SANJAY KUMAR AGGARWAL Vs DIVISIONAL MANAGER, LIC

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Dec. 9, 2003

Citation: 2004 2 CLT 456 : 2004 2 CPJ 21

Hon'ble Judges: K.D.Shahi , Surendra Kumar J.

Final Decision: Appeal dismissed

Judgement

1. MR. Sanjay Kumar Aggarwal, an agent of L.I.C. has filed this appeal against the judgment and order dated 16.7.2001 passed by the District

Forum, Nainital by which his complaint was rejected by the Forum for recovery of insured amount on the death of his wife Smt. Seema Aggarwal.

2. SMT. Seema Aggarwal has got an insurance policy. The proposal form was accepted on 30.3.1996. She died on 15.1.1998. The premium of

the policy was regularly paid. On 30.12.1998 the claim was repudiated, it was communicated to complainant on 1.2.1999.

The ground of repudiation of claim is said to be that on 30.3.1996 the insured Smt. Seema Aggarwal was pregnant. This fact was not mentioned in

the proposal form rather it was knowingly suppressed. This was a material fact, which ought to have been known at the time of proposal. It is said

that the agreement is vitiated on this ground and therefore the claim was rejected.

Being aggrieved by this repudiation of claim by the insurance company Mr. Sanjay Kumar Aggarwal filed the complaint before the learned Forum,

which was dismissed on 16.11.1998. It is said that the complainant applied for restoration for setting aside this ex parte judgment but on

23.5.2000 he got the restoration application dismissed as not pressed and thereafter he filed the present complaint before the learned Forum on

9.5.2000. It is said by the insurance company that the second complaint is barred because the judgment is on merits.

3. WE will take other aspects of the case later on but at this time since the plea has been raised here its reply is necessary. When the second

complaint was filed, in the written statement the insurance company took the plea in Para No. 25 that Complaint No. 77 of 1999 has been

dismissed on merit on 16.11.1999. After hearing the complaint, the complainant moved the restoration application, which was dismissed on

23.5.2000. It was further pleaded that the second complaint is barred because after perusal of the records and appreciating the ruling referred by

the insurance company the complaint was dismissed on merits although the complainant was absent on that date. The plea was there but it appears

that this plea was not pressed before the learned Forum. The parties led their evidence and the learned Forum has given a judgment on merits

without any line of finding on this plea that the second complaint is barred.

The plea has been raised here. The judgment dated 16.11.1999 specifically speaks that this is on merits. In para 2 of the judgment the learned

Forum wrote that on the death of his wife the complainant has applied for recovery of Rs. 1,00,000/- (Rupees one lakh only). His claim was

repudiated by the insurance company on the ground that on 30.9.1996 the wife of the complainant was pregnant and there was information that

she gave birth to a child on 15.8.1996. In the third para it was written that the opposite party, i.e. the insurance company denied claim by counter-

affidavit. The complainant has not converted the counter-affidavit and the opposite party has referred the ruling of Mr. Ajay Prakash Mittal in

which in the similar circumstances the case of the claimant was dismissed. Ultimately the complaint was dismissed. This judgment is nothing else but

a judgment on merits. The complete facts have been discussed, the ruling has been discussed, the case of the parties have been discussed, it is true

that in specific words it is not written that the complainant could not prove his case, he has got no merits in his case but still in a short judgment it is

written that the case is not entertainable in view of the ruling of Mr. Ajay Prakash Mittal and the complaint was ultimately dismissed.

4. THE learned Counsel for the complainant argued that his second complaint is not barred. We agree with this argument but if the first complaint

has not been decided on merits, it has merely been dismissed in default then alone the second complaint is not barred. If the judgment has been

given on merits the only remedy available to the complainant is to file the appeal. It is true that even in ex parte judgment some merits are to be

discussed but it is still true that where merits have been discussed and the judgment is ex parte only in application for setting aside the dismissal and

for restoration of complaint this plea can be taken that this judgment is ex parte on merits therefore it should be set aside and the complaint be

restored. But if the judgment is on merits; second complaint will not lie. Although restoration application could have been maintainable but the

complainant himself got his restoration application dismissed as not pressed, may be under incorrect legal advice but an incorrect legal advice will

not make the second complaint maintainable which is legally not maintainable. Every judgment, which is on merits, is binding on the parties. Any

party cannot say that the judgment is incorrect, invalid, illegal and even without jurisdiction and therefore he will ignore it. No party can ignore the

judgment. It is to be set aside by competent Court of jurisdiction may be by restoration, may be by recall of the dismissal order, may be by way of

appeal but unless the judgment is set aside it is fully binding and the judgment dated 16.11.1999 had not been set aside from any corner by any

Court of Law or Authority therefore it has full binding effect on the parties.

The learned Counsel for the complainant referred the ruling reported in I (2000) CPJ 19 (SC)=II (2000) SLT 520=AIR 2000 Supreme Court

941, New India Assurance Co. Ltd. v. R. Srinivasan. In this ruling it is specifically written in head-note referring paras 8, 9, 10 and 16 that:

The fact that the case was decided on merits and was dismissed in default of non-appearance of the complainant cannot be overlooked and

therefore it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default

We have already discussed above that the present complaint has been decided on merits and if the present complaint has been decided on merits,

the second complaint is fully barred. In Para 18 of this ruling the Hon''ble Supreme Court has held that the Court or Judicial Body or Authority has

jurisdiction to dismiss the complaint in default and it has also got inherent jurisdiction to restore the complaint on good cause being shown for the

non-appearance of the complainant but here the question is not of restoration but is of ignoring the judgment which was given on merits and on the

basis of ruling the complainant could have got the complaint restored but he cannot ignore the judgment given on merits.

The learned Counsel for the appellant again referred the ruling reported in 2003 U.D. 627, Ranjeet Singh v. State of Uttaranchal and Others

wherein it has been written that every ex parte judgment shall be on merit that will make the ground for non-restoration because ex parte judgment

is ex parte and the party may be given an opportunity for hearing only restoration application being maintainable. No body can dispute this aspect

of law. This ruling could have been of great importance to the complainant had he been pressing his restoration application but this ruling will not

help the complainant to ignore the judgment given on merits. In view of these discussions it is clear that the second complaint is not at all

maintainable and could have been dismissed merely on this ground but since the parties have proceeded to lead evidence and the Forum has

proceeded to decide the case on merits, we will not enter into the merits of the case as well.

5. IN the very first line of the judgment we have told that Mr. Sanjay Kumar Aggarwal was not a foreign and unknown person for the insurance

department. Admittedly he was an insurance agent. Although this fact was no-where mentioned by Mr. Sanjay Kumar Aggarwal in his complaint

or ground of appeal or anywhere else but in Para 15 of the written statement the insurance company has specifically pleaded that Mr. Sanjay

Kumar Aggarwal is an agent of the Corporation and the policy has been obtained by him for his wife. IN Para 21 of the written statement it is

specifically written that the complainant himself is an agent of the insurance company. He was well aware if the rules and regulations of the

insurance department but knowing full well that his wife was pregnant he got the insurance. Had he disclosed this fact, the insurance policy could

not have been given to her. IN Para 23 of the written statement again this fact has been emphasized that the complainant himself is an agent of the

insurance company. We are writing this fact only to lay emphasis that a countryside illiterate ignorant man can very easily say that he did not know

that the pregnancy of the wife is a material fact and it should not be suppressed but an agent of the insurance company cannot say this fact. He

should fully know that when an insurance policy can be given and when an insurance policy cannot be given. We will discuss that whether this was

a material fact or not and whether its suppression is fatal or not later on, but here we will like to see that whether to a pregnant lady an insurance

policy can be given. On this the case of Mr. Ajay Prakash Mittal on the basis of which the complaint was earlier dismissed by the Forum on

16.11.1999 is crystal clear. IN this ruling the Manual of INstructions issued by the insurance company was relied upon. It is held in this ruling that,

Reliance was placed by the Corporation on the Manual of INstructions given to their agent wherein it is provided that the proposal for assurance

on the life of lady after the child birth would be considered only six months after delivery. If the deceased had disclosed correctly regarding her on

the date when she signed the proposal form, the L.I.C. could waive off the conditions of six months or abide by the instructions in the Manual not

to insure the pregnant lady until six months had expired after delivery. According to us, if the deceased had not suppressed the material facts, it

would have influenced the L.I.C. whether to insure or not to insure the deceased. It may be pertinent to mention that the deceased had died within

the period of two years from the date of taking of the life insurance policy. We are of the firm opinion that the L.I.C. was able to establish that the

deceased suppressed facts which it was material to disclose . The State Commission was right in holding likewise.

6. THE learned Counsel for the insurance company also referred the Manual wherein instructions have been given on how female lives can be

insured and in para "A" of this Manual it is specifically written that proposals on the lives of ladies who are pregnant at the time of proposal will not

be generally entertained. A Proviso Clause was given that proposal from pregnant lady in Female Categories 1 and 2 can be considered subject to

the conditions given below. In Category 1 there are earning females, in Category 2 there are women with unearned income tax having sizable

personal property yielding income and in Category 3 there are other ladies. Admittedly as is given in the proposal form Smt. Seema Aggarwal was

a housewife fully dependent on the income of the husband. She was having no income of her own and she was not paying income tax therefore she

not being of the 1 and 2 Categories. Her proposal if she was pregnant could not have been entertained.

Now the question is whether Smt. Seema Aggarwal was pregnant on the date of proposal or not. We again lay emphasis on the point that the

complainant was fully aware with the insurance proceedings being an insurance agent. He got the legal advice for complaint. He has always been

associated by competent Lawyers. His claim before the insurance company was repudiated solely on the ground that his wife was pregnant on

30.3.1996 having a pregnancy of about four or five months on that date and it was written in the repudiation letter that she was operated upon on

15.8.1996 for delivery but the husband of the insured had written everywhere in his earlier complaint, in his second complaint, in his affidavit, in his

memorandum of appeal and in his affidavit supporting the memorandum of appeal that his wife was not pregnant on 30.3.1996 and she did not

give birth to a child on 15.8.1996 but we are surprised that nowhere he has written that his wife was not pregnant on 30.9.1996. In para 1 of the

complaint he wrote that the proposal of the insurance was accepted on 30.3.1996 and his wife died on 15.1.1998 all of a sudden, although this

fact is also incorrect that she died all of a sudden. She gave birth to a child on 14.1.1998. She was operated upon and she has died after giving

birth to the child, may be due to excessive bleeding, may be due to operation, may be due to any disease but she did not die all of a sudden. In

Para 2 he has alleged that he is nominee. In Para 3 he has alleged that he made the complaint after completing formalities. In Para 4 he wrote that

his claim was repudiated and in Para 5 he became argumentative to criticize the repudiation order by saying that the grounds of repudiation are

false. She gave the information knowing it correct. In para 13 she has given reply in relation to her health. The doctor examined her. The doctor

confirmed her statement in her proposal form. To the query whether she was pregnant she has written no. Now the argument starts, ""If this is taken

to be correct that she was not pregnant then why the insurance department knowing it fully well has suppressed this fact for two years"". It did not

write that she was not pregnant. If he was an agent and if the Development Officer of the L.I.C. who regularly gets business from him tried to

support the complainant in submitting this false information, the complainant cannot be allowed to loot the insurance company because certain

employees of the Corporation were also dishonest. The question is not why the employees of the insurance department colluded with the

complainant but the question is whether the insured suppressed this fact that she was pregnant and if she suppressed even after the insurance

company knew this fact her suppression of facts was not to be exonerated. In para 10 of the complaint it is written that if on such grounds the

claims are repudiated then the total spirit of insurance shall be waived off. To the contrary he argued that if such claims are allowed everybody shall

be able to loot the Corporation after all the money of the L.I.C. is also public money cannot be thrown away in charity, this is the position of the

complaint. It is totally silent about her pregnancy. Same is position of the affidavit of Mr. Sanjay Kumar Aggarwal dated 9.5.2000. With a definite

finding being given by the Forum that the insured was pregnant on that date and therefore his claim was liable to be repudiated This appeal was

filed and nowhere in the memorandum of appeal it is written that she was not pregnant on that particular date. The finding is correct. Merely by

saying that the finding of the Forum is incorrect it cannot be said that the complainant has denied that his wife was pregnant on that date.

In the written statement it is specifically pleaded that on 30.3.1996 the insured was pregnant and she gave birth to child on 15.8.1996. It is again

pleaded that on 14.1.1998 she again gave birth to a child in Nursing Home, Haldwani and due to the complication developed as given in para 16

she died on 15.1.1998.

7. THE learned Counsel for the complainant Mr. Bindesh Kumar Gupta was very much emphatic on the affidavit of Mr. R.P. Pandey or P.S.

Pangati, employees of the insurance department who have written that they have verified the affidavit on the basis of records and legal opinion. He

was also emphatic that the report of Meena Shah has not been proved by her affidavit or any other evidence but he forgot to look to the law that

fact alleged if not denied shall be deemed to have been admitted. THE insurance company has emphatically pleaded this plea. It has not been

denied by the complainant and therefore shall be deemed to have been admitted. THE fact deemed to have been admitted need not be proved, it

stands admitted and stands automatically proved.

Now coming to the other aspects of the case and also the rulings referred by the complainant that the fact should be material fact, it should have

been in the knowledge of the complainant and it should have nexus with the death of the insured. We will discuss the law as given by the parties.

8. SINCE the pregnant female could not have been insured and if she has been insured after suppressing the fact, the insurance itself is vitiated. It

cannot be said that this was not a material fact and its suppression was not very much relevant. In the rulings referred by the complainant there was

some illness, the illness was not very much material, for this the proposal could not have been rejected and the disease could have nexus with the

death of the insured but here in this particular case the policy could not have been issued at all in view of the instruction of the insurance

department.

The proposal was given on 30.3.1996. The death of the insured occurred on 15.1.1998 within two years of the insurance. Section 45 of the

Insurance Act will come into play or not is of little importance . The learned Counsel for the complainant referred the ruling reported in AIR 1968

Madras 324 (V 55 C 75), Life Insurance Corporation of India v. Janaki Ammal. It is held in this ruling that if the death is within two years the

policy can be questioned on the statement which is false but if the policy is questioned after two years the insurance company has to show that the

statement was a material matter and the complainant suppressed it fraudulently. In view of our finding that insured was pregnant on that particular

date, her statement is false.Its suppression is material because had this fact not been suppressed, policy could not have been issued or even in their

discretion the insurance company could have waived the condition. In this ruling of Janaki Ammal there was illness and it was held that illness did

not affect the expectation of life of the insured but such is not a case of temporary illness in this case. The ruling reported in I (2001) SLT 89=AIR

2001 SC 161, Life Insurance Corporation of India and Others v. Smt. Asha Goel and Another, was referred. In this ruling repudiation of claim

was merely on the ground that deceased had withheld correct information regarding his health at the time of effecting the insurance policy. The

deceased in the case of Smt. Asha Goel died due to acute myocardial infarction and cardiac arrest and in this ruling insured was not even suffering

from any disease but he had not only stated his health good and he had not consulted any medical practitioner for last 5 years which was found to

be incorrect. There was no ground in this ruling for which the claim could have been repudiated. This ruling shall not apply to the facts of the

present case.

On the basis of the ruling of Smt. Asha Goel, it was also argued that for determination of the question whether there has been suppression of any

material fact it shall be also necessary to examine whether suppression relates to a fact which is in the exclusive knowledge of the person intending

to take the policy and it cannot be ascertained by reasonable inquiry by person. It was argued that it would have been in the knowledge of the

instant company that the insured was pregnant because the doctor of the insurance company had examined the insured and this was not a matter,

which was only with the excessive knowledge of the insured.

9. WE have already said above that merely because the Development Officer or any doctor of the Insurance Company colluded with the

complainant, the complainant cannot get benefit of his own fraud. Secondly in the proposal form last date of menstruation has been given as

25.3.1996. Whether the insured has menstruated on 25.3.1996 or not would have been in the exclusive knowledge of the insured only. If she

wrote it incorrectly the complainant had to suffer. The lady who was pregnant for the last four or five months could not have menstruated on

25.3.1996 and this has purposely been written to show that she was not pregnant. Therefore, her pregnancy has definitely been suppressed. The

ruling of Smt. Asha Goel will also not help the complainant. Some rulings are referred to show that there is no nexus between the fact suppressed

and the death, the claim cannot be repudiated for this. The ruling reported in I (2003) CPJ 505, Branch Manager, L.I.C. of India and Ors. v. Smt.

Jayalakshmi, was referred. In this ruling the deceased was alcoholic addict. It was not disclosed. He died of heart attack. It was held that there

was no nexus between the consumption of alcoholic beverages and heart attack, the Insurance Company was liable. It was argued that the first

pregnancy of the insured has nothing to do with the death of insured. It has emphatically been stated by the Insurance Company that the insured

was operated upon on 15.8.1996 for delivery. She was again operated upon 14.1.1998 for delivery. After delivery and operation she died. A

judicial notice of the fact can be taken that there are a number of ladies who are advised not to give birth to more than one or two children by

operation because that may be fatal to her. Her pregnancy has been suppressed. The insured might have been a lady of this nature that she could

have been advised not to give birth to two children that could have been fatal to her. Ultimately which proved fatal and she died. Therefore, it

cannot be said that her earlier pregnancy has got no nexus with her death.

10. SEVERAL other rulings were referred reported in AIR 1962 SC 814 (V 49 C 117), Mithoolal Nayak v. Life Insurance Corporation of India,

III (2002) CPJ 294, Oriental Insurance Co. Ltd. v. Ram Lal, I (2003) CPJ 620, Life Insurance Corporation of India and Ors. v. Smt. Manju

Sharma & Ors., I (2003) CPJ 152, Narendra Kumar Jain v. Oriental Insurance Co. Ltd., II (2002) CPJ 271, Life Insurance Corporation of India

v. Smt. Gauran Devi, which are not relevant to the facts of the present case and are not discussed in detail. The facts of the present case are

peculiar and entirely different where due to pregnancy no policy could have been given to her and to the case of the complainant, the case of Ajay

Prakash Mittal will apply with full force. That is a National Commission ruling and is binding on all State Commissions and Forums.

Having discussed all the aspects of the case we find that the judgment given by the learned Forum is well considered judgment on facts. We have

nothing to differ with the learned Forum. This appeal has got no force and is liable to be dismissed. ORDER The appeal is hereby dismissed. cost

of the appeal shall be easy. Appeal dismissed.