

(1999) 12 NCDRC CK 0026

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Life Insurance Corporation of
India

APPELLANT

Vs

SHANTABAI RAJARAM DESAI

RESPONDENT

Date of Decision: Dec. 6, 1999

Citation: 2000 3 CPJ 152

Hon'ble Judges: G.R.Bedge , Rajyalakshmi Rao J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal arises out of the order passed by the District Forum, Ratnagiri in Complaint No. 86 of 1995. By its order, the District Forum has directed the appellant to pay an amount of Rs. 1,01,000/- alongwith cost of Rs. 500/-.

2. THE case of the complainant is that he had taken a Money Back Policy in the name of Subhash, who was a minor, for Rs. 1,00,000/- on 9.3.1993. Subhash died on 1.6.1993 in Krishna Hospital, Karad due to fever. THEREfore, the complainants preferred a claim. It was investigated since the death had taken place immediately after the policy was taken. THE complainants approached the District Forum. THE appellant/L.I.C. defended their case on the ground that on investigation it has been revealed that deceased Subhash was suffering from jaundice and for that he had taken medical treatment. This fact was revealed in the application dated 16.3.1993. His claim was accordingly repudiated because there was suppression of material facts. THE District Forum relied upon the ruling cited in 1994 (1) CPR 736, Sanjiv Mahendralal Shah v. Life Insurance Corporation of India, wherein it has been held that the burden of proof was on the Insurance Company and they applied this ratio

to the instant case although it was established that the deceased Subhash was suffering from jaundice. It further observed that Subhash died of Malaria and that had no nexus with jaundice. Accordingly, impugned order came to be passed. THE Forum has awarded 18% interest on the amount of Rs. 1,01,000/- till its realisation. THEREfore, this appeal.

Mr. Chavan, Advocate appeared for the appellant-L.I.C. and Mr. Umar Kazi, Advocate appeared for the respondent. They were heard at length. Our attention has been drawn to the provisions of Section 45 of the Insurance Act, 1938 and the various decisions of the National Commission and the decision taken by our own Commission. Mr. Chavan drew our attention to the decision of the National Commission in I (1998) CPJ 2 (NC)=(1997) 5 CTJ 749 (CP) (NCDRC) in the case of Ajay Prakash Mittal v. Life Insurance Corporation of India, wherein it has been held by the National Commission - the evidence disclosed that the deceased suppressed material facts which would have influenced the LIC whether to insure or not to insure her. It has further been held by the National Commission that there need not be any nexus between the cause of death and the disease suffered by the insured. In the instant case, the Forum has failed to appreciate the legal position. Subhash was suffering from jaundice and jaundice always gives rise to fever and it is possible that Subhash died of malarial fever. In view of the decision of the National Commission, there is a suppression of material fact by the proposer, and so the ratio of the decision of the National Commission cited above is applicable to this case.

The learned Counsel for the respondent has submitted that the respondent lady is an illiterate person and she did not know how to fill up the proposal form and as such the reply given in the proposal form should not be read against the respondent Subhash. Further Mr. Chavan, brought to our notice that the proposal form was in Marathi and signed by him maternal uncle Shri Sharad K. Mehta who is a literate person and not by the respondent-Subhash R. Desai.

3. ON consideration of the facts and circumstances of the case, we find that the L.I.C. was within its legal rights and repudiated the claim on the ground of the suppression of material facts. Therefore, we have no option but to quash and set aside the order passed by the District Forum and allow the appeal. Mr. Chavan-Advocate states that the L.I.C. has already made a payment of Rs. 1,22,300/- + Rs. 1,01,500/- to the respondent directly. In view of these facts we pass the following order : Order

"The appeal is allowed. The order passed by the District Forum, Ratnagiri is hereby quashed and set aside. The respondents are directed to refund the entire amount paid by the L.I.C. in lumpsum within a period of two months from the receipt of this order. If the respondents fail to repay the amount within the stipulated period, the said amount shall carry interest @ 12% from the date of this order till payment. No order as to costs."

Appeal allowed.