

A.F.R.

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

COMPLAINT NO. 25 OF 2008

Vijay Pal Singh
S/o Late Sri Sardar Singh
R/o B-134, Lohiya Nagar
Tehsil/District - Ghaziabad

...Complainant

Vs.

01. Regional Manager
Regional Office
Life Insurance Corporation of India
Kanpur.

02. Divisional Manager
Life Insurance Corporation of India
Divisional Office
Prabhat Nagar, Saket, Meerut.

03. Branch Manager
Life Insurance Corporation of India
Branch Office No.1, Model Town
Ghaziabad
Tehsil/District Ghaziabad.

...Opposite Parties

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. ASHOK KUMAR CHAUDHARY, MEMBER

For the Complainant : Sri A K Pandey, Advocate.

For the Opposite Party : Sri V S Bisaria, Advocate.

Dated : 19.09.13

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

Sri Vijay Pal Singh the complainant filed this complaint seeking the relief that the opposite party be directed to pay the claim on the



policies in the name of the deceased son of the complainant to the tune of Rs.26,00,000/- alongwith 10% interest from the date of death of his son till the payment is made. A sum of Rs.1,50,000/- towards mental and physical agony and further a sum of Rs.20,000/- towards the economic loss is also claimed by the complainant in this complaint.

Briefly stated the facts of the complaint are that Sri Anil Kumar the deceased son of the complainant Sri Vijay Pal Singh was having four policies on his life. The details of the Policies are as under.

1. Policy No. 254243993 dated 28-04-2006 for a sum of Rs.12,00,000/-
2. Policy No. 253721300 dated 28-06-2005 for a sum of Rs.4,00,000/-.
3. Policy No. 252860717 dated 02-04-2003 for a sum of Rs.5,00,000/-.
4. Policy No. 253176933 dated 02-04-2003 for a sum of Rs.5,00,000/-.

Thus the aforesaid policies to the tune of Rs.26,00,000/- were issued in favour of Sri Anil Kumar by the opposite party. Sri Anil Kumar died on 31-07-2006 in a car accident. The information of the accident was sent to the police on 31-07-2006. The complainant is the nominee of his son in all the aforesaid policies. He put in the claim of the policies before the opposite party on 06-09-2006. Despite various reminders and the applications seeking information for payment by the opposite party, no information was given to the opposite party by the complainant nor the claim of the complainant was disposed of by the opposite party. Therefore, the complainant was forced to come before this Commission



by way of this complaint.

The opposite party thereby filing the written statement did not deny the factum of the death of Sri Anil Kumar. The submission of the claim before the opposite party by the complainant has also not been denied. The death claim under two policies bearing no. 254243993 and 253721300 were repudiated due to concealment of policies earlier taken by the deceased from private insurance companies at the time of proposals of both these policies while under the two other policy's claims were admitted and the amount have been paid in full and final settlement to the complainant. Since the death claims arising out of the policies involved heavy amount on the life assured having died in a car accident and the car was said having caught fire and the body of the deceased was completely burnt therefore investigation took a lot of time. The proposals for policy issued in favour of the deceased were accepted on the basis of answers given to each and every question contained in each of the proposal and declaration contained therein. Since the deceased had concealed the material facts of the policies of insurance earlier taken by him from other insurance companies i.e. H.D.F.C. Term Insurance Plan Policy No. 10155018 for a sum assured of Rs.13,00,000/-, H.D.F.C. Endowment Plan Policy No. 10154482 for a sum of Rs.7,00,000/- on 04-01-2005 and TATA AIG Life Insurance Company Limited covering of risk to the tune of Rs.4,00,000/- under application dated 02-08-2005, therefore, the claim of the complainant was repudiated.

The complainant filed his affidavit in support of his complaint annexed therewith the copy of insurance policies, inquest report of the police pertaining to the death of Sri Anil Kumar, copy of general diary



dated 31-07-2006 of the Police Station concerned, death certificate of Sri Anil Kumar, postmortem report pertaining to deceased Sri Anil Kumar and various notices and applications sent by the complainant to the opposite party with proof of their registry.

In support of the facts in written statement the opposite party filed the affidavit of Sri Krishna Bihari Lal, Administrative Officer (Law), L.I.C. Divisional Office, Lucknow annexing the copies of four policies on the life of deceased Sri Anil Kumar.

We have heard Sri A K Pandey, learned Counsel for the complainant and Sri V S Bisaria, learned Counsel for the opposite party.

The entire facts and circumstances, as are aforesaid, revealed that merely one question is to be decided in this case as to whether the non-disclosure of earlier policies by the complainant at the time of taking the subsequent policies from the opposite party amounts to concealment of material facts empowering the opposite party insurer to repudiate the claim of the complainant insured.

As per contentions of learned Counsel for the complainant that non-disclosure of policies taken from the H.D.F.C. Standard Life Insurance in the month of April, 2003 and in the month of August, 2005 at the time of taking the policies bearing no. 253721300 on 21-06-2005 and 254243993 dated 28-04-2006 from the opposite party is a material fact justifying the repudiation of the above mentioned policies by the opposite party as is the law laid down by Hon'ble NCDRC in the matter of Dinesh Bhai Chandarana and another V/s Life Insurance Corporation and another reported in III(2010) CPJ 358(NC) in which it is held that non-disclosure of details of last policy by the deceased is a material fact



in proposal form for last policy not a bonafide inadvertence as the contract of life insurance is based on principle of uberrima fide on part of life assured and the insurer may be well within its rights to repudiate the claim under last policy. It is also contended on behalf of the opposite party that the insurer is not liable to pay any interest as the investigation took time, as the death claim arising out of the policies involved heavy amount and the life assured having died in a car accident and the car had caught fire wherein the body of the deceased was completely burnt. It is further contended that after the payment of two policies of Rs.5,00,000/- each, the complaint was left with the claim of Rs.17,20,000/- which is the pecuniary jurisdiction of the District Consumer Forum and not of the State Commission.

Learned Counsel for the complainant taking recourse of the following citations completely rebutted the contentions of the learned Counsel for the opposite party thereby stating that despite the fact that the complainant had already disclosed the earlier policies to the agent who have not mentioned this fact deliberately or inadvertently in the proposal form, even if for the sake of argument taking it granted that the earlier policies were not disclosed, the non-disclosure of earlier policies is not a material fact empowering the insurer to repudiate the claim of the complainant.

1. 1996(2) CPC (SC) Page-18 B V Nagaraju V/s M/s. Oriental Insurance Company Limited.
2. III(2011) CPJ 373(NC) Life Insurance Corporation of India V/s Shahida Begum.
3. 2004(3). T.A.C. 943(P&H) Life Insurance Corporation of India V/s Narinder Kaur Batra and others.

A perusal of the aforesaid citations the position of law, as is held



by the Hon'ble Supreme Court in the case of Sikandia, is that when the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obedience to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is supported by Carter's Breach of Contract vide paragraph 251.

Non-disclosure of previous policies has not been held fatal by the Hon'ble N.C.D.R.C. as is held in the case of Shahida Begum (Supra) stating therein that by not disclosing earlier policies the contention regarding escaped special medical examination is not acceptable. It is fundamental principal of insurance law that utmost good faith must be observed by the contacting parties and good faith forbids either parties from non-disclosure of the facts which the parties know. The assured has a duty to disclose and similarly it is the duty of the Insurance Company and its agent to disclose all material facts in their knowledge since obligation of good faith applies to both equally, as the law laid down by the Hon'ble Supreme Court in the case of M/s. Modern Insulators Ltd. V/s Oriental Insurance Co. Ltd. reported in I(2000) CPJ 1(SC).




The insurer cannot repudiate the liability by showing some inaccuracy or falsity of statement nor it can avoid the liability for immaterial misrepresentation or for material misrepresentation which had no bearing on the risk. Similarly mere non-disclosure of some immaterial facts would not per-se give right to rescission. In other words, a misrepresentation would not ipsofacto and be a ground available to the aggrieved party to avoid the contract unless it is found that consent of opposite party was secured by practicing some deception. Thus on every misrepresentation or concealment of a fact, a contract cannot be avoided merely on trival and inconsequential misstatement or non-disclosure, is the law laid down by the Hon'ble Supreme Court in the case of Bhasgani Bai V/s LIC reported in AIR 1984 SC 125.

Non-disclosure of earlier four policies and particularly fourth one, wherein assured was asked to part with extra premium on account of his being overweight is held not material by the Hon'ble High Court of Punjab and Haryana as is held in the case of Narinder Kaur Batra (Supra). Unless suppression of material facts deter L.I.C. to enter into contract, such non-disclosure would not be material.

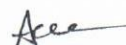
Here in this case before us, neither the opposite party disclosed that suppression of two polices earlier taken by the complainant under what circumstances was deterrent for the opposite party to allow the subsequent policies, nor we have come across any of the material fact on record that non-disclosure of earlier polices by the deceased at the time of taking the policies in question has any adverse impact on the rights of the insurer for issuance of the policies. Hence concealment of earlier policies either accidentally or inadvertently or even deliberately is not a



fact to be held a material fact for repudiation of a claim, unless it is proved that non-disclosure of such fact had an impact adverse on the rights of the insurer. Since there is no record of any such adverse impact on the rights of the insurer, we do not find any substance in the contentions of the opposite parties in this regard.

So far as the question of jurisdiction of this Commission is concerned as is contended on behalf of the opposite parties that after the payment of two policies of Rs.5,00,000/- each, the complaint is merely left for a claim of Rs.17,20,000/- which is the pecuniary jurisdiction of the District Consumer Forum and not of the State Commission, we are not convinced with the contention of the learned Counsel for the opposite party because the perusal of the complaint shows that the claim was filed by the complainant before this Commission to the tune of Rs.26,00,000/- the aggregate amount of the policies and the payment of two policies of Rs.5,00,000/- each to the complainant has been made by the opposite party during the course of pendency of this complaint before this Commission, therefore, the contention regarding jurisdiction of this Commission has no force. During the pendency of the complaint the payment made by the opposite party to the complainant may be a fact that it should not be allowed to the complainant but this fact cannot be taken into account that the complaint of the complainant was merely for Rs.17,20,000/-. Hence this Commission has jurisdiction to decide the complaint.

So far as the question of claim of the claimant to the tune of Rs.1,00,000/- in respect to the mental agony is concerned, since we do find it expedient that the appropriate interest to the tune of 9% per annum




should be allowed to the complainant on a sum due to him against the opposite parties, therefore, the compensation for mental agony is not worth allowed. However, a sum of Rs.10,000/- is allowable to the complainant for legal expenses as against the claim of Rs.20,000/- in the complaint.

ORDER

The complaint is hereby allowed. The opposite parties are directed to pay a sum of Rs. 16,00,000/- (Rupees Sixteen lacs only) in lieu of the policy nos. 253721300 and 254243993 alongwith interest @ 9% per annum from the date of filing the complaint i.e. 23-05-2008 till the date of payment. A sum of Rs.10,000/- (Rupees Ten thousand only) shall also be payable to the complainant by the opposite parties towards the litigation charges.

Let copy of this order be made available to the parties as per rules.


(JUSTICE VIRENDRA SINGH)
PRESIDENT ✓


(ASHOK KUMAR CHAUDHARY)
MEMBER