

(1994) 11 NCDRC CK 0021

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

PRAMILA MALHOTRA

APPELLANT

Vs

Life Insurance Corporation of
India

RESPONDENT

Date of Decision: Nov. 25, 1994

Citation: 1995 1 CLT 711 : 1995 1 CPJ 371

Hon'ble Judges: R.N.Mittal , S.Brar , A.N.Saxena J.

Final Decision: Complaint allowed with costs

Judgement

1. BRIEFLY, the facts of the case are that the deceased Shri Subhash Chander Malhotra had taken two Life Insurance policies from the respondent (LIC) in 1987. The L.I.C. issued two policies Nos. 110405187 for Rs. 75,000/- and No. 110405184 for Rs. 25,000/- on 15-5-87.

2. IT is contended that both the policies were issued after medical examination and full satisfaction of the respondent as per their requirement. IT is further contended that the insured continued to make regular payment of premiums from 1987 till his death in January '90.

It has been stated by the complainant that the insured Shri Subhash Chander Malhotra died on 24-1-90 due to kidney failure leaving behind his wife, (the complainant) along with his three school going children. In terms of the two Life Insurance Policies of her deceased, husband the complainant approached the LIC (respondent) to settle the claim amounting to Rs. 1 lac. However, the respondent repudiated their liability on the pretext that the deceased had withheld material information regarding his ailment from Hypertension extending over a period of 14

years while seeking the life insurance policies.

The complainant sent a legal notice to the respondent on 14-8-92. The present complaint, was filed on 31.12.92. In the complaint, the following reliefs have been sought:- "1. Rs. One Lac (Rs. 1,00,000/-) being the claim amount of two Insurance Policies with interest @ 24% per annum. 2. Rs. 50,000/- as compensation damages on account of harassment, mental pain and suffering.

3. THE respondent in their reply have taken the plea that there has been no deficiency of service on their part as they have acted under a contract of insurance under Clause 18 of the policy. THEy have further pleaded that the complaint is not maintainable before the Commission.

On facts, the respondent has stated that the claim of the complainant was repudiated since it was render revealed from the two hospital reports i.e. in Ganga Ram Hospital, Annexure "R-4" (pages 16, 17) that the insured had been suffering from Hypertension for past 14 years. The same fact of 14 years ailment from Hypertension was revealed from the hospital certificate of Batra Hospital R-3, (Pages 13,14,15). These Annexure Form a part of the affidavit of Mr. S.K. Nand, Administrative Officer of the Divisional Office of the respondent. Respondent (LIC) have therefore, relied on these two certificates in repudiating the claim of the complainant under Clause 18(b) of the Proposal Form of Life Insurance Annexure-I. We have heard the arguments on both sides and have also perused the documents on record.

4. THE first question that arises for determination is, whether the State Commission has got jurisdiction to entertain the complaint. It is well settled that Section 2(1)(o) of the Consumer Protection Act clearly specifies that complaints concerning "Insurance" are covered by the Act. THE plea of the respondent that the complainant is bound by the "contract of Insurance" and remedy does not lie under C.P. Act is, therefore, liable to be rejected.

The second question that arises for determination is, whether the complainant's claim in respect of Life Insurance Policy is sustainable. In deciding this issue it has to be examined whether there has been any deficiency of service on the part of the

respondent.

It is admitted that the Insurance Policy was taken on 15-5-87 and the insured died on 24-1-90. It is further admitted that the deceased continued to pay the insurance premiums till his death and there was no default on his part in this behalf. The reason of death being kidney failure is further admitted. The only reason adduced by the respondent in repudiating the claim of the complainant is that at the time of taking the Insurance Policy the deceased (insured) had deliberately withheld the information that he was suffering from Hypertension for a long time and that the cause of death was the result of this long ailment. Obviously according to the respondent, if the fact of ailment that is "Hypertension" had been given out by the deceased the respondent would not have issued the L.I.C. policy.

5. It has further been pleaded by the learned Counsel for the respondent that they repudiated the claim on the basis of investigations carried out by the investigator appointed by the respondent and that the investigator's report was also based on the information given in the two certificates issued by Ganga Ram Hospital and Batra Hospital respectively. Both the certificates go to prove that the deceased fraudulently concealed the fact of his suffering from Hypertension at the time of taking Life Insurance policies.

6. It is further argued that the deceased was admitted in Ganga Ram Hospital from 18-9-89 upto 5-10-89 for treatment of Hypertension. He was subsequently again hospitalised in Batra Hospital in January, 1990 where he died. That in the Medical Certificate of Batra Hospital in Col. 4(g) it has been mentioned that the deceased "also had hypertension for the last 14 years". Since both the certificates established the fact of deceased suffering from Hypertension the respondent were justified in repudiating the claim of the complainant.

In our view the important documents to be examined are (i) The Insurance Proposal Form; (ii) The Medical Examination Report; and (iii) The approval given by the LIC for accepting the proposal of the insured for granting the policy. The other document relevant is the Investigators Report on the basis of which the respondent repudiated the claim of the insured.

The respondent (LIC) has failed to produce the Medical Examination Report of the Doctor who examined him and gave the report of fitness. Since, it is only after the Medical Examination Report that the proposal is processed to the concerned officials, their remarks approving the policy became a relevant document and should have been produced. Even the Investigators Report on the basis of which the complainant's claim has been disallowed has not been produced. The only other document on which the respondent have relied upon are the report of Ganga Ram Hospital and Batra Hospital. In examining these two certificates it must be pointed out that both the certificates were obtained by the respondent on their prescribed form and the details given therein should have been cross checked by the respondent as well as their Investigator.

7. IT must be observed that while the certificate issued by the Batra Hospital has the authentication of the Medical Director of the Hospital, the certificate issued by Ganga Ram Hospital does not bear the verification of the hospital Superintendent, which respondent should have ensured. This in our view was absolutely necessary to establish its creditability.

While examining the certificate we further find that under Clause 5(a) it has been stated "Hypertension - 14 years" However, under 5(b) where it has been stated that the above information was given by the insured (patient) himself and the name of the Doctor is given as Dr. R.K. Jain. No verification or affidavit to establish the correctness of this information has been filed by the respondent. It was necessary for the respondent to establish the veracity of this information. No information about the Doctor or his address is available on record so that material fact of ailment of the deceased could be ascertained.

8. THE most surprising feature of the two hospital certificates is that in both the certificates the period of ailment from hypertension has been given as 14 years. Obviously, the figure of 14 years could not be the same since the period of illness in Ganga Ram Hospital was 18-9-89 to 5-10-89 while in Batra Hospital it was in end January, 1990. In further examining the certificate from Ganga Ram Hospital, we find that while the date of issue given on the first page under seal is given as 19-11-90. Obviously these two dates are unaccountable.

Since the insurance cover was taken on 15-5-87 and the fact of ailment from hypertension came to the notice first in 1989 from Ganga Ram Hospital and then again in 1990 from Batra Hospital, the claim should not have been repudiated merely relying on the conflicting version of the two certificates.

While the fact of the insured having been admitted in Ganga Ram Hospital may be correct what is of consequence is the state of health of the insured at the time of his discharge. This has been mentioned in the same certificate as "Reasonably good". Another fact which can't be over-looked is that in reply to the second question in Col. No. 5(e) of the certificate in which the information sought was "where he was treated earlier, it is only mentioned" "not known".

9. IN our view in a hospital of repute how can a patient give information about his ailment to a Doctor and at the same time conceal the information about having had any treatment anywhere. Move so it was for the Doctor to have verified about his past treatment. Even otherwise a record of past treatment is maintained in every hospital and the same was available in Batra Hospital. The respondent have failed to produce the same to corroborate their basis of contention.

10. NOW that the insured is dead no verify cation can be made from him and the only basis left is to draw conclusion from the facts on record. In the absence of the insured the only other person who could provide authentic information was the Doctor (R.K. Jain) to whom it is alleged information about the ailment from hypertension for 14 years was given. This having not been done the version of the respondent is liable to be rejected. It is also important to mention that the Insurance Policy was taken in 1987 and the insured was hospitalised in 1989 and he died in the end of January '90. In the death certificate the cause of death is given as Kidney failure.

The human physionomy is vulnerable to ailments which sometimes may not be apparent. It is neither the purpose not the intention of taking a life insurance policy that one would not contract any illness or shall not die, for some years. No such stipulation can be made and taking a view detrimental to the insured would defeat the very purpose of life insurance since the benefit of Dipolicy goes to the family after his death.

We have gone through the riders provided in the L.I.C. Policy under Clause 10. There give enough leverage to the respondent to repudiate the claim particularly if the insured is dead. In our view the only defence in such eventuality is the "Medical Report" given by the respondent Doctor before granting the Insurance Cover. This report is a comprehensive document on the basis of which respondent had issued the policy. Obviously, Respondent's action in not producing this document casts a shadow of doubt.

11. WE would also like to observe that in both the certificates (Ganga Ram and Batra Hospital) the period of ailment from hypertension is given 14 years. It can't be the same. Even otherwise, if the information as stated in a Hospital certificate was given to Dr. R.K. Jain, it should have been verified from him or his address furnished before the Commission to seek necessary information. It is also significant to mention that no certificate or proof from a medical specialist has been filed by the respondent which could prove that the cause of death of the insured due to Kidney failure was attributed to his alleged illness from hypertension.

Taking into account the facts and circumstances of the case we accept the complaint with costs and order that the respondent should make the payment of the two Insurance Policies amounting to Rs. 1,00,000/- with interest @18% p.a. from the date of filing the complaint (31-12-91) say 1-1-92 till the date of payment.

12. IN view of the fact that the complainant (Wife of the deceased) has been put to avoidable mental pain and suffering, we award damages amounting to Rs. 10,000/-.

The respondent is directed to make the payment of Rs. one lac with interest @18%p.a. from 1-1-92 till the date of payment and damages of Rs. 10,000/- within a period of three months from the date of the order, failing which action shall be taken under Section 27 of the Consumer Protection Act, 1986. Costs Rs. 2,000/-.

ORDER Mr. R.N Mittal, President-I have carefully gone through the order rendered by my Brother Mr. Saxena, but regret my inability to agree with the conclusions arrived at by him. 1. The facts have been given in detail in the order by my learned Brother. It is not disputed that the deceased remained admitted in the Ganga Ram Hospital and Batra Hospital before he took the two insurance policies. The proposer is required to disclose all the ailments suffered by him and the other relevant

information regarding health in the proposal form which is in the form of a questionnaire. The deceased while filing the two forms both dated 29th April, 1987 replied the followings questions in both of them in the negative. Question No. Question Reply. (a to d) xxxxx xxxxx xxxxx xxxxx 18(e) Paralysis, insanity, epilepsy, fits of any kind of nervous breakdown or any other disease of the brain or the nervous system? 22(a) xxxxx xxxxxx xxxxxx 22(b) Have you ever had an electrocardiogram, X-Ray or screening, blood, urine or stool examination ? 22(c) Have you ever been in any hospital, asylum or sanatorium for check-up, observation, treatment or any operation? There is a verification of the proposer regarding correctness of the said replies in the proposal form. The deceased concealed the fact that he was admitted in the said hospitals and suffered from hypertension for a long time. The question whether the information supplied by the two hospitals to the Insurance Company is not correct, is a question of fact and can be determined by cross-examination of the witnesses. It is not possible to hold in these summary proceedings that the information supplied by the hospitals is incorrect on assumptions and minor contradictions. Thus, the repudiation by the L.I.C. cannot be said to be not in good faith. 2. After taking into consideration all the said circumstances, I am of the view that there is no deficiency in the service provided by the O.P. In the above view I am fortified by the decision of the National Commission in Divisional Manager, L.I.C. of India & Ors. v. Sunita Sharma I (1994) CPJ 3 (NC), Revision Petition No.198 of 1993-Decided on 10.11.1993. In that case also the proposer did not disclose the correct information in the proposal form. The following observations may be read with advantage:-

"We have gone through the record and after hearing the parties we are of the view that the District Forum and the State Commission are patently in error in passing an award against the Insurance Company and in favour of the complainant. In the first instance the repudiation of the claim under the policy by the Revision Petitioner, L.I.C. was by a speaking order, the reasons stated in which cannot be said to be irrelevant or extraneous. It cannot also be said that the repudiation was not made in good faith. As such, there was no deficiency in service, and therefore, there was no bona fide complaint maintainable before Consumer Forums. On merits also, it has been fully established that the insured had concealed material facts while taking the Insurance Policy and it entitles the L.I.C. to repudiate its liability under the policy, inasmuch as a policy of insurance evidences a contract founded on good faith. We, therefore, allow the Revision Petition and set aside the order of the State Commission and the District Forum. There is no order as to costs."

3. For the aforesaid reasons dismiss the complaint with no order as to costs. The complainant may seek remedy in the Civil Court, if so advised. Complaint allowed with costs.