

**(1999) 11 NCDRC CK 0028**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

BRANCH MANAGER, LIFE  
INSURANCE CORPORATION OF  
INDIA

APPELLANT

Vs

SATYENDRA KUMAR SRIVASTAVA

RESPONDENT

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**Date of Decision:** Nov. 18, 1999

**Citation:** 2000 1 CPJ 268

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

**Final Decision:** Appeal allowed

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**Judgement**

1. THIS is an appeal against the judgment and order dated 17.12.1992 passed by District Consumer Forum, Gorakhpur in complaint case No. 183/1992.

2. THE facts of the case stated in brief are that a life policy of Rs. 25,000/- was taken on 20.3.1989 of Smt. Patima Srivastava. THE nomination was given in favour of her husband Sri Satyendra Kumar Srivastava. On 15.3.1990 Smt. Pratima Srivastava died on account of bursting of uterus. Complainant put up a claim with the Insurance Company, but they declined to pay the amount as a material fact was suppressed from the Insurance Company that the first child was by caessarean operation.

The opposite party in their written statement alleged that as the material fact of first birth by caessarean operation was suppressed, therefore, the complaint became void and nothing is to be paid.

Learned District Forum, after considering the facts of the case, did not find any deficiency in service on the part of the Insurance Company but ordered for payment

of the amount of premium deposited with the Insurance Company.

3. AGGRIEVED against this order, the Insurance Company has come in appeal and has challenged the correctness of the order.

Mr. Arjun Bhargava, learned Counsel for the Insurance Company is present. None is present on behalf of the respondent despite the fact that notice was issued in February, 1997 by registered post and the same has not been received back unserved and hence service is deemed sufficient on the opposite party. As none was present, therefore, the appeal was heard in the absence of the opposite party.

4. WE have heard the learned Counsel for the appellant. WE have also perused the facts of the case that the learned District Forum had not found any deficiency on the part of the Insurance Company.

On the question of the refund of the amount, learned Counsel for the appellant has placed reliance on the case of Mithoolal v. Life Insurance Corporation of India, AIR (1962) SC 814. In para 11 at page 821 of this judgment, it was held as under :

"This brings us to the last question, namely, whether the appellant is entitled to a refund of the money he had paid to the respondent Company. Here again one of the terms of the policy was that all moneys that had been paid in consequence of the policy was vitiated by reason of a fraudulent suppression of material facts by the insured. We agree with the High Court that where the contract is bad on the ground of fraud, the party who has been guilty of fraud or a person who claims under him cannot ask for a refund of the money paid. It is a well established principle that Courts will not entertain an action for money had and received, where, in order to succeed, the plaintiff has to prove his own fraud."

Thus in view of the pronouncing of the Hon"ble Supreme Court, it is held that the complainant was not entitled for any of the relief under the policy and the order of the learned District Forum cannot be sustained. Order The appeal is allowed and the judgment and order of the learned District Consumer Forum is set aside. The complaint is dismissed. Let copy of this order be made available to the parties as per rules. Appeal allowed.