NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2049 OF 2017

(Against the Order dated 07/03/2017 in Appeal No. 871/2015 of the State Commission Haryana)

1. SUBHASH KUMAR
S/O. BHAGWAT CHAUHAN R/O. VPO ATTERNA, TEHSIL AND
DISTRICT-SONIPAT
HARYANA-131023 .....Petitioner(s)

Versus

1. BRANCH MANAGER, BAJAJ ALLIANZE LIFE INSURANCE CO. LTD. & ANR.
HAVING ITS OFFICE AT 2ND FLOOR, PAWAN MEGA MALL, ATLAS ROAD,
SONEPAT-131001
HARYANA
2. BAJAJ ALLIANZE LIFE INSURANCE CO. LTD.,
THROUGH ITS MANAGER/DM, HAVING ITS HEAD OFFICE AT GE PLAZA 3FLOOR, AIRPORT, YERAWADA,
PUNE
MAHARAHSTRA .....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE PETITIONER : FOR THE PETITIONER : MS.RICHA SHARMA, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENTS : MS. SHWETA SINGH PARIHAR, ADVOCATE

Dated : 01 May 2024

ORDER

1. The present Revision Petition has been filed by the Petitioner under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 07.03.2017, passed by the learned Haryana State Consumer Disputes Redressal Commission, Panchkula, ('the State Commission') in First Appeal No. 871/2015 wherein the State Commission allowed the Appeal filed by the Respondents/OPs against the order dated 05.08.2015 passed by the learned District Consumer Disputes Redressal Forum, Sonipat, ('the District Forum') wherein the District Forum had allowed the complaint filed by the Petitioner/Complainant.

2. As per the office report, there is 10 days delay in filing this Revision Petition. For the reasons stated in I.A. No.9635 of 2017, the delay is condoned.

3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

4. Brief facts of the case, as per the Complainant, are that he filed the death claim of the two policies of his wife (deceased life insured- DLI), after her death on 01.03.2013 for maturity sum assured Rs.2.5 Lakh each. However, the OPs repudiated the claim on the grounds non-disclosure of treatments taken. Aggrieved, he filed a complaint seeking directions to OPs to pay the claim with interest @ 18% per annum from the date of claim till the actual realization along with Rs.2 Lakh compensation on account of mental harassment, pain and agony together with Rs.50,000/- as litigation expenses.

5. In reply, the Respondents/OPs admitted the issue of policies and receipt of the claim and contended that, while taking the policy, the deceased life insured (DLI) had hidden material information about her disease and treatment and deliberately did not disclose the facts of her ailment. This amounted to suppression of material facts and giving misstatements with ulterior intention to obtain the insurance policies. The OPs came to know during investigation that the DLI was a patient of Acute Gastroenteritis with Septicemia with Shock with Cerebrovascular Accident CVA (Old) as per Discharge Summary Sheet of Jaipur Golden Hospital and had taken treatment, prior to date of filing up the proposal form. Hence, the OP rightly repudiated the claim for non-disclosure of the material facts in the proposal form of the policy. The decision to repudiate the claim was taken in good faith and based on an inquiry. This being a considered repudiation, no deficiency is involved.

6. The learned District Forum vide Order dated 05.08.2015 allowed the complaint and granted the following relief:-

> ***"In our view, the disease for which the deceased has taken the treatment, cannot be said to be the chronic disease and these are very common, normal and routine manner disease. It is very strange that the respondents no.1 and 2 have repudiated the claim of the complainant on the routine manner disease, whereas he was entitled for the claim amount of the policies in question. Accordingly, we allow the present complaint with the directions to the make the payment of Rs. 2,50,000/- each qua policy no. 282217167 and 282219325 and the said amount is directed to be paid to the complainant along with interest at the rate of 09% per annum from the date of filing of the present complaint till realization and further to compensate the complainant to the tune of Rs. 2000/- (Rs. Two thousands) for rendering deficient services, for harassment and further to pay Rs. 2000/- (Rs. Two thousands) under the head of litigation expenses."***

7. Being aggrieved by the Order of the learned District Forum, the OPs filed First Appeal No.871 of 2015 and the State Commission vide order dated 07.03.2017 allowed the Appeal and dismissed the complaint filed by the Complainant with the following observations:

"4. The question for consideration before this Commission as to whether the Insurance Company was justified in repudiating complainants' claim or not?

5. The insured purchased two insurance policies on September 24th , 2012. Prior to the purchase of the insurance policies, Insured was a patient of Acute Gastroenteritis with Septicaemia with Shock with Cerebrovascular Accident CVA (Old) as is evident from Discharge Summary Sheet (Annexure A-1) of Jaipur Golden Hospital, New Delhi.

6. It is a well settled proposition of law that a contract of insurance is based on the principle of utmost good faith uberrimae fidei, applicable to both the parties. The rule of non-disclosure of material facts vitiating a policy still holds the field. The bargaining position of the parties in a contract of insurance is unequal. The insured knows all the facts, the insurer is unaware of anything which may be material to the risk. Very often, it is the insured who is the sole person who has this knowledge. The insurer may not even have the means to find out facts which would materially affect the risk. The law, therefore, enjoins on the insured an absolute duty to disclose correctly all material facts which are within his personal knowledge or which he ought to have known had he made reasonable inquiries. A contract of insurance, therefore, can be repudiated for non-disclosure of "material facts."

7. In Mithoo Lal V. Life Insurance Corporation of India, AIR 1962 Supreme Court 814, Hon'ble Apex Court held as under:-

"Contract of life insurance entered into as a result of fraudulent suppression of material facts by policy holder- Policy is vitiated and person holding assignment of policy cannot claim benefit of contract. ……"

8. Hon'ble Apex Court in Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd. - (2000) 2 SCC 734 held as under:-

"It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and the good faith forbids either party from

non- disclosure of the facts which the parties know. …….”

9. In Revision Petition No.967 of 2008, Life Insurance Corporation of India versus Smt. Neelam Sharma, decided on Commission September 30, 2014, Hon'ble National observed as under:-

“8. In Satwant Kaur Sandhu VS New India Assurance Company Ltd. (2009) 8 SCC 316, it has been observed by the Supreme Court that the expression “material fact” is to be understood in general terms to mean as any fact which would influence the judgment of a prudent Insurer, in deciding whether to accept the risk or not. If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Any inaccurate answer will entitle the Insurer to repudiate their liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance, which is based on the principle of utmost faith -uberrima fides. Good faith forbids either party from non-disclosure of the facts which the party privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. (See: United India Insurance Co. Ltd. Vs. M.K.J. Corporation [(1996) 6 SCC 428]. It has also been emphasized that it is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known."

"11. Having given our anxious consideration to the material on record, we are of the opinion that the answers given by the Insured in the proposal form were untrue to his knowledge. There was clear suppression of "material facts" in regard to the health of the Insured. It was not for the Insured to determine whether the information sought for in the aforesaid questionnaire was material for the purpose of the two policies.

10. On the aforesaid facts and principles enunciated, the right to claim insurance benefits by the complainant does not survive having reference to Discharge Summary Sheet (Annexure A-1) issued by Jaipur Golden Hospital, New Delhi. Thus, it stands established to the hilt that the insured was suffering from Acute Gastroenteritis with Septicaemia with Shock with Cerebrovascular Accident CVA (Old), prior to the purchase of the Insurance Policies and she suppressed this fact. Thus, the District Forum fell in error in allowing the complaint and as such the impugned order cannot be allowed to sustain. The appeal is accepted, the impugned order is set aside and the complaint is dismissed.”

8. Being dissatisfied by the Impugned Order dated 07.03.2017 passed by the State Commission, the Petitioner / Complainant has filed the instant Revision Petition bearing no.2049 of 2017.

9. I have examined the pleadings and other associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

10. The case of the Petitioner revolves around the rejection of a death claim under a life insurance policy. The petitioner, who is the nominee of the deceased policyholder, contended that the claim was wrongfully repudiated by the insurance company and asserted that the deceased Insured never concealed any material facts. Therefore, the Respondents/Insurance Company's repudiation is unjustified. He cited various legal precedents to support his case, emphasizing that the State Commission has failed to consider the basic premise of the life insurance policy and should not be arbitrary. He sought due settlement of the claim and uphold the order of the District Forum.

11. On the other hand, the contentions and arguments of the Respondents/OPs revolve around the assertion that his claim was rightly repudiated due to non-disclosure of material facts at the time of taking the insurance policy. The Respondents/OPs relied on certain legal precedents to assert that the proposer has a duty to disclose pre-existing ailments health condition to the insurer.

12. It is a matter of record that the deceased had obtained life insurance policies and the Complainant filed the death claim of the two policies of his wife - deceased life insured – (DLI), after her death on 01.03.2013 of maturity sum assured Rs.2.5 Lakh each. However, the OPs repudiated the claim for failing to disclose the medical treatments as required. Hence, he filed complaint seeking directions to the OPs to pay maturity sum assured Rs.5 Lakh along with compensation and interest on account of unreasonable delay and mental harassment. It is an admitted position that the insured was suffering certain ailments and had not disclosed these material facts at the time of taking the insurance policies. The DLI did not disclose the medical conditions while filling the proposal and obtained the policies. The Respondents/OPs asserted that the contract for life insurance is based on utmost good faith and the insured was bound to clearly bring out all prescribed details, including his medical condition. However, he failed to do so. Hon'ble Supreme Court *in* ***Bajaj Allianz Life Insurance Company Ltd. v. Dalbir Kaur, 2020 SCC OnLine SC 848*** decided on 09.10.2020 has held that:-

"A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk."

13. Similar view was taken by the Hon'ble Supreme Court in ***Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175*** decided on 24.11.2019 wherein it was held that suppression of the facts made in proposal form will render Insurance Policy voidable by the Insurer. A Division Bench of the Mysore High Court in VK Srinivasa Setty Vs M/s Premier Life and General Insurance Co Ltd which is cited with approval by the Hon'ble Supreme Court in this case:

31. Finally, the argument of the respondent that the signatures of the assured on the form were taken without explaining the details cannot be accepted. A similar argument was correctly rejected in a decision of a Division Bench of the Mysore High Court in VK Srinivasa Setty v Messers Premier Life and General Insurance Co Ltd21 where it was held:

— Now it is clear that a person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequence arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it. That is because, in filling up the proposal form, the agent normally, ceases to act as agent of the insurer but becomes the agent of the insured and no agent can be assumed to have authority from the insurer to write the answers in the proposal form.

- If an agent nevertheless does that, he becomes merely the amanuensis of the insured, and his knowledge of the untruth or inaccuracy of any statement contained in the form of proposal does not become the knowledge of the insurer.

14. In the present case, it is the contention of the Petitioner that the deceased insured was covered under the life insurance policies from 24.09.2012 for maturity sum assured Rs.2.5 Lakh each. However, the insured died on 01.03.2013. It is also an admitted position that the insured was diagnosed various ailments and had undergone treatment for same before taking the insurance policy in question. While the Complainant asserted that the deceased insured did not conceal about the previous illness, however, the proposal form filled by the deceased insured reveals that he had not mentioned any previous illness.

15. Based on the aforesaid discussions and the precedents established by the Hon'ble Supreme Court, I am of the considered view that the Order of the State Commission dated 07.03.2017 does not suffer from any infirmity which warrants the interference of this Commission in revisional jurisdiction. The Revision Petition No.2049 of 2017 is, therefore, **dismissed**.

16. There is no order as to costs. All pending Applications, if any, stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER