

Lic of India Vs. Chanderkala

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Apr-10-2008

Judge : J.D. Kapoor, President & the Honourable Ms. Justice Rumnita Mittal, Member

Appeal No. : Appeal No. A-407 of 2004

Appellant : Lic of India

Respondent : Chanderkala

Judgement :

J.D. Kapoor, President (Oral):

1. Admittedly the insurance claim of the respondent assured cover of life was repudiated by the appellant on the solitary ground that the assured had given his age 48 years in the proposal form whereas his age was 51 years. In our view this is hardly any ground of repudiating the claim.

2. However, this ground of repudiation did not find favour with the District Forum and as such vide impugned order dated 12th May, 2004 passed by the District Forum the appellant has been directed to pay Rs. 1 lac sum assured under the policy with interest @ 9% from the date of filing of complaint till the date of payment and Rs. 2,000 as cost of litigation. Feeling aggrieved the appellant has preferred this appeal.

3. Broad facts are more or less not in dispute. The plea was taken that the diseased/ insured had deliberately concealed/withheld material facts / information with regard to his habit of smoking and ailment besides his age and as such Clause 5 of the terms and conditions were invoked for rejection of the insurance policy. Clause 5 provides that in case the premium is not paid or in case any condition is contravened or it is found that any untrue or incorrect statement is contained in the proposal, personal statement, declaration and connected documents or any material information is withheld, then in every such case subject to provisions of Section 45 of the Insurance Act, 1938 wherever applicable, the policy shall be void.

4. So far as provisions of Section 45 of the Insurance Act are concerned these are invokable during the period of two years from the date of policy and not beyond that. As regards the allegations of concealment of age, it was rightly repelled by the District Forum as illegal plea as the deceased was not in possession of birth certificate having been born in village and merely because on ration card the age was mentioned 51 years does not mean that the deceased was 51 years old. Ages of illiterates and village folk are just mentioned an approximate age mainly by the officials. The observations of the District Forum as to the age of the deceased are as under:

The medical record produced by the OP is in the shape of discharge summary issued by Rajiv Gandhi Cancer Institute and Research Centre and it appears from the discharge summary that Sukhbir Singh was admitted in the hospital on 21.9.2001 and discharged on 22.9.2001. It further disclosed that he was suffering from cancer of pharynx but it does not appear from the said discharge summary as to what was the cause of the disease. There is no evidence to suggest that smoking led to the cancer of pharynx. The OP has also not led any evidence to show that the deceased was a smoker. Though along with affidavit, the OP has enclosed statement of two persons namely Praveen Kumar and Usha Lakra but the said statements cannot be looked into as they have not been properly proved. The OP has not filed affidavits of the said persons who had allegedly made statements with regard to the habit of smoking of the deceased. There is thus no legally admissible evidence suggesting that the diseased was a smoker and he

had suppressed this material fact while taking the policy. As regards the age of proposer, also there is no definite evidence relating to his age. The deceased had given his age as 48 years at the time of taking the policy and the OP has not provided any evidence to show that the deceased was older than what he stated in the proposal form. In support of his plea, reliance has been placed on the copy of the Ration Card of the OP that the deceased understated his age. In the Ration Card, the age of the deceased has been given as 51 years and the Ration Card was issued in the month of August, 1997. learned Counsel for the OP contended that the policy was taken after three years of the Ration Card, which clearly shows that the deceased made inaccurate statement with regard to his age and understated his age though he knew that he was 51 years of age three years ago. We have not been able to persuade ourselves to accept this argument. Age given in the ration card is not definite proof of age. It is also not clear as to who had disclosed this age while obtaining the ration card. It is common knowledge that when the rationing officer asks for age, any member of the family may give the age approximately and no proof of age is demanded. It, therefore, cannot be said that deceased was 51 years of age in 1997 when the Ration Card was issued. Since the OP is claiming that the deceased had understated his age, which was one of the grounds of rejection of the claim, the onus was on OP to have established with evidence the age of deceased. The OP failed to discharge the onus. We are, therefore, of the opinion that there is no material brought on record from which it can be inferred that the proposal had fraudulently suppressed material facts or made inaccurate statement while taking the policy. We are, therefore, of the firm view that the OP was not justified in repudiating legitimate claim of the complainant. We have perused the case law produced on behalf of the OP and we are of the opinion that the ratio of the orders / judgements on which the OP placed reliance is not applicable to the facts of the present case. Each of the cases was decided on the basis of peculiar facts and circumstances. On the other hand, there are plethora of judgments which supports our view and to name a few orders/ judgments reported in 2002 CCC 441 (NS), I (1998) CPJ 45 (NC), 1 (2203) CPJ 50 (NC) and II (2002) CPJ 319. The Honble Supreme Court in Civil Appeal Nos. 4186-87 of 1988, decided on 13.12.2000 and reported in AIR 2001 SC 549 has even gone to the extent of saying that mere inaccuracy or falsity in respect of

some recitals or items in the proposal is not sufficient for repudiation of the claim. The Honble Supreme Court further observed that the repudiation of claim by LIC merely on grounds that insured had not disclosed correct information regarding his health at time of effecting insurance with corporation is not proper. As we have noted above the OP has failed to establish that the proposer had concealed or suppressed material while taking the policy or that he understated his age. We, therefore, hold that the OP was in effort in repudiating the legitimate claim preferred by the complainant. Rejection of legitimate claim on flimsy and unsubstantiated grounds amounts to deficiency in service and we hold accordingly.

5. The findings of fact returned by the District Forum do not call for any interference.

6. Appeal is dismissed being devoid of merit.

7. F.D.R./Bank Guarantee, if any, furnished by the appellant be returned forthwith after completion of due formalities.

8. A copy of this order as per statutory requirements, be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to the Record Room.

Appeal dismissed.

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