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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Jul-10-2013

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Member &Amp;amp; the Honourable Mr. Thota Ashok Kumar, Member

Appeal No. : F.A.No. 172 of 2012 Against C.C.No. 155 of 2011 District Forum Warangal

Appellant : Barupati Sunitha

Respondent : The Branch Manager, Lic of India and Another

Judgement :

Oral Order: (R. Lakshminarsimha Rao, Member)

1. The unsuccessful complainant is the appellant. She filed complaint claiming the sum assured under the life insurance policy obtained by her deceased husband which was refused to be paid by the respondent-insurance corporation on the premise that the insured suppressed the fact that he had undergone surgery for treatment of Glioma prior to taking the insurance policy.

2. The appellants husband during his lifetime obtained life insurance policy bearing number 688511762 from the respondent-insurance company for the period of 21 years commencing from 18.03.2009 for sum assured of Rs.1,00,000/-. The appellants husband died on 10.07.2010 and after the death of her husband, the

appellant lodged claim with the respondent -insurance company. The respondent has not paid the claim amount on the premise that the insured concealed the fact that he was suffering from Glioma. The appellant submitted that her husband did not suppress any material fact while obtaining the insurance policy and he died due to cardio-respiratory arrest and the repudiation of the claim is arbitrary.

3. The respondent -insurance company resisted the claim on the premise that the insured was suffering from Glioma prior to obtaining the insurance policy and he had undergone surgery on 10.02.2005 at Osmania General Hospital. The investigation conducted by the respondent -insurance company disclosed that the insured suffered from cancer and obtained the life insurance policy by suppressing the fact of his suffering from cancer and treatment that he had undergone thereof.

4. The appellant has filed her affidavit and the documents Exs.A1 to A11. On behalf of the respondent insurance company, its Manager (Legal and HPF) filed his affidavit and the documents, ExB1 to B3.

5. The District Forum dismissed the complaint on the premise that the insured concealed the fact of his suffering from cancer prior to the time of submitting the proposal and the death of the insured due to cardio-respiratory arrest was result of consequence of the fatal disease, Left Frontal Glioma.

6. Feeling aggrieved by the order of the District Forum, the complainant has filed appeal contending that the District Forum has not considered the evidence on record in correct perspective. It is contended that the respondent had not adduced cogent evidence to show that the insured suppressed material information about the surgery he had undergone for treatment of left frontal glioma. It is contended that the insured did not suffer from cancer nor did he undergo treatment therefor. It is contended that in the case sheet dated 13.01.2010 it is mentioned that the insured was admitted to the hospital for the first time and he was not admitted on any previous occasion.

7. The learned counsel for the respondent -insurance company has filed written arguments.

8. The point for consideration is whether the appellant is entitled to the benefits conferred by the insurance policy?.

9. The facts which have been admitted and which do not require much discussion are that on 18.03.2009 the respondent insurance company had issued Life Insurance Policy for a sum assured of Rs.1,00,,000/- in favour of the appellants husband and the insured died on 10.07.2010. The appellant had lodged claim for payment of the sum assured under the policy.

10. The respondent -insurance company repudiated the claim on the premise that the insured suppressed the fact that he was suffering from Glioma. The appellants husband submitted proposal on 18.03.2009 that he was not suffering from any disease. The contention of the appellant is that her husband was hale and healthy and he did not suppress any fact relating to his health at the time of submitting the proposal.

11. The Medical Record of the Osmania General Hospital, Hyderabad would establish the insured suffering from Left Frontal Glioma(Tumour in left side of brain) and he was operated upon on 10.02.2005. The appellants husband was again admitted to the hospital on 17.09.2009 and he had undergone surgery for second time which was followed by chemotherapy and radiotherapy. Thus, it can be said that the insured had the knowledge of the disease and he had undergone treatment to get cured from the disease. He has answered in negative to the questions at column number 11 of the proposal form which read as under:

Personal History	Answer Yesor No
a) During the last five years did you consult a Medical Practitioner for and ailment requiring treatment for more than a week?	No

b) Have you ever been admitted to any hospital or nursing home for general check-up, observation, treatment or operation?	No
c) Have you remained absent from place of work on grounds of health during the last 5 years?	No
d) Are you suffering from or have you ever suffered from ailments pertaining to Liver, stomach, Heart, Lungs, Kidney, Brain or Nervous system?	No
e) Are you suffering from or have ever suffered from Diabetes, Tuberculosis, High Blood Pressure, Low Blood Pressure, Cancer, Epilepsy, Hernia, Hydrocele, Leprosy any other disease?	No
f) Do you have any bodily defect or deformity?	No
g) Did you ever have any accident or injury?	No

h) Do you use or have ever used alcoholic drinks, narcotics, Tobacco in any form or any other drugs?	No
i) What has been your usual state of heath?	Good
j) Have you ever received at present availing/undergoing, medical advice, treatment or tests in connection with hepatitis B or an AIDS related condition?	No

12. The learned counsel for the appellant has contended that the there is no direct evidence to show that the insured had undergone surgery at Osmania Hospital for treatment of brain tumor on 10.02.2005. The copies of case sheets dated 10.02.2005 and 17.09.2009 would amply prove the treatment administered to the deceased insured at Osmania General Hospital. The feeble plea of the appellant that the respondent had not produced chemical examination report to prove that the deceased suffered from Glioma is not sustainable. The contention that the insured died of cardio-respiratory arrest and not of Glioma does not hold water as the cardio-respiratory failure is the result of the insured suffering from Glioma and the treatment undergone therefor. In the case sheet it is mentioned:

It was old case of left frontal recurrent Glioma operated first (sic for time) on 10.02.2005 followed by radiotherapy and recent occurrence on 22.09.2011 followed by chemotherapy.13. The decision to repudiate the claim was taken by the respondent-insurance company based on the medical record . The appellant could not show how the order under appeal could be said to suffer from any infirmity.

14. Life Insurance Corporation of India vs M.Bhavani in R.P.No. 649 of 2005 reported in Legal Digest , October,(2009)233. is a case where the claim was rejected on the premise that the insured did not disclose that he was suffering from Malignant Brain Tumour at the time of renewal of the insurance policy. The National Commission held that:

The certificate issued by the Cancer Institute, Chennai clearly goes to show that the petitioner had undergone medical treatment for Malignant Brain Tumor in the year1993 and while, getting the policy revived in the year 1993 deceased suppressed the fact that he was suffering from Malignant Brain Tumor. Declaration given by him while getting the policy revived was false. Deceased was guilty of suppressing the pre-existing fatal disease from which he was suffering at the time of getting the policy revived. Suppression of pre-existing disease disentitles the claimant to the amount insured under the policy.

15. The medical record issued by Osmania General Hospital, Chennai clearly goes to show that the insured had undergone medical treatment for Malignant Brain Tumor in the year 2005 and 2009 and while, getting the policy revived in the year 1993 deceased suppressed the fact that he was suffering from Malignant Brain Tumor. Declaration submitted by him while getting the policy revived is devoid of truth. Deceased was guilty of suppressing the pre-existing fatal disease from which he was suffering at the time of getting the policy revived. Suppression of pre-existing disease disentitles the claimant to the amount insured under the policy.

16. The learned counsel for the respondent -insurance company has placed reliance upon the decision of the Honble Supreme Court in P.C.Chacko vs Life Insurance Corporation of India 2008(1)SCC 321 wherein the Supreme Court held:

The purpose for taking a policy of insurance is not, in our opinion, very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered. The proposer must show that his intention was bona fide. It must appear from the face of the record. In a case of this nature it was not necessary for the insurer to establish that the suppression was fraudulently made by the policy

holder or that he must have been aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose. A deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law.

17. In Satwant Kaur Sandhu vs New India Assurance Company Ltd IV(2009)CPJ 8(SC), the Apex Court considered the contract of insurance based on the principle of utmost good faith on the part of the assured to hold:

Thus it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for proposer to determine whether the information is sought for is material for the purpose of the policy or not.18. In the aforementioned decision the repudiation of the claim for non-disclosure of the material facts was held valid and sustainable. The facts of the aforementioned case and those of the present case are similar and as such the ratio laid down therein is applicable to the facts of the case. In the case on hand the insured was suffering from Left Frontal Caldoma and he had not revealed the disease he was suffering from and the treatment he had undergone therefor at the time of obtaining the insurance policy.

19. In the result, the appeal is dismissed confirming the order of the District Forum. No order as to costs.

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