4.1999, he submitted a form relating to his health, wherein at

para 2, it is stated as under:

2 (A) Did you ever suffer from any such disease and undergo for treatment for a period of a week or for further period any more? No. 2 (B)

Question Did you ever undergo any ECG, X -Ray Screening, Blood Urine and stool examination? No''''.

8. THE District Forum also further noted that the respondent did not suppress any material fact while reviving the policy as he did not take any

medical treatment for a year after having got the policy revived. The heart disease he suffered from got confirmed only in the year 2002 and ECG

was taken prior to undergoing bypass surgery and never before that.

9. THE State Commission on the appeal filed by the revision petitioner affirmed the order of the District Forum and also noted that the petitioner

could have examined the respondent at the time of revival of policy, if there was any reason to suspect.

10. HEARD the learned Counsel for both the parties and perused the orders of lower Fora.

11. PETITIONER has revived the policy without any inquiry, and obtaining the consent of the respondent converted the Ashadeep Policy'' into

Endowment Policy''. If they had any doubts, they could have got the respondent examined before doing so, which they have not done. There is no

record whatsoever to show that the respondent was suffering from the aforesaid diseases that have been mentioned. There is no evidence of

treatment that has been taken by the respondent for the same before undergoing bypass surgery in 2002. In normal course, all the medication that

the respondent would have taken for blood pressure and diabetes would have been noted by the doctors while doing the bypass surgery because

certain medications could be contra indicative. Nothing has been recorded in any of the documents that have been produced before us.

12. EXCEPT a mere noting that has been made in the discharge summary regarding respondent''s history and the diagnosis, nothing on record has

been shown as to what medication the respondent was taking for any of the ailments for which he took treatment in the year 2002.

13. ON this very point, this Commission decided in Praveen Damani v. Oriental Insurance Company Limited, IV (2006) CPJ 189 (NC), wherein

it is held as under:

If symptoms of the disease existed before the effective date of insurance and even if the insured person was not aware of these symptoms, the

Insurance Company was not liable to pay any claims arising out of the condition. If this interpretation of the Exclusion Clause was to be accepted,

then, the Insurance Company would not be liable to pay any claims whatsoever, because most people suffer from symptoms of diseases without

the knowledge of the same.

This policy is not a policy at all as it is just a contract entered only for the purpose of accepting the premium without the bona fide intention of

giving any benefit to the insured under the garb of pre -existing disease.

In hindsight, everyone realizes much later that the symptoms were indicative of a disease. But common people are not at all familiar with the

medical knowledge and so they cannot diagnose their own diseases. If they were expected to be so aware of their medical condition at all times,

there would be no use of insurance policies.

14. IF a person mentions at the time of having bypass surgery regarding any ailments that he might have felt, sustained discomfort in health and

being noted by the doctors does not mean that he is already aware of the disease. Had he been aware of heart disease, he would not have waited

endlessly and put himself to further risk of life and would have rushed to get treatment immediately. When the patient is not aware of the disease or

the symptoms of the same that would affect him, or the doctors are not aware of the symptoms of the disease and the Insurance Company does

not do any medical checkup before reviving the policy, it cannot be said that there was suppression of material facts by the respondent.

15. IN view of the above discussion, there is no jurisdictional error in the order passed by the State Commission warranting our interference and

hence the revision petition is accordingly dismissed. R.P. dismissed.