

RESERVED

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

Appeal No. 1946 of 2008

Life Insurance Corporation of India through  
Senior Divisional Manager, Divisional Office,  
19-A, Tagore Town, Allahabad. ..Appellant.

Versus

Smt. Har Devi w/o Sri R.N. Trivedi, substituted in place of  
Smt. Sadhna Trivedi d/o Sri R.N. Trivedi, (since dead)  
R/o 157-G, T.V. Nagar, Karaily Scheme,  
Allahabad. ...Respondent.

Present:-

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

Sri Arvind Tilhari for the appellant.  
Sri A.K. Mishra for the respondent.

Date 20.5.2016

JUDGMENT

Sri A.K. Bose, Member- Aggrieved by the judgment and order dated 19.8.2008, passed by the Ld. DCDFR, Allahabad in complaint case No.167 of 2007, the appellant Life Insurance Corporation of India through its Senior Divisional Manager has 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 be set aside in the interest of justice otherwise, the appellant will suffer irreparable financial loss.


  
20.5.2016



(2)

During the pendency of the case, the respondent/complainant (Insured) Smt. Sadhna Trivedi expired and therefore, Smt. Har Devi w/o Sri R.N. Trivedi (Mother), being nominee, was substituted in her place. The ld. counsel for the parties, however, could not inform the Bench as to whether a claim on death of the insured has been filed or not; and if filed, what is the status of the same.

From perusal of the records, it transpires that the original respondent/complainant Smt. Sadhna Devi d/o Sri R.N. Trivedi was having **Asha Deep-II Policy with Profits (With Accident Benefit)** bearing no.310689876 under **Table and Term 121-25** for a sum assured Rs.1,00,000.00, the yearly premium of which was Rs.4,037.00. The policy commenced from 28.3.2000 was effective till 28.3.2025. Smt. Har Devi was made nominee under Section 39 of the Insurance Act, 1938. The records shows that the Life Assured had to undergo **Double Valve Replacement Surgery** during the period of effectiveness of the policy. The surgery was conducted at **Escorts Hospital and Research Centre Limited, Faridabad** on 4.11.2003 and she was discharged from the Hospital on 12.11.2003. Thereafter, a claim was filed for payment of Sickness benefits assured under the Policy but the same was repudiated in view of clause 11(b)(i) of the terms and conditions on the ground that **Double Valve Replacement** was not covered under it. Aggrieved by this colourful misuse of power and misfeasance in public office, complaint case no.167 of 2004 was filed before the Ld. DCDRF, Allahabad for redressal of her grievances.

  
2.5.2016



(3)

The Forum below, on the basis of facts, circumstances and documentary evidence on record held that the a **Double Valve Replacement Surgery**, underwent by the insured at Escorts Hospital, was an open heart by-pass surgery, performed on significantly narrowed/occluded coronary arteries to restore adequate blood supply to the heart and was, as such covered under clause 11(b)(i) of the terms and conditions of the Policy and therefore, it allowed the complaint on **19.8.2008** and directed the appellant LIC to pay the sickness benefits under the policy with pendentelite and future interest. It also directed the appellant to pay a sum of Rs.5,000.00 as compensation and Rs.1,000.00 as cost of litigation. The instant appeal has been preferred against the aforesaid order.

We have heard the parties and have gone through the evidence on record. It has been contended by the Id. counsel for the appellant that two types of benefits are assured under Asha Deep-II Policy i.e. (i) the sum assured with vested bonus on maturity or death and (ii) a significant benefit for certain ailment as mentioned under clause 11(b) of the policy. Clause 11(b)(i) provides that if the life assured undergoes open heart coronary artery bypass surgery performed on significantly narrowed/occluded coronary arteries to restore adequate blood supply to heart then only the Life Assured can be given sickness benefit. It was contended that since the ailment of the Life Assured was not covered under 11(b)(i) therefore,

  
20.5.2016.



the appellant Insurance Company refused to pay the amount under insurance. It, therefore, committed no deficiency in service in rejecting the claim.

On the other hand, it was contended by the ld. counsel for the respondent/complainant that the Discharge Summary issued by the Escorts Hospital indicates that the surgery was performed for **Double Valve Replacement (Medtronic No.27 Mitral & No.20 Aortic)** which involves the valves as well as the arteries for restoring blood supply in the Heart. She had no history of CVA/PND/Orthopnoea/Haematemesis/Malena. She also did not have any past history of TB/Hypertension/Diabetes Mellitus or any other significant Medical or Surgical history and was also not having any known drug allergy. It was also argued that Open Heart Surgery means or signifies any type of surgery where the chest is cut open and surgical intervention is done on the muscles, valves or arteries of the Heart. The surgical procedure conducted on the insured involved replacement of valves which are connected to the arteries. The surgical intervention did not fall under the exclusion clause and therefore, the repudiation was most inappropriate and unfortunate and certainly amounted to misfeasance in public office.

In the backdrop of above, the **question for determination** is:

Whether the Double Valve Replacement Surgery performed at Escorts Hospital on the Life Assured was covered under Clause 11(b)(i) of the terms and conditions or not?

  
20.5.2016



(5)

If it is found that aforesaid surgery was not an Open Heart By-pass Surgery performed on significantly narrowed/ occluded coronary arteries to restore adequate blood supply to heart then nothing further is required to be done and the appeal has to be allowed.

There is no dispute that clause 11(b) of the terms and conditions of the Policy under Table and Term 121-25 provides that benefit under the Policy Schedule was available on the occurrence of any of the following contingencies. (i) the life assured undergoes open heart bypass surgery performed on significantly narrowed/ occluded coronary arteries to restore adequate blood supply to heart and the surgery must have been proven to be necessary by means of coronary angiography. All other operations (e.g. Angioplasty and Thrombolysis by Coronary Artery Chatheterization) are specially excluded. The Hospital records, issued by the Escorts Hospital show that **Double Valve Replacement (Medtronic No.27 Mitral & No.20 Aortic)** was performed on the insured. She was <sup>u</sup>~~E~~nglycemic (Hyper in Sulinemic clamp meaning a normal blood sugar level) and **Normotensive** (which means normal blood pressure) at the time of the admission and had no history of CVA/PND/Orthopnoca/ Haematemesis or Malena. She had no past history of TB, Hypertension or Diabetes Mellitus. There was no other significant medical or surgical history or any known drug allergy. The blood Test indicated Hb was 11.8 gm%, TLC 7.2000 cells/cmm, DLC P62 L31M1 E6 B0, ESR 13mm. RBS 110mg%, Platelet count  $1.8 \times 10^6$  /cu mm, S.

  
20.5.2016.



(6)

Bilirubin (total) 0.9 mg/dl, S. Bilirubin (direct) 0.3 mg/dl, S. Total Proteins 7.2 g/dl, S. Albumin 4.6 g/dl, S. Globulin 2.6 g/dl, A/G Ratio 1.77. There was no abnormality in the blood. The final diagnosis was **Rheumatic Heart Disease, Severe MR, Moderate AR, Atrial Fibrillation** and therefore, surgical intervention was undertaken for Double valve replacement (Medtronic No.27 Mitral & No.20 Aortic). Thus, it is clear that the patient/insured was having four major problems at the time to her admission the Hospital which required immediate medical/surgical intervention. She was having **Rheumatic Heart Disease** which is a group of short-term (acute) and long-term (chronic) heart disorders that can occur as a result of rheumatic fever. One common result of rheumatic fever is heart valve damage. This damage to the heart valves may lead to a valve disorder. She was also having **Severe MR**. Mitral Regurgitation happens where blood leaks back through the mitral valve in the heart as it fails to close down properly. This increases the pressure in the left atrium and in the blood vessels coming from the lungs. This may lead to various problems and symptoms depending on the severity to the leak. She was also having **Moderate AR** (Aortic Regurgitation) which is always an emergency and requires Urgent Surgical intervention. The insured was also having **Artial Fibrillation**. Atrial Fibrillation is an abnormal heart rhythm characterized by rapid and irregular beating. It often with brief periods of abnormal beating. The periods become longer and possibly constant over the time. The disease increases the

  
20.5.2016



risk of heart failure, dementia and stroke. Apart from this, the Life Assured had no other apparent health problem. Her PFT Report showed moderately severe (reversible) airway obstruction with small airway obstruction FVC is also moderately reduced. **Pulmonary Function Test (PFT)** is a broad range of tests that measure how well the lungs take in and exhale air i.e. how well it works. The **Forced Vital Capacity (FVC)** is the amount of air which can be forcibly exhaled from the lungs after taking the deepest breath possible. FVC is used to help determine both the presence and severity of lung diseases. From perusal of the Hospital records it also transpires that the operative procedure followed was **Double Valve Replacement (Medtronic No.27 Mitral & No.20 Aortic)**. **Double Valve Replacement (Medtronic No.27 Mitral & No.20 Aortic)** is a replacement of both the **mitral** and the **aortic** valve or the entire left side of the heart. This type of surgery is not as common as the others and the mortality rate is higher than other types of surgery. It may be observed here that there are four valves in the heart viz. Mitral, Tricuspid, Aortic and Pulmonic. The aortic valve is located between the left ventricle (Lower heart pumping chamber) and the Aorta, which is the longest artery in the body. Valves maintain one way blood flow through the heart. In the matter in hand, both the **Mitral** and **Aortic** Valves were replaced by way of open heart surgical intervention. Mitral Valve prolapse is a common cause of a heart murmur caused by a "leaky" heart valve. Most cases of mitral valve prolapse are not serious and only

  
20.5.2016.



need to be monitored whereas the Aortic valve is a valve in the human heart between the left ventricle and aorta. It is one of the two semilunar valves of the heart, the other being the pulmonary valve. The valves are responsible for allowing nutrient rich blood to flow through the chambers of the heart. Each valve is supposed to close completely after ushering the blood flow. Diseased heart valves are unable to perform properly and therefore, require replacement. The replacement of the valves in the matter in hand was done as Aortic regurgitation is always an emergency as observed above. Since benefit under clause 11(b) of the terms and conditions could be given for Open Heart Surgery subject to certain **exclusions**, therefore, in the backdrop of the above discussions, we are required to ascertain whether the Double Valve Replacement could be done without open heart surgery and whether the surgery falls under the exclusion clause or not ? An open heart surgery is any type of surgery where the chest is cut open and surgery is performed on the muscles, valves or arteries of the heart. A Bypass Surgery means to replace **damaged arteries** in the heart. This surgery is used when coronary arteries get blocked or when plaque builds up on the walls of the arteries resulting in less blood flow in the heart muscle. Consequently, the heart fails due to inadequate blood supply. By-pass Surgery is performed only when coronary arteries become so narrowed or blocked to warrant a risk of fatal heart attack. In the instant matter, the surgical intervention was for replacement of two major

  
20-5-2016





(9)

valves and such procedure is conducted always in emergency and involves valves, arteries and muscles of the Heart.

The Id. counsel for the appellant submitted ruling laid down in **Life Insurance Corporation of India vs. Abdul Salim, I(2012) COJ 31 (NC)** and argued that the terms of the policy have to be construed as it is and nothing can be added or subtracted. He also cited ruling laid down by the Hon'ble National Commission in **Revision Petition no.1254 of 2006, National Insurance Co. Ltd. vs. Ms. Mohini** and argued that repudiation order was passed keeping in mind the **exclusion clause** as the disease was not covered under clause 11(b) (i) in view of the terms and conditions of the Policy. We have given due consideration on this aspect of the matter and have gone through the impugned judgment in the light of the same. The Id. Forum below dealt with the matter within the four corners of the terms and conditions of the policy. In fact, it is the inappropriateness of the repudiation which is in question. We have also gone through the ruling laid down by the Hon'ble National Commission in **Life Insurance Corporation of India & Ors. vs. Jyotindra R. Nhavsar, II (2009) CPJ 226 (NC)** which has been filed by the Id. counsel for the respondent.

From the discussions made herein above, it is absolutely clear that Double Valve Replacement undergone by the insured in Escorts Hospital falls under the category of Open Heart Surgery and was not covered under exclusion clause and therefore, the repudiation of

  
20.5.2016



(10)

the claim was bad in the eye of law and amounted to misfeasance in public office. The Forum below dealt with the matter at length and allowed the complaint. It directed the appellant LIC to pay Sickness benefits in accordance with terms and conditions of the Policy with pendentelite and future interest @ 8% p.a. There is no irregularity or illegality in the same and therefore, there is no scope for any interference in it. As such, we are not inclined to interfere in it. The appeal, being meritless, is liable to be dismissed with costs.

**ORDER**

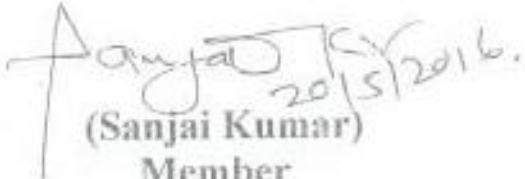
The appeal is dismissed with costs and the judgment and order dated 19.8.2008, passed by the Ld. DCDRF, Allahabad in complaint case No.167 of 2007 is confirmed. Certified copy of the judgment be provided to the parties in accordance with rules.



(A.K. Bose)

**Presiding Member**

Jafri PA II  
Court No.2



(Sanjai Kumar)

**Member**