

RESERVED

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

**Appeal No. 68 of 2010**

- 1- Life Insurance Corporation of India through  
Divisional Manager, Divisional Office, 35-D,  
Rampur Bagh, P.S. Kotwali, Bareilly.
- 2- Branch Manager, Life Insurance Corporation  
of India, City Branch No.1, 35-D, Rampur Bagh,  
P.S. Kotwali, District: Bareilly. **...Appellants.**

**Versus**

- 1- Smt. Pushpa Jaiswal aged about 51 years,  
Wife of late Sri Om Prakash Jaiswal.
  - 2- Manoj Kumar Jaiswal aged about 34 years,  
S/o late Sri Om Prakash Jaiswal.
  - 3- Vivek Kumar Jaiswal aged about 34 years,  
S/o late Sri Om Prakash Jaiswal.
- All no. 1 to 3 resident of 72-A, Nawada Shekhan,  
Old City, Bareilly, presently resident of 5, Green Park  
Colony, Pilibheet Bypass Road, P.S. Baradari,  
Bareilly. **....Respondents.**

Present:-

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

Sri V.S. Bisaria for the appellants.  
Sri A.K. Misra for the respondents.

Date 2<sup>nd</sup> 3.2016

**JUDGMENT**

**Sri A.K. Bose, Member-** Aggrieved by the judgment and order dated 8.12.2009, passed by the Ld. DCDRF-I, Bareilly in complaint case No.222 of 2008, the appellants Life Insurance Corporation of India through Divisional Manager and another 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

  
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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 appellants will suffer irreparable financial loss.

From the perusal of the records, it transpires that the husband of the respondent/complainant no.1 Sri Om Prakash Jaiswal had a life insurance policy **Endowment Assurance with Profits plus Accident Benefit** bearing no.221907629 under **Table & Term 14-22** for a sum assured **Rs.10,00,000.00 (Rs. Ten Lacs)**, the yearly premium of which was **Rs.62,535.00**. The proposal for the insurance was submitted on **30.12.2002** and it commenced from **28.1.2003**. The respondent/complainant no.1 Smt. Pushpa Jaiswal, being wife was made nominee.

The records further show that the life assured Sri Om Prakash Jaiswal expired on **4.2.2005** at Devaki Hospital, Chennai due to **Cardiac Respiratory Arrest, secondary to Recurrent Intracerebral Haemorrhage with raised Intracranial Pressure and Chronic Renal Failure with end stage Renal Disease**. The Death Certificate issued by the Hospital dated **4.2.2005** is on record. It has been alleged in the complaint that the insured had no history of previous ailment. After death of the insured, the nominee and her children filed a claim for payment of the amount under insurance.

The claim was, however, repudiated on **29.9.2006** on ground that the life insured had concealed the fact that he

  
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was a patient of Chronic Renal Disease for more than 4 years with **Diabetes Mellitus** for 18 years and long **Standing Hypertension** in the proposal form. Had he declared these diseases in the proposal form then his policy would certainly not have been accepted.

Aggrieved by this repudiation, complaint case no.222 of 2008 was filed before the Ld. DCDRF-I, Bareilly for redressal of their grievances.

The Forum below, after hearing both the parties, partly allowed the complaint and directed the appellant Corporation to pay the insured amount of Rs.10 lakhs with Bonus within a period of one month, failing which it was directed to pay interest @ 9% p.a. from 29.9.2006 on the entire decretal amount. The appellants were also directed to pay a sum of Rs.5,000.00 as compensation and Rs.2,000.00 as cost of litigation to the respondents/complainants. Aggrieved by this judgment and order, the instant appeal has been preferred.

Heard both the parties and have gone through the evidence on record.

**During the course of arguments, the Ld. Counsel for the appellant LIC submitted that the records of the claim-case was misplaced from the office of the Life Insurance Corporation and therefore, some documents pertaining to the claim could not be produced before the Forum below or at the appellate stage. This factum has not been challenged.**

There is no dispute that the life assured Sri Om Prakash Jaiswal obtained an **Endowment Assurance** with

  
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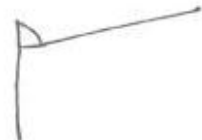
**Profits plus Accident Benefit** Policy bearing no.221907629 on 30.12.2002 under **Table & Term 14-22** for a sum assured Rs.10,00,000.00. The policy commenced from 28.1.2003 although the Bond was accepted on 6.2.2003 by the authorized signatory of the appellant Corporation. There is no dispute also that the life assured expired on 4.2.2005 in Devaki Hospital, Chennai due to **Intracranial Pressure and Chronic Renal Failure with end stage Renal Disease**. Since it was a matter of early claim, therefore, an investigation was conducted and certain documents were obtained from the Hospital concerned. The Discharge Summary of Devaki Hospital revealed that the life assured was admitted in the Hospital on 27.12.2004 with a complaint of **High Grade Fever with Rigor Cough with Mucoid**. The history of ailment revealed that he was suffering from long standing **Diabetes Mellitus** for 18 years, **Hypertension** and **Chronic Renal** disease from more than 4 years and was on maintenance **Haemodialysis** since August, 2004. The **CT Scan Report** dated 18.1.2004 submitted by Bharat Scans, Chennai on reference of Dr.C.M. Thiagarajan, indicated that the insured was a known case of **CRF and Haemodialysis**. The **Multi Slice CT-Brain** revealed impression of **Large subdural collection probably haemorrhage in right frontal, temporoparietal and occipital region with mass effect**. Details of the effect of the ailment were dealt with in detail, in the body of the C.T. Scan Report. The Post Surgery CT Scan Report dated

  
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**26.1.2005**, submitted by Bharat Scans (on reference from Dr. U. Sridhar of Devaki Hospital) revealed **Residual/recurrent Subdural Haematoma in Right Fronto-temporal Region with minimal midline shift**. This report further shows that the patient was initially admitted in the Hospital on **27.12.2004** and was discharged on **2.1.2005**. However, other documents prove that he was under treatment in the same Hospital prior and subsequent to this period. The **Death Certificate** dated **4.2.2005** shows that he expired in the Hospital on that date at 3.45 pm. As discussed earlier, documents relating to subsequent admission (after 2.1.2005) is not available on record as, admittedly those papers have been misplaced in the office of the Corporation. The Medical Attendant's Certificate in Claim in Form-B proves that the insured was also suffering from Diabetes and Hypertension for more than 18 years and was admitted in the Hospital on 27.12.2004. His end stage Renal Disease was detected in the year 2000 and he was under Haemodialysis since August, 2004. The patient expired on 4.2.2005 due to Cardiac Respiratory Arrest and Renal Failure. **Cardiac Respiratory Arrest** is cessation of normal breathing due to failure of the lungs to function effectively. A respiratory arrest is different from a cardiac arrest where the heart muscles fail to contract and can also be the result of prolonged apnea. Respiratory arrest prevents delivery of oxygen to the body. Lack of oxygen to the brain causes loss of consciousness. Respiratory arrest is a medical

  
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emergency that in certain situations is potentially reversible, if treated early. The **Cerebral Haemorrhage** is a type of intracranial haemorrhage that occurs within the brain tissues. It is alternatively called Intra-Cerebral Haemorrhage. It can be caused by brain trauma and can occur spontaneously in haemorrhagic stroke. Non-Traumatic Intracerebral Haemorrhage is a spontaneous bleeding into the brain tissues and may be caused by increased exertion, tension or stress. **Intra-Cranial Pressure (ICP)** is the pressure inside the skull and thus in the brain tissues and cerebro-spinal fluid (CSF). Thus, it is clear that a patient can suffer **Cardiac Respiratory Arrest, secondary to Recurrent Intracerebral Hemorrhage with raised Intracranial Pressure** due to many reasons other than chronic Renal Problem. The hospital records further reveal that the patient was also suffering from **Diabetes and Hypertension** for 18 years and was having **End Stage Renal Disease** since 2002 and was under Dialysis since August, 2004. The genuineness of these Hospital records have not been disputed. **End Stage Renal Disease** is a medical condition in which the kidneys fail to adequately filter waste products from the blood. The two main forms are: Acute Kidney Disease which is often reversible with adequate treatment and Chronic Kidney Disease which is often not reversible. In both cases, there is usually an underlying cause. Kidney failure is mainly determined by a decrease in glomerular filtration rate which is the rate at which blood is filtered in the glomeruli of the kidney. The condition is detected by a

  
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decrease in or absence of urine production or determination of waste products (creatinine or urea) in the blood. Depending on the cause, hematuria (blood loss in the urine) and proteinuria (protein loss in the urine) may be noted. In kidney failure, there may be problems with increased fluid in the body (leading to swelling), increased acid levels, raised levels of potassium, decreased level of calcium, increased levels of phosphate, and in later stages anemia. Bone health may also be affected. Long-term kidney problems are associated with an increased risk of cardiovascular disease. These symptoms do not surface all of a sudden. Thus, it will be clear that long term kidney problems are associated with an increased risk of cardiovascular disease and in the instant case, the patient expired due to **Cardiac Respiratory Arrest, secondary to Recurrent Intracerebral Hemorrhage with raised Intracranial Pressure and Chronic Renal Failure with End Stage Renal Disease**. All these diseases are found to be inter related and, therefore, repudiation on the basis of these documents appear to be appropriate. It has been held in **United India Insurance Co. Ltd. vs. Kanta Gupta, I (2012) CPJ 442 (NC)** at para 8 that

**"it is a well known fact that a person cannot suddenly develop diabetes mellitus and Chronic Renal Failure in a short period of time."**

The hospital records show that the patient was admitted in the Hospital on 27.12.2004. He was suffering from Diabetes Mellitus and Hypertension for more than 18

  
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years at that time. The proposal form was submitted on 30.12.2002 and, therefore, it is clear that he deliberately concealed his previous ailments in the proposal. It has been held by the Hon'ble National Commission in **LIC of India vs. Shahida Khatoon & Anr., IV(2013) CPJ 370 (NC)** that non-disclosure of history of Diabetes in the proposal amounts to suppression of material fact. The above observation of the Hon'ble National Commission was based on the ruling laid down by the Hon'ble Apex Court in **Satwant Kaur Sandhu vs. New India Assurance Co. Ltd., IV (2009) CPJ 8 (SC), P.C. Chacko & Anr. vs LIC of India, III(2008) CPJ 78 (SC), LIC of India vs. Smt. Asha Goyal, I(2001) SLT 89.** Similarly, in **United India Insurance Co. Ltd. vs. Biman Krishna Bose, 11(1995) CPJ 62,** it has been held that non-disclosure of Hypertension in the proposal form also amounts to suppression of material information. In the instant matter, the life assured suppressed information regarding his previous ailments in the proposal form.

It has been argued on behalf of the respondent/complainant that the insured was not aware about his previous ailment. Besides this, the questions asked to him were not relevant for the purposes of policy and the medical certificate have not been proved by the Attending Doctor and, therefore, it will not be appropriate to rely upon them. We have given due consideration on all these facts. It has been held by the Hon'ble National Commission in **Pushpa Chauhan vs. LIC of India, II (2011) CPJ 44 (NC)** that evidence of the Doctor who

  
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issued Medical Attendant Certificate and Hospital Treatment Certificate is not required. Similarly, it has been held in **Satwant Kaur Sandhu's** case (supra) that it is not for the proposer to determine whether the information sought for is material for the purposes of policy or not? A mere denial of knowledge relating to previous ailments can not be treated as correct in view of the seriousness of the ailments and documents available on record. The Forum below failed to deal with the matter appropriately. It ignored the CT Scan Report, Medical Attendant's Certificate, Death Certificate and the Hospital records and delivered the judgment on the basis of surmises and conjectures and, therefore, cannot be allowed to sustain. Consequently, the appeal deserves to be allowed. The repudiation was made on the basis of cogent documentary evidence. There is no irregularity, illegality or impropriety in it.

**ORDER**

The appeal is allowed and the judgment and order dated 8.12.2009, passed by the Ld. DCDRF-I, Bareilly in complaint case No.222 of 2008 is set aside. No order as to costs. Certified copy of the judgment be provided to the parties in accordance with rules.

  
(A.K. Bose) 2/3/2016.

**Presiding Member**

  
(Sanjai Kumar) 2/3/2016.  
Member