

RESERVED

**State Consumer Disputes Redressal Commission
U.P., Lucknow.**

Appeal No. 1489 of 2003

- 1- Branch Manager, Life Insurance Corporation of India, Branch Office, Hardoi.
- 2- Divisional Manager, Life Insurance Corporation of India, Bareilly.
- 3- Life Insurance Corporation of India through its Manager Legal, Divisional Office, Jeevan Prakash, 30, Hazratganj, Lucknow. ..Appellants.

Versus

Sri Brajesh Kumar s/o Late Jai Rakhan Lal,
R/o Han Pasigawan, Post Office: Mahmoodpur
Saraiyya, District: Hardoi. ...Respondent.

Present:-

- 1- Hon'ble Sri A.K. Bose, Presiding Member.
- 2- Hon'ble Sri Sanjai Kumar, Member.

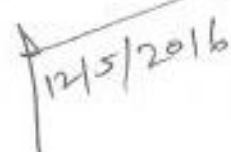
Sri Sanjai Jaiswal for the appellants.
Sri Neeraj Singh for the respondent.

Date /2 .5.2016

JUDGMENT

Sri A.K. Bose, Member- Aggrieved by the judgment and order dated 7.5.2003, passed by the Ld. DCDRF, Hardoi in complaint case No.95 of 2001, the appellant Life Insurance Corporation of India through its Branch Manager and 2 others have preferred the instant appeal under Section 15 of the Consumer Protection Act, 1986 (Act 68 of 1986) on the ground that the impugned order is arbitrary, perverse and is bad in the eye of law. It was delivered without proper appreciation of law and/or application of mind on the basis of surmises and conjectures and therefore, it has been prayed that the same


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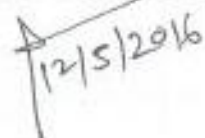
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be set aside in the interest of justice otherwise, the appellants will suffer irreparable financial loss.

From perusal of the records, it transpires that the father of the respondent/complainant late Shri Jai Rakhan Lal had a **Money Back Assurance Policy** (20 years) (with Accident Benefit) bearing no.221160765 under **Table and Term 75-20** for a sum assured Rs.50,000.00, the half-yearly premium of which was Rs.3,532.00. The date of proposal was 30.12.1996 but the policy commenced back datedly from 28.12.1996. The respondent/complainant Sri Brajesh Kumar, being son was named as nominee under Section 39 of the Insurance Act, 1938. The date of birth of the Policy Holder as per the Policy Bond was 20.12.1956 which was made on the basis of information given by the Policy Holder in the proposal form. From perusal of the records, it further transpires that the Policy Holder Shri Jai Rakhan Lal expired on 8.4.1999. Consequently, a claim was filed for payment of the amount under insurance. The claim was repudiated on 30.9.2000 on the ground of concealment of age in the proposal. It was contended that the insured had declared his date of birth as 20.12.1956 and also mentioned that he was about 40 years old in the proposal form whereas, the documentary evidence obtained by the appellants during the course of investigation indicate that he was 76 years old at that time. Had he declared his correct age in the proposal, the same would have certainly been rejected as the rules do not permit to accept such policies for persons of that age.

Aggrieved by this deficiency in service, complaint


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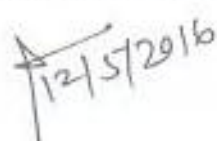
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case no.95 of 2001 was filed before the Id. DCDRF, Hardoi. The appellants filed their Written Statement before the Forum below in which they admitted the details mentioned in the Policy Bond. They also admitted the date of death of the Policy Holder. They, however, took the plea at para 12 of the Written Statement that the Policy Holder had incorrectly declared his date of birth as 20.12.1956 and that he was about 40 years old in the proposal form whereas, as per Register of Family (Pariwar Register), which is a public document, his year of birth was 1920 and therefore, he was about 76 years old at that time. It also took the plea at para 13 of the Written Statement that the second son of the insured Shri Khayali Ram obtained his B.A. Degree in the year 1976 and declared his date of birth as 22.3.1955. In this way, he was about 42 years old at the time of proposal dated 30.12.1996 which conclusively prove that his father Shri Jai Rakhani Lal (insured) could not be 40 years old at the time of proposal.

The Forum below, after hearing the parties and on the basis of facts, circumstances and evidence allowed the complaint and directed the appellants to pay the entire maturity value of the Policy in question with interest @ 9% from the date of filing the complaint i.e. 25.5.2001 till its full and final payment. Aggrieved by this judgment and order, the instant appeal has been preferred.

Heard the Id. counsel for the parties and have gone through the records in the light of their arguments. There is no dispute that the Policy-Holder late Shri Jai Rakhani


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Lal had **Money Back Assurance Policy** bearing no.221160765 for a sum assured Rs.50,000.00. The date of proposal was 30.12.1996. The Life Assured declared his date of birth as 20.12.1956 in the proposal form and also mentioned that he was about 40 years old at that time. There is no dispute that the Life Assured expired on 8.4.1999. Consequently, a claim was filed for payment of the amount under insurance. The claim was, however, repudiated on 30.9.2000 on ground of concealment of age in the proposal form.

In the backdrop of the aforesaid factual matrix, the **main question for determination** is whether the age of the Life Assured was 40 years as claimed by him in the proposal form or whether he was 76 years old as claimed by the insurer on the basis of public documents obtained by it during the course of investigation ?

We have given due consideration on all aspects of the matter. The photocopy of the Policy Bond is on record which shows that the date of birth of the Life Assured was 20.12.1956 and he was about 40 years at the time of filling up the proposal on 30.12.1996. The proposal form is also on record which shows that his date of birth was 20.12.1956 which corroborates the above factum. The insured also declared that his date of birth was 20.12.1956 in the declaration form 3260 dated 30.11.1996. He appeared before the Medical Officer of LIC on the same date. The Attending Medical Officer certified that he appeared to be 40 years of age. This observation of the Medical Officer can not be considered as a conclusive


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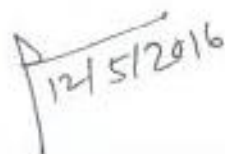

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evidence in view of the documentary evidence available on record. During the course of investigation, excerpts of Voter's list 1999 and Family Register of the Gram Panchayat Han Pasigawan, Tehsil, Shahbad were obtained by the insurer. The name of Shri Khyali s/o Shri Jai Rakhan Lal (insured) appears at serial number 551 of the Voter's list in which he was shown to be 47 years in the year 1999. Admittedly, Voter's List is also not a conclusive evidence and, therefore, we focused our attention to other evidence on record. The excerpts of Family Register of Gram Panchayat, Han Pasigawan shows that the year of birth of Shri Jai Rakhan Lal (insured) was 1920. The year of birth of his wife Smt. Mithana was 1922. The year of birth of his first son Shri Joddi was 1942 and the second son Shri Khyali was 1946. From perusal of the judgment dated 7.5.2003, it transpires that Shri Khyali obtained his B.A. Degree in the year 1976 and his date of birth was 22.3.1955. It may be observed here that Members of Gram Panchayat are public servant as per Section 21 (fifth) of Indian Penal Code, 1860. Furthermore, Section 35 of the Indian Evidence Act provides that:

"An entry in any public or other official book, register or record (or an electronic record), stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record (or an electronic record) is kept, is itself a relevant fact."


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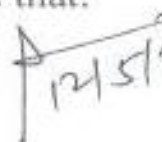
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Thus, Section 35 of the Evidence Act requires the following three conditions to be fulfilled before a document can be treated as admissible under it:

- (i) The document must be in the nature of an entry in any public or other official book, register or record.
- (ii) It must state a fact in issue or a relevant fact; and
- (iii) The entry must be made by a public servant in the discharge of his official duties.

In the instant matter, entries in the Family Register were made in discharge of official duties by Pradhan, Gram Panchayat who is a Public Servant. The entries relating to the age is a fact in issue or a relevant fact. Thus, the entries can not be ignored without any cogent evidence. It is a rebuttable evidence and no evidence was filed by the respondent/complaint in rebuttal in order to establish the fact that the entries in the Register were either incorrect or were inadmissible evidence. The respondent/complainant Shri Brajesh Kumar did not rebut the assertion that his brother Shri Khyali Ram obtained his B.A. Degree in the year 1976 and his date of birth was 22.3.1955. This categorically proves that the date of birth of his father could not be 20.12.1956. The son can not be older than the father. Thus, we are of the considered view that the Life Assured late Shri Jai Rakhan Lal concealed his actual age in the proposal form; and therefore, repudiation on this ground can not be treated as inappropriate. It has been held by the Hon'ble Apex Court in **Satwant Kaur Sandhu vs. New India Assurance Co. Ltd.**, IV(2009) CPJ 8 (SC), at para 12 that:



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"A contract of insurance falls in the category of contract of Uberrimae fidei meaning a contract of utmost good faith on the part of the insured. 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 the proposer to determine whether the information sought for is material for the purpose of the policy or not."

It was argued that had the insured declared his correct age in the proposal, his policy would not have been accepted as under rules such proposals can not be accepted after the maximum **entry age** of 50 years and maximum **premium ceasing age** of 70 years. In Revision Petition no.1935 of 2009, **Laxman Prasad Patel vs. LIC & Ors.**, Hon'ble National Commission relied upon the age mentioned in the Voter's List of Panchayat and passed orders accordingly. In the instant matter, as noted above, the Voter's List 1999 shows that the age of Shri Khyali s/o Jai Rakhan Lal was 47 years in the year 1999 therefore, his father (the insured) could not be 40 years in the year 1996. Shri Khyali obtained B.A. degree in the year 1976 and his date birth was 22.3.1995. He has certified in writing that he passed High School Examination in the year 1972 and his date of birth was 22.3.1955. He obtained his B.A. Degree in 1976. This factum has not been disputed. Besides this, the entries pertaining to the age mentioned in the Voter's List corroborates with the entries of Family Register of Gram Panchayat and


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therefore, these documents can not be ignored as non-admissible. The Forum below failed to give due consideration in this aspect of the matter and allowed the complaint without assigning any cogent reason. It erred in law and fact in not considering the documentary evidence and the settled principles of law laid down by the Hon'ble Appellate Court (supra) and therefore, the impugned judgment and order is liable to be set aside. Consequently, the appeal succeeds.

ORDER

The appeal is allowed and the judgment and order dated 7.5.2003, passed by the Ld. DCDRF, Hardoi in complaint case No.95 of 2001 is set aside. No order as to costs. Certified copy of the judgment be provided to the parties in accordance with rules.


12.5.2016.
(A.K. Bose)

Presiding Member

Jafri PA II
Court No.2


12/5/2016.
(Sanjai Kumar)
Member