

(2014) 01 NCDRC CK 0081

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

DEVAMMA

APPELLANT

Vs

Branch Manager, Life
Insurance
Corporation

RESPONDENT

Date of Decision: Jan. 30, 2014

Citation: 2014 0 NCDRC 40 : 2014 2 CPJ 3

Hon'ble Judges: K.S.CHAUDHARI , B.C.Gupta J.

Advocate: MAHALING PANDARGE

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 09.08.2012, passed by the Karnataka State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. 3808/2011, ""Devamma versus Sr. Divisional Manager, LIC of India & Ors. "" vide which while dismissing appeal, the order dated 24.10.2011, passed by the District Consumer Disputes Redressal Forum, Mandya, dismissing the consumer complaint no. 71/2011 was upheld.

2. BRIEF facts of the case are that the husband of the complainant Smt. Devamma, during his life time, took two life insurance policies from Life Insurance Corporation (hereinafter referred to as ""LIC "") of Rs.50,000/ - each as per policy number 724020986 and 720799225. The complainant/petitioner was nominated as his nominee in both the policies. The policy holder Kempaiah died on 06.07.2009. The complainant/petitioner claimed the insurance amount from the respondent LIC by furnishing the relevant documents. The LIC settled the claim with respect to policy

number 720799225, but refused to pay claim for the other policy on the ground that the policy holder had suppressed material information at the time of obtaining the policy. It was stated that Shri Kempaiah was suffering from cancer, but he did not disclose this information while obtaining the policy, although he was under treatment for the said disease at the time of taking the policy. The consumer complaint was filed by the petitioner/complainant before the District Forum, saying that the policy amount of Rs.50,000/- should be paid to her along with bonus and interest. In addition, a compensation of Rs.1 lakh should be paid towards mental agony, pain and financial loss etc. and also the cost of litigation should be paid. The District Forum vide their order dated 24.10.2011, dismissed the complaint, saying that the policy holder had suppressed material information about the disease before taking the policy. An appeal filed against this order before the State Commission was also dismissed vide impugned order dated 09.08.2012. It is against this order that the present petition has been made.

Along with revision petition, a letter was sent by the petitioner requesting for grant of legal aid as he belongs to below poverty line category. Mr. Mahaling M. Pandarge, Advocate was appointed amicus curiae in the case to assist the court.

3. LEARNED amicus curiae at the time of hearing before us, stated that the LIC had allowed claim for one of the policies. The petitioner should, therefore, be paid claim for the second policy as well or as requested, the premium deposited with the LIC, should at least be refunded to her with reasonable interest.

4. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. As made out from records, the policy number 724020986 commenced with effect from 28.11.2007, and the husband of the petitioner died on 6.07.2009, i.e., after a period of 1 year 7 months and 8 days after taking the policy. As per the investigation conducted by LIC, it was revealed that the deceased was a patient of cancer and he took treatment at Mandya Institute of Medical Sciences, Mandya under registration number 407/07 dated 20.11.2007. In support of this version, the OP got examined Dr. T. Ranganath from the Mandya Medical Science Society Cancer Centre who produced record before the court from where it was revealed that Shri Kempaiah was admitted on

20.11.2007 in the said hospital for treatment. Regular treatment was also given to him w.e.f. 28.11.2007. It has been made out, however, that while filling proposal form, the insured did not give correct answers to various questions contained in the proposal form. Some of the questions and their answers given by the policy holder are reproduced as follows: -

""Q. No. 11 (a) During the last five years did you consult a Medical Practitioner for any ailment requiring treatment for more than a week? No (b) Have you ever been admitted to any hospital or nursing home for general check -up, observation, treatment or operation: No (c) Are you suffering from or have you ever suffered from Diabetes, Tuberculosis, high Blood Pressure, Low Blood Pressure, Cancer, Epilepsy, Hernia, Hydrocele, Leprosy, or any other disease? No (i) What has been your usual state of health? Good Q. No. 15 - Have you understood in full, the term and conditions of the plan you propose to take? Yes ""

It is clear from the answers given by the policy holder in the proposal form that he concealed material information from the insurance company before taking the policy in question. It is also clear from record that medical examination of the policy -holder was not got conducted by the LIC.

5. IT is an established legal proposition that the contract of insurance is a contract of utmost good -faith. The doctrine of ""Uberrima Fides "" is fully applicable in this case. It was the duty of the insured to give correct answers to the questions, in the absence of which an adverse inference is likely to be drawn against him.

6. IT has been stated in the complaint that Shri Kempaiah died on 06.07.2009 by committing suicide because of some family problems. The insurance company, however, maintains that the cause of death was cancer and not suicide. Even if the version of the complainant is believed that death took place by suicide, the policy holder cannot be absolved of his responsibility to provide correct information to the insurance company at the time of obtaining the policy in question.

Further section 45 of the Insurance Act, 1938 is reproduced below: -

""45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no

policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected be called in question by an insurer on the ground that statement made in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy -holder and that the policy -holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose: Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal. ""

7. A plain reading of the above section shows that if a period of two years has passed after obtaining the insurance policy, the policy cannot be called in question on the ground of misstatement, unless the insurer shows that material facts had been suppressed with a fraudulent motive. In the present case, the death occurred before the expiry of two years from the date of commencement of policy. The insurance company was, therefore, well within its rights to repudiate the claim upon discovery that correct information about the state of health of the deceased was not given at the time of obtaining the policy.

8. BASED on the discussion above, we do not find any legal infirmity, irregularity or jurisdictional error in the orders passed by the State Commission and District Forum. The said orders are, therefore, upheld and the present revision petition is ordered to be dismissed with no order as to costs.