

AFR / NAFR

CHHATTISGARH STATE
CONSUMER DISPUTES REDRESSAL COMMISSION
PANDRI, RAIPUR

APPEAL No.- FA/23/334

Date of Institution: 19/12/2023

Date of Final Hearing: 16/05/2024

Date of Pronouncement: 07/06/2024

IN THE MATTER OF :

1. Head Claims, SBI Life Insurance Co. Ltd.,
Third Level, Seawoods Grand Central, Tower-2,
Plot No.R-1, Sector-40, Seawoods Nerul Node,
NAVI MUMBAI - 400 706

... Appellant No.1

2. SBI Life Insurance Co. Ltd.,
Mahasamund, Main Branch Mahasamund,
Dist. MAHASAMUND (C.G.)
Both through: E. Praveen Kumar
S/o. E. Sathyanarayan Rao,
HPC Head of SBI Life Insurance

... Appellant No.2

Both Through: Shri Anshul Mishra , Advocate

Vs.

Smt. Sumitra Yadav, W/o. Late Shri Vijay Yadav,
R/o. Ward No.01, Gaboud, Khusrupali, P.S. & Tah. Bagbahra,
Dist. MAHASAMUND (C.G.)

... Respondent

Through: Shri Lokesh Kumar Mishra, Advocate

APPEAL No.- FA/23/337

Date of Institution: 21/12/2023

Date of Final Hearing: 16/05/2024

Date of Pronouncement: 07/06/2024

IN THE MATTER OF :

Smt. Sumitra Yadav, W/o. Late Shri Vijay Yadav,
R/o. Ward No.1, Gaboud, Khusrupali, P.S. & Tah. Bagbahra,
Dist. MAHASAMUND (C.G.)

... Appellant.

Through: Shri Lokesh Kumar Mishra, Advocate

Vs.

1. Head Claims, SBI Life Insurance Co. Ltd.,
8th Level, Seawoods Grand Central, Tower-2,
Plot No.R-1, Sector-40, Seawoods Nerul Node,
NAVI MUMBAI - 400 706

... Respondent No.1

2. SBI Life Insurance Co. Ltd.,
Mahasamund, Main Branch Mahasamund,
Dist. MAHASAMUND (C.G.)

... Respondent No.2

Both Through: Shri Anshul Mishra , Advocate

CORAM: -

HON'BLE SHRI JUSTICE GAUTAM CHOURDIYA, PRESIDENT
HON'BLE SHRI PRAMOD KUMAR VARMA, MEMBER

PRESENT IN BOTH APPEALS: -

Shri Anshul Mishra, Advocate for SBI Life Insurance Co. Ltd.
Shri Lokesh Kumar Mishra, Advocate for Smt. Sumitra Yadav.

ORDER
PER: - JUSTICE GAUTAM CHOURDIYA, PRESIDENT

This order will govern disposal of Appeal Nos.FA/23/334 & FA/23/337 as both these appeals, under Section 41 of the Consumer Protection Act, 2019 (hereinafter called "the Act" for short), filed by the opposite parties and the complainant respectively of Complaint Case No.CC/02/2022, have arisen out of the same impugned order dated 17.10.2023 passed by District Consumer Disputes Redressal Commission, Mahasamund (C.G.) (hereinafter called the "District Commission" for short) whereby the complaint was partly allowed and the opposite parties were jointly and severally directed to pay within 45 days the balance sum assured of Rs.5,60,000/- (Five Lacs Sixty Thousand) with interest @ 6% p.a. from the date of filing complaint 07.07.2021 till the date of realization along with compensation for mental agony Rs.5,000/- (Five Thousand) and cost of litigation Rs.3,000/- (Three Thousand). Hereinafter in this order, for the purpose of convenience, the parties will be referred as per their original nomenclature before the District Commission.

2. Briefly stated the facts of the case are that the complainant's husband Vijay Yadav obtained two life insurance policies from the opposite parties, first in the year 2015 on 24.09.2015 which was to be matured on 24.09.2020 and second in the year 2018 on 26.10.2018 for 10 years, in which the complainant was declared as nominee. On 02.07.2020 the life assured Vijay Yadav died for which insurance claim was submitted before the opposite part No.2 and on their instructions the requisite documents were submitted. But the opposite parties returned the premium amount of both the policies as Rs.70,000/- and Rs.70,000/- through cheque and said that the life assured died due to excessive consumption of alcohol, hence benefit of insurance cannot be extended to

the complainant, alleging which as deficiency in service complaint was filed before the District Commission seeking direction to the opposite parties for payment of Rs.14,00,000/- along with compensation for financial and mental agony Rs.50,000/- and cost of litigation etc.

3. The opposite parties in their joint written version except the specifically admitted facts denied all the adverse allegations leveled against them and averred that a Membership Form was received on 28.08.2015 under Rin Raksha Group Insurance Scheme under Master Policy No.70000003903 with initial premium of Rs.4,936/-. The premium payment mode and premium payment term was single. The initial sum assured was Rs.6,70,000/- and as per the policy document point No.19 in the event of death of life assured the sum assured applicable for the month and year of death was payable. Accordingly, as on the date of death 02.07.2020 the sum assured was Rs.45,465/-, that amount was transferred to the bank account No.35149543722, held with the State Bank of India and thus death claim has been settled with regard to that policy.

4. On the basis of another proposal dated 25.10.2018 with initial premium of Rs.70,000/- another policy for sum assured of Rs.7,00,000/- for policy term of 10 years was issued. The premium paying term was 05 years with yearly premium payment mode. The deceased life assured (DLA) paid initial premium and renewal premium of Rs.70,000/- each. It was specifically denied that he paid premium of Rs.70,000/- for two different policies. Upon death of the life assured the opposite parties received death claim intimation on 22.10.2020 from the complainant, which was investigated and during investigation it revealed that the DLA was chronic alcoholic, consuming drug and was taking treatment for the same prior to the date of signing proposal form. Therefore the claim was

repudiated with intimation to the complainant vide letter dated 05.02.2021 and an amount of Rs.1,40,000/- was transferred to the complainant's bank account on 30.01.2021 towards refund of premium. The life insurance contract is a contract of utmost good faith, wherein the proponent is duty bound to disclose everything concerning his/her health, habits and other material facts. The DLA was well aware of the terms and conditions and even then he gave wrong information in the proposal, hence in repudiating the claim no deficiency in service was committed. It was prayed that the complaint be dismissed with cost.

5. Learned District Commission in the impugned order observed that the opposite parties issued the first policy on 24.09.2015 insurance cover of which was available up to 24.09.2020 and the same insurance company issued another policy on 26.10.2018, hence by repudiating the claim within three years the opposite parties have committed deficiency in service. After deducting the amount already paid as premium, which refunded by the insurance company, from the sum assured the complainant was held entitled for the balance sum assured. With the above observations the complainant was partly allowed directing the opposite parties as aforesaid in paragraph No.1.

6. Final arguments heard. Perused the record, the impugned order as well as written arguments filed by learned counsels for the parties.

7. Reiterating the averments made before the District Commission the opposite parties have challenged the impugned order on the ground that the same has been passed overlooking the documents available on record. It is prayed that the impugned order being erroneous be set aside. Whereas the complainant has come up before us for enhancement of awarded amount on the ground that learned District Commission has

allowed the claim regarding only one policy and no decision has been given with regard to the second policy. It is prayed that total maturity amount of the second policy Rs.7,00,000/- may be awarded modifying the impugned order.

8. After due consideration of documents, written version, appeal memo and written arguments filed by the parties we are satisfied that death claim regarding the first policy issued in year 2015 has already been allowed and an amount of Rs.45,465/-, as per the policy conditions, has been transferred on 29.10.2020 to the bank account No.35149543722 of the complainant held with the State Bank of India through direct credit vide UTR No.CTL259626600018. This fact was clearly stated in the written version before the District Commission but the complainant has not contradicted the same by way of any cogent evidence that any such amount was not transferred. Nothing has been stated in this regard in the appeal memo, during oral arguments or in the written arguments submitted by learned counsel for the complainant. On the other hand the opposite parties have given UTR No., date of transfer and account number of the complainant to which the amount was transferred.

9. So far as death claim under the second policy is concerned admittedly the said policy was issued on 26.10.2018 and within three years of commencement of the said policy the life assured died on 02.07.2020 i.e. within three years. It is quite pertinent to reproduce here the Section 45 of the Insurance Act, 1938 as amended by Insurance Law (Amendment) Act 2015, which is as under : -

“45. (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.

Explanation I. – For the purposes of this sub-section, the expression "fraud" means any of the following acts committed by the insured or by his agent, with intent to deceive the insurer or to induce the insurer to issue a life insurance policy: –

(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;

(b) the active concealment of a fact by the insured having knowledge or belief of the fact;

(c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent."

As provided in Sub-section 45(2) of the Insurance Act 1938 in the instant case being a death claim within three years of commencement of the policy it was investigated by the insurer and on investigation it revealed that the life assured was chronic alcoholic and was suffering from mental problem for the last four years.

10. In this regard medical prescription of Bhimrao Ambedkar Hospital, Raipur (CG) dated 04.11.2016, VY Hospital Raipur dated 27.09.2019 and discharge card of Dr. BR Ambedkar Hospital Raipur and Govt. CHC Bagbahra were also enclosed with investigation report available between page No.120 to 130 in the record of the District Commission. The claim was repudiated vide repudiation letter dated 05.02.2021, available at page No.131 of the record of the District Commission on the ground Question Nos.13(4), regarding medical history of past 10 years, treatment and hospitalization, Question No.13(16) regarding consumption of Narcotic substance or addictive drugs in any form, Question No.13(18) regarding consumption of Alcohol were wrongly answered as 'No' in the proposal form, whereas the life insurance contract is a contract of utmost good

faith. The copy of proposal form has also been brought on record, available between page No.104 to 114, in which at page No.106 overleaf and on page No.107 of the record i.e. page Nos.50 & 51 of the proposal form, the aforesaid questions have been answered in negative i.e. as 'No'. From perusal of above documents it clearly appears that wrong information with regard to past medical history and consumption of alcohol and drugs was given by the life assured at the time of signing proposal form for insurance policy in question.

11. The Hon'ble Apex Court in **Satwant Kaur Sandhu Vs. New India Assurance Company Ltd., (2009) 8 SCC 316** held that :-

"In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact" - If the proposer has knowledge of such fact, he is obliged to disclose it to insurer particularly while answering questions in the proposal form - Any inaccurate answer to said questions will entitle the insurer to repudiate its liability under the policy"

The above principle has been discussed in detail by the Hon'ble Apex Court in its judgement in **Branch Manager, Bajaj Allianz Life Insurance Co. Ltd. Vs. Dalbir Kaur, 2020 SCC Online SC 848** and in paragraph No.9 it was held that :-

"9. 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.-----"

Hon'ble National Commission in its recent judgement dated **01.05.2024** in **Revision Petition No.2049 of 2017 between Subhash Kumar Vs. Branch Manager, Bajaj Allianz Life Insurance Co. Ltd. & Anr.** has followed the above precedents established by the Hon'ble Apex Court and

decided the revision petition in favour of the insurance company. In that case also the fact of concealment of material facts in the proposal form regarding past medical history/condition and treatment of the insured was established.

12. In the instant case as discussed above it is proved that the life assured had concealed the material information regarding his medical history. Therefore, the opposite parties insurer were having right to repudiate the insurance claim on account of suppression of material facts in the proposal form. We are of the considered view that learned District Commission failed to properly appreciate the facts of the case in accordance with the terms and conditions of the policy in question. Undoubtedly, the contract of insurance is based on doctrine of *uberrima fides* and confidence between the parties and in case of breach of such confidence, the Insurance Company was having right to avoid it's liability, on the ground of suppression of material facts in the proposal form for the contract of insurance.

13. Accordingly, with the foregoing discussion, we allow the appeal of the opposite parties Appeal No.FA/23/334 and set aside the impugned order. Appeal No.FA/23/337 filed by the complainant for enhancement of award is dismissed accordingly. Parties are left to bear their own cost. Original of this order be kept in the record of Appeal No.FA/23/334 and a certified copy thereof be placed in the record of Appeal No.FA/23/337.

(Justice Gautam Chourdiya)
President
/06/2024

(Pramod Kumar Varma)
Member
/06/2024

Pronounced on: 07th June 2024