

K. Chellathangam Vs. the Branch Manager, Lic of India and Another

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Jan-28-2011

Judge : Honourable Thiru Justice M. Thanikachalam President, Thiru J. Jayaram,
M.a., M.L., Judicial Member & Thiru S. Sambandam, B.SC., Member II

Appeal No. : F.A.606/2007 & CMP.1115/2010 [Against order in C.C.87/2006 on
the file of the DCDRF, Kanyakumari @ Nagercoil]

Appellant : K. Chellathangam

Respondent : The Branch Manager, Lic of India and Another

Judgement :

The appellant as complainant filed a complaint before the District Forum against the opposite parties praying for the direction to the opposite parties to release the assured amount of Rs.2,80,000/- with 6% interest from the date of claim and also a compensation of Rs.50,000/- for mental agony and sufferings The District Forum allowed the complaint, against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.30.04.2007 in C.C.87/2006.

This appeal coming before us for hearing finally on 18.01.2011 , upon hearing the arguments of the either counsels and perused the documents as well as the order of the District Forum, this commission made the following order:

M. THANIKACHALAM J, PRESIDENT

1. The complainant is the appellant.

2. The complainants wife by name Mrs.Santhakumari had taken four insurance policies with the opposite parties, for a total sum of rupees, assured Rs.2,80,000/-, wherein, she had nominated the complainant/husband, as her nominee.

3. The assured fell ill suddenly, admitted in the hospital and despite treatment, she died on 5.4.2005. As nominee and beneficiary under the policies, when a claim was made with the opposite parties, for the assured amount, that was denied/repudiated on false grounds, committing negligence as well as deficiency in service, causing mental agony also to the complainant. Thus, claiming a sum of Rs.2,80,000/- being the policies amount and further sum of Rs.50,000/- as compensation, the appellant/consumer knocked the doors of the District Forum, at Nagercoil.

4. The opposite parties, admitting the taking of four policies in the name of the complainants wife, whose husband was an agent of LIC, opposed the claim, contending that by suppressing the material facts with the help of the agent, who is the close relative of the complainant, they had taken insurance policies and upon the claim, investigation was conducted, revealed the suppression of material, affecting the terms and conditions of the policies, on which basis, the claim was repudiated justifiably, not to be called as negligent act or deficiency in service, thereby praying for the dismissal of the complaint, denying other averments also.

5. The District Forum considering the documents, relied on by the parties as well as the proximity of taking the policies and the disease suffered by the insured, came to the conclusion, that the assured had suppressed the material facts, at the time of giving the proposal, followed by taking policies and therefore, the repudiation was justifiable. In this view, the complaint came to be dismissed on 30.04.2007, which is challenged.

6. Before this Commission, CMP.1115/2010 was filed to receive some additional documents, as described therein, to improve the case of the complainant, which was opposed.

7. This case relates to four insurance policies, taken in the name of Mrs.Santhakumari and this case has nothing to do with the Writ Petition or the affidavits filed by the complainant and the counter affidavit filed by the respondents therein. Therefore, three documents related to those proceedings are irrelevant to decide the case. A Certificate, said to have been obtained on 11.09.2010, not even supported by affidavit is not admissible and that cannot be relied on as such and therefore, the document dated 11.09.2010, a Certificate issued by Alban Hospital, Attoor, is also not necessary to decide the case. As far as, the alleged Case Record is concerned, the same particulars are available in the records available on record and therefore, that document also need not be received as additional document. Hence, as rightly opposed, there is no question of receiving any additional evidence, which are irrelevant for the purpose of deciding the case. Hence, CMP.1115/2010 is dismissed.

8. The policies stood in the name of Mrs.Santhakumari are as follows:-

Sl.No.	Name	Policy No.	Date of Commencement	Sum Assured	Proposal No.	Date	Date of Maturity
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01.	G.Santhakumari	321519868;					
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			28.05.2004	Rs.30,000	1765	31.05.2004	28.05.2029
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02.		321891725;					
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			04.03.2005	Rs.75,000	14169	04.03.2005	04.03.2030
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03.		321894823;					
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			28.03.2005				
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				Rs.75,000	17471	30.03.2005	--
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04.		321893085;					
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			24.03.2005	Rs.1,00,000	15421	22.03.2005	---
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				Total	Rs.2,80,000		
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9. From the date of proposal and the from the date of taking policies, it is evident that within the same month, three policies were taken, that is in the month of March 2005 itself, totaling a sum of Rs.2,50,000/-. The previous policy was taken on 31.05.2004 and the sum assured was only Rs.30,000/-. The dates of the policies will take its important when we consider the allegations against the complainant and the agent, who was the cause for taking these policies, as well the paying capacity of the assured also.

10. In view of the admitted policies, ordinarily it is for the opposite parties to prove the suppression of material facts, affecting the terms and conditions of the policies, making it void. The learned counsel for the respondents/opposite parties urged before us, that the assured was suffering from acute renal failure, TB, Asthma etc., and suppressing the same with the help of the agent, suppressing the material facts, they had taken policies and in support of the same, aid is sought from the Medical Attendance Certificate. As seen from Ex.A8, it is the case of the opposite parties, that the assured was suffering from renal failure, for which, she had taken treatment, in a hospital. As seen from the proposal, the assured declared her health, as good and she has not disclosed about the treatment taken by her elsewhere, before the proposal or at the time of taking the policy. When a claim was made, the complainant has submitted Medical Attendance Certificate, which gives Primary Cause and Secondary Cause for death and the Primary Cause reads Acute Renal Failure, Secondary Cause reads Cardiac Failure. Acute renal failure will not occur within a day or two, it should have occurred spreading over many years. Therefore, we do not find any hesitation to conclude, based upon Ex.B8, as well as the investigation report that the assured has suppressed her health condition namely suffering from renal failure. If that had been disclosed, the acceptance of the policy or rejection may be different and the non-disclosure of the renal failure in the proposal, in our considered opinion, should be construed as suppression of material facts, on which ground, the claim was repudiated justifiably, not to be faulted.

11. The learned counsel for the opposite parties would urge further, that in one policy, the assured was described as labour and other policies, it is described as Tailore, which also should be construed as suppression of material facts, cannot

be disputed. As indicated above, within a month, three policies have been taken, and the paying capacity of the insured has to be ascertained. If, she had declared as Coolie or labourer, then the capacity to pay the amount may arise, resulting non-acceptance of the policy also. Thus, to avoid, falsely, profession was given, as if, she was a Tailore, which is not true. At the time of the proposal, as seen from the documents, the assured has to give the previous policies if any. When the assured has taken three policies in the month of April 2004, only one policy for Rs.30,000/- alone was mentioned and in the proposal forms, there is no mention about the previous policies, thereby indicating, wantonly, the previous policies were suppressed with an ulterior motive, knowing that the life of the assured was short and in order to have the benefit, or to unenrich the nominee by deceitful means, the Agent, who is the close relative of the complainant, and the complainant, who himself was the agent, should have taken these policies, suppressing the material facts, including the disease, suffered by the assured, profession, as well as the previous policies.

12. The submission of the learned counsel for the appellant/complainant, that the assured has not suppressed the material facts or the opposite parties has failed to prove the suppression of the material facts, is not acceptable to us in view of the glaring conduct of the ex-agent namely the complainant as well as taking three policies within a month, without disclosing the reasons, on what ground, the assured was compelled to take three policies in a month. If we read the Medical Attendance Certificate, coupled with the Investigation Report as well as the proximity of taking policies for higher amount, the irresistible conclusion should be, that wantonly material facts were suppressed and that vitiate the contract, as held by the National Commission in LIC of India and Anr. Vs. Kanchanbala Badu reported in III (2006) CPJ 386 [NC]. The District Forum considering all these facts, has rightly dismissed the complaint, which finding is required to be endorsed by us, concluding the appeal is devoid of merits.

13. In the result, the appeal is dismissed, confirming the order passed by the District Consumer Disputes Redressal Forum, Nagercoil, in C.C.87/2006, dated 30.04.2007. There will be no order as to cost in this appeal.