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(2011) 02 NCDRC CK 0007

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

LIC OF INDIA — APPELLANT

Vs

Shobhna Shukla — RESPONDENT

Date of Decision: Feb. 21, 2011

Citation: 2011 1 CPJ 290

Hon'ble Judges: Suresh Chandra J.

Final Decision: Revision Petition dismissed.

Judgement

1. BRIEFLY stated, the facts of this case are that the husband of the complainant who is respondent herein had secured a policy for Rs. 5 lakh on 27.1.2002 from the Life Insurance Corporation of India in which the complainant was a nominee. During the life-time of the insured, the premiums were paid regularly but the instalments from July 2002 to January 2004 could not be deposited resulting in the lapse of the policy. On paying the defaulted instalments of the policy and after complying with formalities, the policy was regularized. The insured expired on 21.2.2004. He fell ill on 3.2.2004 and was taken to a hospital since he had complained of constipation and stomachache. After detailed investigation, it was found that he was suffering from acute Pancreatitis and hence he was referred to the Sanjay Gandhi Post Graduate Institute of Medical Sciences where he remained admitted from 5.2.2004 till his death. The claim preferred by the complainant on the policy of her husband was, however, rejected by the petitioner Corporation vide letter dated 25.9.2004. She, therefore, approached the District Forum which accepted the complaint and passed the following order:

"The complaint is accepted that the respondent Life Insurance Corporation of India will pay an amount of Rs. 5,20,000 (Five lacs twenty thousand only) within two months from today and pay interest @ 12% p.a. on the aforesaid amount with effect from 22.10.2004 otherwise the rate of interest would be 18% p.a. instead of 12% p.a.; respondent will also pay an amount of Rs. 1,000 (one thousand only) to the complainant for the litigation expenses."

2. AGGRIEVED by the aforesaid order of the District Forum, the petitioner Insurance Co. challenged the same in appeal before the State Commission which accepted the appeal in part by modifying the order of the District Forum to the extent that the petitioner Insurance Co. will pay the policy amount of Rs. 5 lakh with bonus and 9% interest to the respondent/complainant from the date of the filing of complaint with the District Forum till the date of payment. Not satisfied with the partial relief given by the State Commission vide this impugned order dated 31.8.2010, the petitioner Insurance Co. has approached the National Commission challenging the same through the present revision petition.

3. WE have heard learned Counsel for the petitioners and perused the record. Based on the appraisal of the issues and the evidence adduced, the District Forum accepted the complaint in terms of the aforesaid order which was slightly modified by the State Commission in appeal filed by the opposite parties. There is, therefore, the concurrent finding of both the Fora below in favour of the complainant regarding the admissibility of the claim of the complainant, which had been earlier repudiated by the petitioner Insurance Co. The short point for our consideration is whether there was any suppression or non-disclosure of the disease/illness with which the late husband of the complainant was suffering which would vitiate the contract of insurance and justify the repudiation of the claim of the complainant by the petitioner Insurance Co. It is the claim of the petitioner Insurance Co. that it got the insured medically examined on 8.2.2004 and the process for renewal of the lapsed policy was started. It is not in dispute that on 3.2.2004 when the insured became ill, he was admitted in Chandni Hospital from where he was referred to S.G.P.G.I. He remained admitted in S.G.P.G.I from 5.2.2004 to 21.2.2004 on which day he expired. Both the Fora below through their concurrent finding of facts have therefore recorded that the physical checkup of the insured could not have been done on 8.2.2004. In the circumstances, they have accepted the statement of the complainant on oath that the petitioner Corporation changed the date from 8.1.2004 to 8.2.2004. It is also seen that the original certificate of the doctor has not been produced by the petitioner Corporation before the District Forum. In view of this concurrent finding, relying on the judgment of National Commission in the case of LIC of India v. Kulwant Kumari, II (2009) CPJ 317 (NC)=2010 NCJ 249 (NC), they gave substantial relief to the complainant and rejected the submissions of the petitioner Co. in this regard. Learned Counsel has contended before us that the State Commission has erred in appreciating the judgment of the National Commission in Kulwant Kumari''s case. He has also cited another judgment dated 18.11.2009 of the National Commission in the case of LIC of India v. Parasmal,

R.P. No.618 of 2009, in support of his contention.

4. HAVING gone through the orders of the Fora below and the two cases cited by the learned Counsel for the petitioner Co., we do not find any infirmity in the impugned order of the State Commission. In this context, it would be appropriate to reproduce the following para of the order of the State Commission in which the issue raised has been adequately dealt with on sound reasoning:

"In this case the questioned policy started on 28.1.2002. Insured died on 21.2.2004. The insured remained admitted in S.G.P.G.I., Lucknow from 5.2.2004 till his death. The issue is whether the insured got the policy renewed by playing fraud or not? According to appellant/Insurance Corporation the renewal is illegal since the insured was admitted in S.G.P.G.I. since 5.2.2004 but he has not declared his disease in the declaration form. In this case it is undisputed that the insured was admitted in S.G.P.G.I., Lucknow during 5.2.2004 till 21.2.2004. On the other hand Insurance Corporation on 8.2.2004 got the health of the insured examined by their doctor therefore in these circumstances it is not possible that when insured was in S.G.P.G.I. during 5.2.2004 upto his death on 21.2.2004 how the insured can be examined on 8.2.2004 giving a clear report of his health. The District Forum had mentioned in this order that the physical check up of the insured was not done on 8.2.2004 but on 8.1.2004 as per the affidavit of the respondent and the Insurance Corporation has changed the number "1" to "2" in 8.1.2004 and this has been done at two places. The District Forum has also observed that the original doctor certificate has not been produced by Insurance Corporation. In this case according to the respondent the illness of the insured started 3.2.2004, when he visited Chandni Hospital from where he was referred to S.G.P.G.I., Lucknow. The insured remained admitted in S.G.P.G.I. during 5.2.2004 till 21.2.2004. Even the appellant cannot given reply as to when the insured was admitted in S.G.P.G.I., Lucknow during 5.2.2004 till 21.2.2004 then how the insured be checked up by the doctors of the Insurance Corporation on 8.2.2004 when the insured was in S.G.P.G.I. Hospital and the doctors of the Insurance Corporation issued the health certificate after which the policy was revived, therefore it is asserted that the Insurance Corporation, has changed the health report. The Insurance Corporation is making allegation against the insured though the Insurance Corporation has not able to explain as to how the examination of the insured can be done when he was admitted in S.G.P.G.I. therefore it is certain that the insured has appeared before the doctors of Insurance Corporation on 8.1.2004 and on that very day 8.1.2004 the health inspection was done and the action for renewal taken. No medical prescription of the insured was available from which it could be ascertain that even before 8.1.2004 the insured was suffering from various diseases and the insured get himself examined from any doctor. Therefore the policy would be effective from its original date 27.1.2002 after renewal. In

this regard the respondent has referred the judgment of National Commission in the case of LIC of India v. Kulwant Kumari (supra), wherein the following principle has been laid down: "Insurance-Suppression of material facts-Scope-Held-period of two year is to be counted from date on which policy originally effected and not from date of revival of policy also in that situation burden lies upon insurance to prove suppression of material fact." On the basis of aforesaid it would be decided as to whether the respondent is entitled for receiving the insured amount under the disputed policy after the two years of its start. According to us there is a deficiency of service on the part of Insurance Corporation in not paying the aforesaid policy amount to be respondent after the death of her husband. Therefore the respondent is entitled for the policy amount along with interest. The District Forum has ordered to pay an amount of Rs. 5,20,000. It is decided that the respondent would be entitled for Rs. 5 lacs since the policy was for Rs. 5 lacs. District Forum has ordered to pay 12% interest on the insured amount. According to the Bench, 9% interest would be justified in this case. This interest would be sufficient for all the compensation."

5. WE have also gone through the judgment of this Commission in Kulwant Kumari"s case and we are of the considered view that the Fora below have rightly interpreted the same while rejecting the defence of the petitioner Insurance Co. So far as the other case of LIC v. Parasmal, is concerned, it is to be noted that the fact of insured having undergone bye-pass surgery on 23.1.1995 in that case remained undisputed and hence repudiation of the claim based on suppression of material information by the insured person was held to be justified. Here, we find that the petitioner Insurance Co. has not been able to establish that the medical examination alleged to have been done on 8.2.2004 was actually done on that date and the Fora below finding serious loopholes in the defence of the petitioner Co. rejected its contentions. The petitioner Insurance Co., therefore, cannot derive any benefit from the judgment in Parasmal case. In view of these vital aspects and taking into consideration the totality of the facts and circumstances, we do not find any substance in the revision petition and dismiss the same at the threshold with no order as to costs. Revision Petition dismissed.