

(2011) 02 NCDRC CK 0005

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Pushpa Chauhan

APPELLANT

Vs

Life Insurance Corporation of
India

RESPONDENT

Date of Decision: Feb. 2, 2011

Citation: 2011 0 CTJ 644 : 2011 2 CPJ 44 : 2011 2 CPR 190

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision Petition dismissed.

Judgement

1. PRESIDENT-Complainant-petitioner has filed this revision petition against the order passed by the Haryana State Consumer Disputes Redressal Commission at Panchkula (for short the State Commission) in Appeal No. 2211 of 2004 dated 26.9.2006 whereby the State Commission while reversing the order of the District Consumer Disputes Redressal Forum (for short the District Forum) has ordered the dismissal of the complaint filed by the petitioner. Briefly stated the facts of the case are:

2. HUSBAND of the petitioner had taken a life policy bearing No. 172479504 for a sum of Rs. 70,000 from the respondent-Insurance Company on 18th April, 1996. Insured died on 21st July, 2000. Petitioner, being nominee, lodged a claim with the respondent along with the relevant documents as per requirement. Respondent-Insurance Company repudiated the claim on the ground that the insured had concealed material information regarding his health while taking the policy. After receiving the letter of repudiation the petitioner filed representation to the Zonal Manager, Life Insurance Corporation of India, Jeevan Bharti Building,

Connaught Place, New Delhi but no reply was received. Thus, being aggrieved, petitioner filed a complaint before the District Forum.

3. RESPONDENT, after being served, entered appearance and filed the written statement rebutting the allegations made in the complaint. Justifying the repudiation of the claim it was pleaded that the insured while taking the policy had failed to disclose that he had been suffering from recurrent pyogenic meningitis for the last 30 years for which he had been taking treatment from Safdarjung Hospital, New Delhi. In support of the stand taken, report of Dr. N. Jain of the said hospital was filed in which the doctor has recorded that the insured had died from CFS Rhinonhoes as he had been suffering from the said disease for the last 30 years as per history of the patient given by the attendant of the deceased; that this information had been withheld by the deceased while filling the proposal form.

4. DISTRICT Forum vide its order dated 29.6.2004 allowed the complaint and held that the respondent-Insurance Company had wrongly repudiated the claim filed by the petitioner which amounted to deficiency in service on its part. Accordingly, respondent Insurance Company was directed to pay the sum of Rs. 70,000 to the petitioner along with interest at the rate of 10% p.a. from the date of representation i.e. 10.11.2001 till the date of payment.

5. RESPONDENT Insurance Company, being aggrieved, filed an appeal before the State Commission which has been allowed by the impugned order. Order of the District Forum has been set aside and the complaint has been ordered to be dismissed. Complainant, being aggrieved, filed the revision petition. Counsel for the parties have been heard at length.

6. LEARNED Counsel appearing on behalf of the petitioner has strenuously argued that the State Commission has erred in reversing the well considered order passed by the District Forum; that it was manifest from the order of the District Forum that in the certificate issued by Dr. N. Jain it was not mentioned as to from whom the insured had been taking treatment regarding his ailment; that since Dr. N. Jain did not file an affidavit in support of the said certificate issued by him no reliance could be placed on the certificate issued by him; that the petitioner was deprived of an opportunity to challenge the veracity of the certificate issued by Dr. N. Jain by cross-examining him; that had Dr. Jain filed his affidavit the petitioner would have cross-examined him for the basis on which the certificate was issued as well as for the correctness of the certificate issued by him. As against this learned Counsel appearing for the respondent-Insurance Company submitted that certificate issued by Dr. N. Jain could be relied upon even in the absence of the affidavit filed by him; that Dr. N. Jain has given the certificate on the basis of the hospital record in which the insured had admittedly been treated. The information about the medical history of the deceased given in the certificate is based on the information supplied by the attendant who accompanied the deceased to the hospital.

7. IT has repeatedly been held that the contract of insurance falls in the category of contract of uberrimae fidei meaning a contract of utmost good faith on the part of the assured. When an information on a specific aspect is asked for in the proposal form, the insured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. Of course obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The Hon"ble Supreme Court of India in United India Insurance Co. Ltd. v. M.K.J. Corporation, III (1996) CPJ 8 (SC)=(1996) 6 SCC 428, has held that it is a fundamental principle of insurance law that utmost faith must be observed by the contracting parties. Good faith forbids either party from non-disclosure of the facts which the party privately knows to draw the other into a bargain, from his ignorance of that fact and his believing to the contrary. To the similar effect is the judgment of the Hon"ble Supreme Court in Modern Insulators Ltd. v. Oriental Insurance Co. Ltd., I (2000) CPJ 1 (SC)=II (2000) SLT 323=(2000) 2 SCC 734.

8. IT is not disputed before us that the insured while taking the policy had not disclosed that he was suffering from recurrent pyogenic meningitis. The only point which falls for determination before us is whether reliance could be placed on the certificate issued by Dr. N. Jain which was not duly supported by his affidavit. The certificate (Exhibit-D2) placed on record indicates in column No. 1 of the certificate that the primary cause of death of the insured was recurrent pyogenic meningitis whereas the secondary cause has been stated as CSF Rhinorrhoea. It is also recorded in the said certificate that the history was given to him by "wife and attendant" of the insured and that the insured had been suffering from the said disease for the last "thirty years" for which he was taking treatment from the Safdarjung Hospital, New Delhi. The Supreme Court of India while considering a similar situation where the doctor had not filed the affidavit in support of the certificate issued by him in *Satwant Kaur Sandhu v. New India Assurance Company Ltd.*, IV (2009) CPJ 8 (SC)=VI (2009) SLT 338, in para 22 of its order held:

"Answers given by the proposer to the two questions were "Sound Health" and "Nil" respectively. It would be beyond anybody's comprehension that the insured was not aware of the state of his health and the fact that he was suffering from diabetes as also chronic renal failure, more so, when he was stated to be on regular haemodialysis. There can hardly be any scope for doubt that the information required in the afore-extracted questions was on material facts and answers given to those questions were definitely factors which would have influenced and guided the respondent-Insurance Company to enter into the contract of Mediclaim Insurance with the insured. It is also pertinent to note that in the claim form the appellant had stated that the deceased was suffering from Chronic Renal Failure and Diabetic Nephropathy from 1st June, 1990, i.e. within three weeks of taking the policy. Judged from any angle, we have no hesitation in coming to the conclusion that the statement made by the insured in the proposal form as to the state of his health was palpably untrue to his knowledge. There was clear suppression of material facts in regard to the health of the insured and, therefore, the respondent insurer was fully justified in repudiating the insurance contract. We do not find any substance in the contention of learned Counsel for the appellant that reliance could not be placed on the certificate obtained by the respondent from the hospital where the insured was treated. Apart from the fact that at no stage the appellant had pleaded that the insured was not treated at Vijaya Health Centre at Chennai where he ultimately died. It is more than clear from the said certificate that information about the medical history of the deceased must have been supplied by his family members at the time of admission in the hospital, a normal practice in any hospital. Significantly, even the declaration in the proposal form by the proposer authorizes the insurer to seek information from any hospital he had attended or may attend concerning any disease or illness which may affect his health."

9. IN this case, the Supreme Court without insisting on the affidavit in support of the certificate issued by the doctor, relying on the certificate held that the insured was guilty of suppression of material fact in not disclosing the disease from which he was suffering.

10. IN the case on hand we find that Dr. N. Jain has given the certificate on a proforma issued by the Life Insurance Corporation of India. Life Insurance Corporation of India hands over the proforma to the attendant to get the certificate from the concerned doctor as to the cause of death. In this proforma there are certain columns which have to be filled by the doctor such as (i) full name, address and occupation of the deceased, (ii) time of death, (iii) the exact cause of death, (iv) for how long had he been suffering from this disease before his death, (v) what other diseases preceded or co-existed with that which immediately caused the death, (vi) the date when first observed, (vii) by whom the history reported, etc. As observed by the Hon"ble Supreme Court in its order, the doctor has clearly stated in the certificate issued that information about the medical history of the deceased was supplied by the wife and attendant of the insured at the time of the admission in the hospital. Since the certificate had been supplied by the petitioner to the Insurance Company, the petitioner could not insist on the affidavit of the doctor in support of the certificate in which it was mentioned that the insured was suffering from the disease for the last 30 years and this history about the illness was supplied by the wife and the attendant who had accompanied the insured to the hospital. The insured had failed to disclose this fact about the illness from which he was suffering while filling the proposal form.

11. FOR the reasons stated above we do not find any substance in the contention raised by the Counsel for the petitioner that the certificate issued by Dr. N. Jain could not be relied upon in the absence of the affidavit filed by him in support of the certificate issued by him. We respectfully follow the view taken by the Hon"ble Supreme Court in Satwant Kaur Sandhu's case (supra) and accordingly dismiss the

revision petition. There shall be no order as to cost. Revision Petition dismissed.