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RESERVED

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW**

APPEAL NO. 2520/2015

(Against the judgment/order dated 23-09-2015 in Complaint
Case No. 121/2014 of the District Consumer Forum, Amroha)

Kotak Mahindra Old Life Insurance Ltd.
7th floor, Kotak Infiniti Building No.21
Infinity Park
Off W.E. Highway General A K Vaidya Marg
Malad East, Mumbai-400097

...Appellant

V/s

Allaudin alias Ajauddin
S/o Gaffur
R/o Village Nandnaur Maafi
Tehsil Dhanura, Post Kamelpur
District Amroha

...Respondent

BEFORE:

**HON'BLE MR. JUSTICE AKHTAR HUSAIN KHAN, PRESIDENT
HON'BLE MRS. BAL KUMARI, MEMBER**

For the Appellant : Mr. Shikhar Srivastava, Advocate.

For the Respondent : Sri A K Pandey, Advocate.

Dated : 08-09-2016

JUDGMENT

PER MR. JUSTICE AKHTAR HUSAIN KHAN, PRESIDENT

Present appeal has been filed under Section-15 of the Consumer Protection Act 1986 against judgment and order dated 23-09-2015 passed by District Consumer Forum, Amroha in Complaint Case No.121/2014 Allaudin alias Ajauddin V/s Kotak Mahindra Old Mutual Life Insurance Limited whereby the District Consumer Forum has allowed above complaint partially and has ordered opposite party to pay insured amount of Rs.5,04,000/- to the complainant with interest @ 8% per annum from the date of complaint till date of actual payment. The District Consumer Forum has further ordered opposite party to pay Rs.2,000/- as compensation for



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mental harassment as well as Rs.4,000/- as cost of the case.

Appeal has been filed by opposite party Kotak Mahindra Old Mutual Life Insurance Limited whereas complainant is respondent in this appeal.

During course of hearing a preliminary objection was raised by learned Counsel for the respondent that the appeal has been filed after expiry of limitation but it has been admitted without affording opportunity of hearing to respondent on condonation of delay application.

We have considered the preliminary objection raised by learned Counsel for the respondent.

Perusal of record as well as office report shows that appeal was filed after expiry of limitation but vide order dated 08-12-2015 the Commission has admitted appeal absolutely. In order dated 08-12-2015 no specific order has been passed for the condonation of delay but the admission of appeal itself shows that the Commission has condoned delay of appeal.

In view of proposition laid down by Hon'ble Apex court in the case of Rajeev Hitendra Pathak and others V/s Achyut Kashi Nath Karekak and another reported in IV(2011) CPJ 35(SC) as well as provisions of the Consumer Protection Act 1986, this Commission has no power to review or recall its earlier order. As such, we proceeded to hear appeal on merits.

We have heard learned Counsel for the parties and have gone through the impugned judgment and order passed by District Consumer Forum as well as records of the case.

It has been contended by learned Counsel for the appellant that the insurance policy was obtained by wife of respondent/complainant by making false statement about her health and income. She had concealed her disease in proposal form and had given false statement about her annual income. As such, appellant Insurance Company has rightly declined the claim of respondent/complainant.

It has been further contended by learned Counsel for the appellant that impugned judgment and order passed by District Consumer Forum is against law and evidence. The District Consumer Forum has committed error in allowing complaint and awarding insured amount as well as compensation to the respondent/complainant.



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Learned Counsel for the respondent/complainant has opposed appeal.

It has been contended by learned Counsel for the respondent/complainant that the wife of respondent/complainant Smt. Tabunisha aged about 45 years was hale and hearty. She obtained insurance policy No. 02650367 after having paid premium of Rs.24,794/-. The policy was effective from 21-12-2012. Thereafter on 02-05-2014 she died suddenly.

It has been further contended by learned Counsel for the respondent/complainant that respondent/complainant is nominee of his wife insured Smt. Tabunisha and he is entitled to receive insured amount.

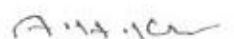
It has been contended by learned Counsel for the respondent/complainant that appellant has wrongly declined claim of respondent/complainant and the District Consumer Forum has rightly allowed the claim of respondent/complainant. The impugned judgment and order passed by the District Consumer Forum is in accordance with law and evidence.

It has been contended by learned Counsel for the respondent/complainant that Smt. Tabunisha wife of complainant/respondent has not made any false representation about her health and income at the time of proposal.

We have considered the submissions made by learned Counsel for the parties.

Perusal of impugned judgment and order passed by District Consumer Forum shows that the District Consumer Forum has considered the grounds alleged by appellant Insurance Company for declining the claim of respondent/complainant. The District Consumer Forum has mentioned in its impugned judgment and order that insured Smt. Tabunisha wife of respondent/complainant had given three proposals for insurance policies of appellant Insurance Company respectively on 21-12-2012, 31-12-2012, 23-01-2013 and she had deposited aggregate amount of Rs.49,598/- as premium for the said three policies. Therefore, it cannot be said that insured Smt. Tabunisha had no sufficient income for payment of insurance policies of





appellant. In impugned judgment and order the District Consumer Forum has mentioned that paper no.39Ga/2 certificate of Village Pradhan produced by complainant shows that annual income of joint family of respondent/complainant is Rs.2,25,000/- whereas Ration Card shows income of head of the family only. The District Consumer Forum has further observed that the appellant Insurance Company had verified the income of insured and was satisfied that she had sufficient means to make payment of premium of insurance policies. The appellant Insurance Company cannot decline the claim of insured amount made by respondent/complainant on the ground that the insured Smt. Tabunisha had given her false annual income. The finding recorded by District Consumer Forum on this issue cannot be said to be against law and evidence.

Perusal of impugned judgment passed by the District Consumer Forum shows that appellant Insurance Company has filed paper no. 22Ga certificate issued by Supdt. CHC, Dhanoura before District Consumer Forum. This certificate has been issued on the basis of records of CHC and it has been certified that on 07-07-2012 Smt. Tabunisha was brought to this CHC. After necessary check-up and investigation on 09-07-2012 it was confirmed that she had been suffering with TB and thereafter she remained under treatment for six months.

Perusal of impugned judgment and award passed by the District Consumer Forum shows that appellant has produced paper no. 24Ga before the District Consumer Forum which is a certificate issued by Dr. Mahesh Chandra in which it has been certified by Dr. Mahesh Kumar that Smt. Tabunisha has died on 02-05-2014 due to disease of TB. In impugned judgment and order the District Consumer Forum has mentioned that respondent/complainant has filed paper no. 29Ga/4 affidavit of Dr. Mahesh Kumar in which he has denied the certificate 24Ga allegedly issued by him. The District Consumer Forum has not given any reason to disbelieve certificate of Supdt. of CHC, Dhanoura in which it has been certified that Smt. Tabunisha was suffering from TB and she had been under treatment of said CHC for six months. Alongwith written arguments the respondent/

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complainant has filed a certificate issued by CHC, Dhanoura in which it has been certified that Smt. Tabunisha was under treatment of said CHC from 09-07-2012 till 09-01-2013 but she had taken full treatment and was diagnosed cured. Thus it is an admitted fact that Smt. Tabunisha was suffering from T.B. and was under treatment of above C.H.C. from 09-07-2012 to 09-01-2013 for said disease.

Questionnaire clause 11(1) of proposal form reads as follows:-

11(1) Have you ever suffered from, received/receiving treatment or advice for any of the following conditions, diseases or impairments?

(a).....

(b).....

(c).....

(d) Any respiratory diseases/disorders like asthma, bronchitis, pulmonary TB, lung ailment etc. This question has been answered in negative by proposer Smt. Tabunisha. The proposal has been signed by insured Smt. Tabunisha. Therefore, it shall be deemed that she has signed it knowingly.

Thus, it is apparent that in proposal form she had concealed her disease of TB for which she was under treatment of CHC, Dhanoura for six months before filling proposal form. Therefore, it is obvious that she had concealed truth and has made a false declaration about her disease in proposal form.

At this juncture, it is relevant to mention that admittedly insured Smt. Tabunisha had obtained three insurance policies of appellant within a period of 32 days making aggregate payment of Rs.49,598/- for said three policies. Even if Rs.2,25,000/- alleged annual income of her joint family is accepted, taking of three insurance policies after having paid Rs.49,598/- in a short period of 32 days compels us to infer something abnormal and unfair.

In view of discussion made above we are of the view that insured Smt. Tabunisha had deliberately concealed her disease in proposal form and obtained insurance policy by making false declaration.

In the case of L.I.C. of India V/s Aasha Goel (2001) 2 S.C.C. 160 the





Honourable Apex Court has observed that the contracts of insurance including the contract of life insurance are contracts uberrima fides and every material fact must be disclosed otherwise there is a good ground for rescission of the contract.

In the case of Life Insurance Corporation of India and others V/s Neeta Bhardwaj reported in I(2014) CPJ 409 NC the Hon'ble National Commission has held that it is immaterial whether cause of death has any nexus with the disease suffered and suppressed by the insured.

In view of above, we are of the view that there is sufficient ground to repudiate insurance policy of Smt. Tabunisha and appellant Insurance Company has rightly declined claim of complainant/respondent. The District Consumer Forum has committed error in accepting claim of complainant/respondent. The complaint filed by respondent/complainant should be dismissed with cost.

Appeal is allowed accordingly. Impugned judgment and order passed by District Consumer Forum is set aside and complaint filed by respondent/complainant is dismissed with cost of Rs.5,000/- liable to be paid by respondent/complainant to appellant/opposite party.

The amount deposited under Section-15 of the Consumer Protection Act 1986 in this appeal shall be refunded to the appellant Kotak Mahindra Old Life Insurance Ltd. alongwith interest accrued if any.

Let copy of this order be made available to the parties within 15 days positively as per rules.

A. H. Khan
(JUSTICE A H KHAN)
PRESIDENT 8/9/2016
Bal Kumari
08/09/2016
(SMT. BAL KUMARI)
MEMBER