

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1725 OF 2016

1. NIRMALA DEVI

W/o. Nirmala Devi, R/o. Near Idea Tower, Chau Ki Basti, Line

Par,

MORADABAD - 244 001.

U.P.

.....Complainant(s)

Versus

1. RELIANCE LIFE INSURANCE COM

Reliance Life Family, Through Its Ombudsman/Manager, Regd

Office: H-Block, 1st Floor, Dhirubhai Ambani Knowledge City,

Navi,

MUMBAI -400 710.

MAHARASHTRA.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR. HIRANDRA KUMAR, ADVOCATE

FOR THE OPP. PARTY : MR. PRAVEEN MAHAJAN, ADVOCATE

Dated : 08 August 2023

ORDER

1. This Consumer Complaint under section 21 (a) (i) of the Consumer Protection Act, 1986 (in short, 'the Act') alleges deficiency in service in denying a claim under the life insurance policy issued by the Opposite Party in respect of the deceased son of the Complainant, who is the mother and nominee of the Policy Holder.

2. Briefly stated, the facts are that the Deceased Life Assured (DLA), Vijay Kumar S/o. Mr. Babulal Verma, held a Life Insurance Policy No. 52392026 dated 14.10.2015 issued by the Opposite Party for a sum of Rs.1,00,00,000/-. The benefit payable was Rs.1,00,00,000/- or 10 times the annualised premium or 105% of the premium paid as on date of death excluding extra premium, if any, in case of death. The Policy was issued after a medical fitness examination conducted by the Opposite Party. The DLA who was an employee of the Oriental Bank of Commerce met with a road accident on 27.10.2015, while driving a two wheeler, when he was found lying injured on the road in an unconscious state due to head injuries. He was taken to Government Hospital and was provided first aid at Government Hospital, Karnal followed by admission to Arvinda Hospital, Karnal and subsequently, shifted to Medanta Hospital, Gurgaon where he expired on 09.11.2015.

3. The Insurance Company was informed on 15.12.2015 and a claim of insurance was submitted by the Complainant, as the nominee of the DLA. Following investigations, since the claim was filed within the two year period from the date of issue of the policy, opposite party vide letter dated 07.05.2016 informed that the claim could not be considered on the ground that the DLA had not disclosed the fact that he had met with an accident one year prior to obtaining the policy in the proposal form and had suffered a concussion injury to the head and had, therefore, misled the Opposite Party to grant insurance cover in the said policy. The Complaint was repudiated in terms of section 45 of the Insurance Act, 1938.

4. The Complainant has alleged deficiency in service on part of the Opposite Party and submitted that the deceased was also covered by other policies of the Life Insurance Corporation of India (LIC) and his accidental death claim has been settled by the LIC without any objection. It is submitted that since the DLA had paid required premium, the nominee was entitled to receive the benefit of the policy. The Complainant is, therefore, before this Commission with the prayer that the Opposite party pay the complainant as the nominee of the DLA Rs.2,00,00,000/- for his accidental death, Rs.50,000/- for harassment and cost of Rs.51,000/- towards litigation charges along with any other relief deemed fit.

5. The complaint was resisted by way of filing of a Written Statement by the Opposite Party. The grounds contended are that (a) the policy was a contract of insurance based on *uberrimae fidei* ('utmost good faith') on the part of DLA who had withheld disclosure of material facts with regard to an concussion accident suffered by him one year prior to the policy in which he suffered a concussion injury in the head; (b) the claim was preferred within one month and seven days from the commencing of the policy and, therefore, under section 45 of the Insurance Act, 1938, the Opposite Party was mandated to investigate the genuineness of the claim; (c) the DLA's past medical history of head injury due to road accident one year prior to the policy was a material fact that had not been disclosed in the proposal form and (d) under regulation 2(1)(d) of the Insurance Regulatory and Development Authority (Protection of Policy Holders Interests') Regulations, 2002, the proposal form for a policy required disclosure of all important, essential and relevant information in the context of underwriting the risk to be covered. It was submitted that the complainant had inflated the claim for accidental death since the policy did not provide for Rs.2 crores in case of accidental death but was only for Rs.1 crore for death. Therefore, the claim of Rs.2,00,00,000/- was false and frivolous.

6. The Opposite Party argued that the claim was rightly repudiated under section 45 of the Insurance Act, 1938 and that there was no deficiency in service. According to the Opposite Party, a "nominee" under the Life Insurance Policy was not a beneficiary and hence the

Complainant is not a 'consumer' under the Act. It is also stated that as per the certificate of Dr. Vineet Bhai of Arvind Hospital certifying the admission of the DLA in the Hospital from 31.07.2014 to 01.08.2016 for head concussion injury and prescription of various medications and advised rest for 10 days along with leave record from Oriental Bank of Commerce, where it was certified that the DLA had taken sick leave from 31.07.2014 to 09.08.2014 which was evidence that the DLA had a previous history of head injury. It is, therefore, argued that the policy has been rightly repudiated and that the complaint be dismissed with costs.

7. Parties filed their evidence. Complainant filed rejoinder to the Written Statement filed by the Opposite Party reiterating her submissions. Both the parties filed their written synopsis of arguments. I have heard learned Counsel for both the parties and carefully considered the material on record.

8. Learned Counsel for the Complainant argued that the policy had been approved by the Opposite Party, after medical examination by doctors in its panel. The repudiation of the claim was on the grounds that the previous head injuries had not been disclosed in the proposal form and was stated to be not relevant to the repudiation, since an FIR had been lodged with regard to the accident in the Police Station, Civil Lines, Karnal (Haryana). It is argued that a claim of Rs.2,00,00,000/- for accidental death claim had been filed in error as under the scheme the entitlement was of Rs.1,00,00,000/- along with damages and costs which should be considered. It was also contended that leave for 10 days taken by the DLA from 31.07.2014 to 09.08.2014 was not for medical reasons.

9. Learned Counsel for the Respondent contended that since the Insurance cover was only for Rs.1,00,00,000/-, the claim of Rs.2,00,00,000/- for accident-cum-death benefit filed by the Complainant as the nominee of the DLA was not maintainable as she was not a 'consumer' under the Act, and therefore, the complaint was not maintainable on this preliminary ground. On merits, it was argued that the claim of the DLA was repudiated since investigation was mandated under section 45 of the Insurance Act, 1938 as the claim was within two years of the policy during the course of which it had come to light that the DLA had met with an accident head injury on 27.10.2015. According to the opposite party, the non-disclosure of this fact by the DLA in the Proposal Form to the Opposite party constitutes withholding of material information for which reason the policy had been repudiated. In this regard, opposite part relied upon the judgment of the Hon'ble Supreme Court in *Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.* CA No.2776 of 2002 decided on 10-07-2009. Reliance was also placed on the records of the DLA's admission in hospital for the previous head injury and the leave record of the DLA obtained from his employers as proof that the DLA had met with an accident and the material facts had not been disclosed.

10. From a perusal of the record and the submissions and consideration of the submissions of the learned Counsel, it is apparent that Sh. Vijay Kumar, the DLA, expired due to a road accident resulting in head injuries on the night of 27.10.2015. It is also manifest that this incident occurred within 1 month and 7 days from obtaining life insurance policy from the Opposite Party. It is also evident that investigations by the Opposite Party while enquiring into the claim revealed a previous history of hospitalization of the DLA on account of a concussion

injury to the head on 27.10.2015, the fact of which was not disclosed to the opposite party at the time of obtaining the insurance policy.

11. As regards the eligibility of the complainant to seek the benefits under the Policy in view of the demise of her son, the contention of the opposite party that the Complainant be non-suited as she is not a 'consumer' under the Act cannot be considered to be valid. A nominee under a policy of insurance is the rightful claimant of the benefits under the policy which is a contract between the insured and the insurer. Under the Insurance Act, 1945, the nominee is recognized as a beneficiary for all benefit which the policy provides subject to various stipulations. The Complainant, is therefore, a consumer as per ***Canara Bank Vs. M/s. United India Insurance Co. Ltd. & Ors.***, CA No.1042 of 2020 in SLP (Civil) No.20393 of 2018 decided on 06.02.2020 held that the beneficiaries of policies taken by the insured are also 'consumers' under the Act, even though they are not parties to the contract of insurance with the definition of 'consumer' includes beneficiaries entitled to benefits under the insurance available by the insured. This contention of the opposite party cannot, therefore, be considered as valid.

12. From a perusal of the proposal form submitted by the DLA at the time of obtaining the policy, it is apparent that the fact of any previous hospitalization on account of any incidence of accident has been replied to in the negative. The learned counsel for the complainant has not denied that there was a previous history and hospitalization in road accident involving a head injury of the DLA. The letter of repudiation dated 07.05.2016 reads as below:-

(i) We understand from the medical reports obtained from Medanta City Hospital wherein it is noted that (in the past medical history) that Mr. Vijay Kumar had met with a Road Traffic Accident (RTA) one year back and sustained a head injury which is prior to our proposal and not disclosed in the proposal form.

(ii) the above non-disclosure of accident one year back (as stated in the case sheet) was material to the issuance of the policy and ought to have been disclosed in the proposal form. By not doing so, the Proponent has misled us to grant insurance cover on the terms as stated in the policy schedule.

(iii) In the light of the above facts and the irrefutable evidence we are constrained to repudiate the claim under the policy in terms of section 45 of the Insurance Act 1938. According to our policy conditions, all claim benefit shall cease and all the premium paid by the Life Assured shall be forfeited by the company.

(Emphasis added)

Section 45 of the Insurance Act, 1938 reads as below:-

*“45. Policy not be called in question on ground of misstatement after three years.—
(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.*

(2) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:

Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the misstatement of or suppression of a material facts was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact are within the knowledge of the insurer:

Provided that in case of fraud, the onus of disproving lies upon the beneficiaries, in case the policyholder is not alive.

(Emphasis added)

13. The findings of the investigation by the Opposite party are that the DLA had a history of a head concussion injury due to an accident. The leave records of the deceased with his employer also corroborate the evidence brought on record by the opposite party that the treating doctor at Arvind Hospital, Karnal had advised the DLA rest for 10 days following the incident of the accident for which said leave was sanctioned.

14. According to the opposite party, in view of the clear position of law requiring disclosure of previous medical history in the proposal form being an essential requirement, the failure of the DLA to disclose his previous medical history as required at the stage of filling the proposal form was in clear violation of the Insurance Act, 1938. The opposite party has, therefore, justified its repudiating the claim as the policy was violation of section 45 of the Insurance Act, 1938. Hence, it is argued that the action of the opposite party in repudiating the claim cannot be construed to constitute a deficiency in service under the Consumer Protection Act.

15. The argument of the learned counsel for the opposite party is that the cause of the road accident in which the DLA sustained fatal injuries on 27.10.2015 was attributable to the head

concussion injury incurred by the DLA prior to the taking of the policy, the fact of which had not been disclosed in the proposal form. Reliance has been placed by him on the medical grounds of the DLA at the time of discharge of the deceased from the hospital and the leave records of his employer Oriental Bank of Commerce. On the basis of this investigation it is concluded by the opposite party that the cause of the road accident was the head injury incurred earlier. There is nothing in the medical discharge certificate of the hospital relied upon by the opposite party to suggest that the DLA had been advised not to drive a two wheeler on medical grounds on account of the concussion head injury suffered by him earlier. Except for the fact that he had been advised rest for 10 days for which purpose the DLA obtained leave from him employees, in the absence of any documents that would indicate that the DLA was driving a two wheeler against medical advice no other evidence to attribute the cause of the road accident has been brought on record. While it may be the Opposite Party's case that the DLA did not disclose the fact of hospitalization as required in the proposal form, the medical examination of the proposed insurer is regarding pre-existing illness or diseases. Hospitalization on account of a motor vehicle accident not reported in the form need not be held against the DLA as this does not amount to concealment of any pre-existing illness or disease, and specifically since another insurance company, the Life Insurance Corporation of India had cleared his claim without objection on this ground. Therefore, it cannot be said that the DLA concealed material evidence while obtaining the policy for which grounds the policy itself was considered void and the claim repudiated by the Opposite Party.

16. In view of the foregoing, it would be most unjust to consider the repudiation of the claim by the nominee of the DLA to be not acceptable. The repudiation of the claim for the reasons stated in the repudiation letter dated 07.05.2016 is not considered to be based on a judicious appreciation of the facts and circumstances of this case for the reasons stated earlier.

17. In view of the foregoing, the complaint is found to have merits and is, accordingly, allowed. The opposite party is directed to pay the complainant (nominee of the DLA) the amount of insurance for which he was eligible (Rs.1,00,00,000/- or 10 times the annualised premium or 105% of the premium paid as on date of death) along with interest @ 9% per annum from the date of submission of the claim, till the date of this order within two months, failing which the applicable rate of interest shall be 12%. The Opposite Party shall also pay the complainant Rs.50,000/- as litigation cost. All pending IAs also stand dismissed along with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**