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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Apr-17-2008

Judge : Sri. M.V. Viswanathan: Judicial Member, Sri. S. Chandra Mohan Nair: Member

Appeal No. : APPEAL No. 978 of 03

Appellant : The Lic of India and Another

Respondent : Devasia

Judgement :

SRI. S. CHANDRA MOHAN NAIR : MEMBER

The opposite parties in OP No.760/1999 of CDRF, Kottayam are under orders to pay the claim of the petitioner with interest at 9% per annum from 26.3.1998 till the date of payment within 45 days from the date of order (ie., 17.10.2003) failing which the interest will be 12 % per annum instead of 9%. A sum of Rs.1,000/- is also ordered as costs. It is aggrieved by the above directions that the present appeal is filed by the opposite parties.

2. The case of the complainant bereft of unnecessary details is that the complainants son Benny Sebastian had taken two life insurance policies from the opposite parties for Rs.60,000/- and Rs.50,000/- on 17.7.96 vide two separate policies. The said Benny Sebastian died on 25.5.97 due to chronic renal failure

and consequent to the repudiation of the claim by the Insurance Company the complaint was filed praying for directions to pay the policy amount with interest, @ 18% per annum, compensation and cost.

3. In the version filed by the opposite parties it was admitted that the said Benny Sebastian had taken two insurance policies on 17.7.96 for the sums claimed by the complainant. But it was contented that the deceased Benny Sebastian had undergone treatment for Genito Urinary Tuberculosis 10 years back and the cause for death of the complainant was also related to the said disease and hence the claim was repudiated specifically on the ground of suppression of material facts by the insured at the time of taking policies. It was further submitted that the deceased was willfully suppressing the material fact of the treatment for the Genito Urinary Tuberculosis though in the proposal form there was a specific question to reveal whether he had suffered from Tuberculosis. The opposite parties submitted that there was no deficiency of service on their part and taking a humanitarian ground, the Review Committee examined the aspects of the claim and decided to pay a sum of Rs.55,000/- on an exgratia basis which the complainant did not accept.

4. The evidence consisted of the oral testimony of the mother of the insured as PW1 and two other persons as PW2 and 3 and documents A1 to A16. On the side of the opposite parties the Senior Divisional Manager, Kottayam was examined as DW1 and a doctor was examined as DW2 and the Proprietor Diagnostic Centre , Kottayam as DW3. Exts.B1 to B18 were marked to support the contentions of the opposite parties.

5. We heard the counsel for the appellant who submitted his arguments based on the contention taken in the version as well as the grounds urged in the memorandum of present appeal. The decision of the Honble Supreme Court in P.J.Chacko and another Vs Chairman, L.I.C.of India and others (2008 SAR Civil 44) was also relied on by learned counsel.

6. The learned counsel for the appellant vehemently argued before us that the order of the Forum below is arbitrary unsustainable and against the facts and evidence adduced in the case. It was reiterated that the insured had suppressed

the material fact of treatment for Tuberculosis undergone by him and that the opposite party could not be found fault with the repudiation of the claims made by the complainant as nominee of the diseased insured. It is also submitted by him that it was on humanitarian ground that Rs.55,000/- which is half of total insured amount was sanctioned by the Review Committee though the complainant was not eligible for any amount. It is incumbent on the insured to disclose all the facts relating to the questionnaire made in the proposal form and it is based on such answers and information in the proposal form that the opposite parties enter into a contract with the proposed persons. Section 45 of the Insurance Act justifies the insurer in repudiating a claim if the policy is taken by the insured suppressing the material facts. The learned counsel invited our attention to the decision in P.J.Chacko and another Vs Chairman, L.I.C. of India and others (2008 SAR Civil 44) where in the Honble Supreme Court has held that the insurer is justified in repudiating the claim of the policy holder which was taken suppressing the material facts. With regard to the disclosure of facts, the Honble Supreme Court had made mention of the issue in the decision in Ratan Lal and another Vs Metropolitan Insurance Co.Ltd, (AIR 1959 PAT 413) which is distinguished The well-settled law in the field of insurance is that contracts of insurance including the contracts of life assurance are contracts uberrima fides and every fact of materiality must be disclosed; otherwise there is good ground for rescission. And this duty to disclose continues up to the conclusion of the contract and covers any material alternation in the character of the risk which may take place between proposal and acceptance. On a perusal of Ext.B3 it is noted that in column 11 (e) there is a specific question. Are you suffering from or have you ever suffered from Diabetes, Tuberculosis, High Blood Pressure, Low Blood Pressure, Cancer, Epilepsy, Hernia, Hydrocele, Leprosy or any other disease and the deceased insured had answered No to the said query. It is also noted that the deceased himself had disclosed the fact of treatment for Genito Urinary Tuberculosis in Ext.B14 in column previous illness. It is stated that he had undergone treatment for Genito Urinary Tuberculosis 10 years back and in such a circumstance we are unable to find fault with the opposite parties in repudiating the claim of the complainant. However the opposite parties have taken a lenient view and have offered Rs.55,000/- to the legal heirs of the diseased insured.

7. The above discussions would clearly show that the opposite parties are not at fault in repudiating the claim. However the opposite parties have offered the sum of Rs.55,000/- and we direct them to give the amount within 2 months from the date of this order failing which the said sum shall carry interest at 9% per annum from the defaulted date till the date of payment.

In the result the appeal is allowed setting aside the order dated 17.10.03 of CDRF, Kottayam in OP No.760/99 with the direction to pay the offered sum of Rs.55.000/- within 2 months as indicated above. In the nature and circumstances of the case there is no order as to cost.

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