

(2002) 06 NCDRC CK 0020

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Senior Divisional Manager, Life
Insurance Corporation of India

APPELLANT

Vs

AJAY KUMAR DUBEY

RESPONDENT

Date of Decision: June 29, 2002

Citation: 2003 1 CPJ 186

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

Final Decision: Appeal allowed

Judgement

1. THIS is an appeal against the judgment and order dated 7.9.2001 passed by District Consumer Forum, Mirzapur in Complaint Case No. 17 of 1999.

2. THE facts of the case stated in brief are that the complainant's brother, Rama Kant Dubey, had taken a policy from the Life Insurance Corporation on 28.3.1997 for a sum of Rs. 50,000/- through the agent. THE medical examination was also got done. THEREAFTER through same agent another policy was taken for a sum of Rs. 50,000/- on 28.8.1997. THE first premium was paid. In both these policies the complainant, Ajay Kumar Dubey, was the nominee. On 3.9.1997 the insured, Rama Kant Dubey, suddenly developed high fever and inspite of treatment, died on 7.9.1997 at 9.15 p.m.

The complainant submitted the claim form to the Life Insurance Corporation. It is further alleged that the insured had deposited the amount through the agent, Jata Shankar Sharma, opposite party No. 3. The complainant was asked by letter dated 3.9.1997 about the health of the insured. The complainant replied that his brother was hale and hearty. With respect to policy taken on 28.3.1997 the payment was

made of the insured amount. On 3.9.1997 when the form was sent by the L.I.C. the condition of complainant's brother was not good and he was not in a position to fill up the form. He was not in a position to get the medical check up done. The proposal form was filled up on 28.8.1997 and the money was then deposited. When the payment has already been made to the L.I.C. of the previous policy and the condition of the insured was good and he was hale and hearty, the complainant should get the amount of the claim. According to the complainant policy No. 281032654 was taken for the second time for which the claim has not been paid.

The opposite party No. 3, the so-called agent, in its written version has alleged that on 28.8.1997 no payment of the premium was made by the complainant's brother or by any other person. The premium was received in the office on 4.9.1997. After the premium was sent, the proposal was accepted. The answering opposite party has done what was required to be done by him. Hence he has not committed any deficiency in his service.

3. THE opposite party Nos. 1 and 2 in the written statement has denied the allegations of pages 1 to 16 and alleged that the deceased on 23.8.1997 was admitted to the hospital on account of cholera and thereafter discharged on 24.8.1997. He was seriously ill on 23.8.1997. This condition of the deceased was apprised at the time of taking the policy. THE policy was taken with a bad intention. THE proposal was filled up on 28.8.1997 and the premium was deposited in the office on 4.9.1997 while the insured was suffering from cholera and ultimately died on 7.9.1997. It is wrong to say that the proposal form for insurance was received in the office on 28.7.1997. This form was received on 4.9.1997 and this was sent to the Divisional Office for approval. THE proposal was under scrutiny and no policy was issued till the death of the deceased. It is further alleged that no policy was issued and, therefore, there was no contract of insurance between the parties and no claim is to be paid.

The parties led evidence in support of their respective contentions before the learned District Forum who after considering the case of the parties came to the conclusion that there was deficiency on behalf of the opposite party, Insurance Corporation and hence it directed for payment of the insured amount to the complainant within a period of three months along with 12% per annum interest.

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

We have heard the learned Counsel for the parties. The learned Counsel for the appellant has argued that the proposal which was submitted by the deceased was under consideration and it has not been approved by the Divisional Office. Before the approval could reach the office, the insured had died. No policy was issued by the Life Insurance Corporation. This argument of the learned Counsel is correct because on records no policy was issued to the insured. Had any policy been issued to the deceased, then the same would have been filed by the complainant. It is a definite case of the Insurance Corporation that no policy was issued. When no policy was issued by the Insurance Corporation it cannot be said that there was any binding contract between the insured and the Insurance Corporation. In the absence of any contract, the Insurance Corporation is not bound to pay any amount.

It is also right that the complainant was suffering from cholera. It has been alleged by the Insurance Corporation that the complainant was admitted in the hospital on 23.8.1997. He was treated for cholera and thereafter was discharged on 24.8.1997. This goes to show that the complainant was admitted for treatment of cholera on 23.8.1997 but this fact was not mentioned in the proposal form. This fact has been suppressed by the insured. The papers on record filed by the Insurance Corporation clearly goes to show that the complainant was suffering from cholera and later on died. The repudiation was also done by the Insurance Corporation by its letter dated 24.4.1998 on the ground that correct answers were not given by the insured in the proposal form.

5. THUS on consideration of the entire evidence on records we find that the complainant is not entitled to claim any amount. The judgment and order of the learned District Forum is not correct and, therefore, it is liable to be set aside and the appeal is liable to be allowed. ORDER The appeal is allowed and the judgment and order of the learned District Forum are set aside and the complaint is dismissed. There will be no order as to the costs. Let copy as per rules be made available to the parties. Appeal allowed.