

(2000) 05 NCDRC CK 0004

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Chairman, Life Insurance
Corporation of India

APPELLANT

Vs

PRAMILA KALANI

RESPONDENT

Date of Decision: May 29, 2000

Citation: 2001 3 CPJ 383

Hon'ble Judges: K.C.Bhargava , D.D.Bahuguna , Senior J.

Final Decision: Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 16.9.1997 passed by District Consumer Forum, Jhansi in Complaint Case No. 225/1996.

2. THE facts of the case stated in brief are that the deceased Sri Ajai Kalani had taken an insurance policy for Rs. 1,00,000/- from Life Insurance Corporation of India on 11.2.1991. At the time of issuance of the policy he was thoroughly checked-up medically by the Doctor of the Life Insurance Corporation of India. After said examination the policy was issued. Ajai Kalani the deceased developed some trouble and was admitted to Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow on 12.3.1991. He was treated at that place but he could not survive and died on 19.3.1991. A claim was preferred by the complainant after informing the Insurance Company. This claim was repudiated by the Insurance Company on 15.10.1993 on the ground that deceased was suffering from jaundice and alcoholic hepatitis prior to the date of taking the policy and this fact was concealed by him. According to the complainant the deceased were not having all these ailments at the time of taking the policy. THE complainant has claimed a sum of Rs. 1,22,000/-

besides the amount of the claim along with interest at the rate of 24% per annum.

The opposite party, Life Insurance Corporation of India had filed the written version admitting the insurance of the deceased but it was alleged that the repudiation was done on account of the fact that the policy holder had suppressed material facts. He was suffering from the jaundice prior to the taking of policy in question. It is also alleged that the medical examination which was conducted by the Life Insurance Corporation of India was merely a routine examination and the blood test is not included in such examination.

The parties led evidence before the learned District Consumer Forum, who after considering the case of the parties came to the conclusion that no material suppression of fact was made by the deceased and there is deficiency in service on behalf of the Life Insurance Corporation of India. It, therefore, directed the Insurance Company to pay a sum of Rs. 1,00,000/- as the insured amount along with interest at the rate of 18% per annum with effect from 18.3.1991 till the date of payment. It was also held that a sum of Rs. 10,000/- was also to be paid as compensation for mental pain. A sum of Rs. 2,000/- was allowed as cost. This amount was to be paid within a period of two months.

3. AGGRIEVED against this order, the opposite party, Life Insurance Corporation of India has come in appeal and has challenged the correctness of the order passed by learned District Consumer Forum.

We have heard the learned Counsel for the parties. Arguments in this case were heard on 28.3.2001. The judgment was reserved on 28.3.2001. During the course of, hearing of the appeal some documents were filed by the appellant, Insurance Company on which an objection was made by the learned Counsel for the opposite party on the ground that only two papers were filed before the District Consumer Forum and the rest of the papers were not filed before the District Forum. For this purpose two weeks" time was given to the learned Counsel for the appellant to file an affidavit to the effect that all the papers the copies of which have been filed in the appeal were also filed before the District Forum. The judgment was held up on account of this fact and even after passing of two weeks" time no affidavit was filed by the learned Counsel for the appellant. Later on an application was moved by the appellant on 14.5.2001 mentioning therein that documents at Sl. Nos. 2, 3, 5, 7, 8, 9 and 11 of the list dated 21.11.2000/4.1.2001 were not filed in the District Forum. A list of documents in the form of questionair obtained from the District Forum has been filed along with the application. In the application it has also been mentioned that these documents may be taken as evidence and read. This has been opposed

by the learned Counsel for the opposite party.

4. WE now propose to deal with the fact whether these documents can be admitted at this stage or not. In the affidavit of J.P. Agrawal, Advocate, it has been stated that he was the Counsel of the Life Insurance Corporation of India before the District Forum. According to the photostate copies of two documents namely certificate of hospital treatment and S.G.P.G.I. death certificate were filed by the deponent in the District Forum. According to him due to bona fide mistake as well as oversight, the other documents such as Proposal Form, Doctor's Certificate, Claimant's statement, Medical Certificate of Doctor Suresh Mehra, Medical Prescription of Dr. Suresh Mehera, Death Certificate and Investigation Report were not filed at District Forum though such documents were available in the policy docket of Corporation handed over to me to prepare written statement. These facts have also been mentioned in the application moved for permission to take the papers on record and read in support of defence. WE have gone through the file and it is not possible to believe that the Advocate who is conducting the case of the Life Insurance Corporation of India would not have filed all these documents which were material for the decision of the case. It has not been mentioned in the affidavit that it is the first case conducted by Mr. J.P. Agrawal, Advocate on behalf of the Life Insurance Corporation of India, therefore, it cannot be believed for a moment that all these material documents would not have been filed by the Advocate while filing the written statement or the evidence before the District Forum. If the Advocate has not filed these papers before the District Forum then the Life Insurance Corporation of India is responsible for it and the complainant cannot be blamed for it. The complainant has a right that these documents which were not placed before the District Forum should not be allowed to be filed at this late stage even when the arguments were heard and only permission was given to the learned counsel for the appellant to file an affidavit in order to show that all the documents numbered 1 to 11 which were filed in the appeal were also filed before the District Forum. The Counsel was not given any time for filing these documents. After the arguments were heard the judgment was not written on account of the fact that this affidavit about the filing of papers before the District Forum was awaited. Now the Life Insurance Corporation of India cannot be permitted to file these papers. This application is, therefore, rejected.

It is an admitted fact that the deceased had taken a policy from the Life Insurance Corporation of India. The burden is on the Insurance Company to prove that the deceased had suppressed the material facts about having jaundice and alcoholic hepatitis. The Life Insurance Corporation of India has not been able to discharge

this burden. As it is evident that the jaundice is a disease which can be seen with naked eyes. The eyes become yellowish. The nails also become yellowish. The Doctor who had conducted the medical examination on 11.2.1991 would have easily detected the presence of the jaundice. According to the Life Insurance Corporation of India it was present on the deceased with effect from November, 1990. It is not necessary that the blood test is the only way out to diagnose this disease. Therefore, the Doctor who had examined the deceased should have noted these symptoms of jaundice at that time if the medical check-up was done by him. It has been argued by the learned Counsel for the appellant that the checkup which was done by the Doctor was a routine checkup. This is incorrect. A particular form is prescribed by the Insurance Company on which the Doctor has to do the examination and a number of details have to be filled by the Doctor after medical examination of the person whose insurance is to be done. If the Doctor has not conducted the duty sincerely then the complainant cannot be allowed to suffer. It is the duty of the Life Insurance Corporation of India to instruct its Doctor to make thorough examination of the person whose is to be insured. The Life Insurance Corporation of India cannot take shelter behind the fact that only a routine medical examination is done by the Doctor and the same was also conducted in the present case. The Insurance Company cannot take advantage of its own mistake or the mistake of its Doctor. Before the District Consumer Forum the Insurance Company had filed a Death Certificate of Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow which shows that Ajay Kalani, deceased died due to Cardiac Tamponade/Renal Failure. It was a case of Alcoholic Cirrhosis. The other paper filed by the Insurance Company is the certificate of treatment. It is not clear as to which Doctor issued this certificate because his name is not clear. Whether the Doctor who had examined the patient has issued the certificate or was issued by some other Doctor on the basis of record available in the hospital. No affidavit has been filed of the treating Doctor for proving this certificate.

5. A perusal of this goes to show that the deceased was admitted in the hospital on 12.3.1991. He was diagnosed as a case of jaundice and it has been mentioned that the duration of the disease from November, 1990. About the diagnosis which was arrived at in the hospital, it has been mentioned that it is a case of Alcoholic Hepatitis with Cirrhosis. It is further mentioned that the patient was discharged on 20.2.1991 and he was deeply in jaundice when discharged. He expired on 19.3.1991. He was kept in this hospital for five days only. Thus this certificate does not prove that the deceased was suffering from jaundice since 1990 or he had any knowledge that he is suffering from jaundice since November, 1990. If a Doctor who has

medically examined the patient on 11.2.1991 could not detect the presence of the jaundice how a layman like the deceased would have known that he is suffering from jaundice. Therefore, the fact that the Life Insurance Corporation of India has utterly failed to prove that the deceased was suffering from jaundice and was having knowledge of this disease at the time when he filled up the proposal form and on the date of which the policy was issued. Thus the appeal is liable to be dismissed. ORDER The appeal is dismissed. The judgment and order of the learned District Forum are confirmed. The appellant shall pay a sum of Rs. 2,000/- as cost to the complainant. Let compliance of this order be made within a period of two months from the date of this order. Let copy of this order be made available to the parties as per rules. Appeal dismissed.