

First Appeal No.
111 of 2019

Life Insurance Corporation of India
Versus
Sh. Kailash Chand Joshi

18.07.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 27.03.2019
Date of Final Hearing: 05.07.2024
Date of Pronouncement: 18.07.2024

FIRST APPEAL NO. 111 / 2019

Life Insurance Corporation of India
North Central Zonal Office
Mahatma Gandhi Road, Jeevan Vikas, Kanpur
having one of its Divisional Office at
(Jeevan Prakash), Haridwar Road
Dehradun through its Authorised Signatory

(Through: Sh. T.S. Bindra, Advocate
via Video Conferencing)
..... Appellant

Versus

Sh. Kailash Chand Joshi S/o Sh. D.N. Joshi
C/o Sh. Praduman Singh, R/o 221, Ward No. 3
Ganeshpur, Roorkee, District Haridwar

(Through: Sh. Shree Gopal Narsan, Advocate
via Video Conferencing)
..... Respondent

Coram:

Ms. Kumkum Rani,
Mr. B.S. Manral,

President
Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal has been directed against the impugned judgment and order dated 20.10.2015 & 22.02.2019 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as "The District Commission") in consumer complaint No. 05 of 2015, styled as Sh. Kailash Chand Joshi Vs. Life Insurance Corporation of India. Vide judgment and order dated 20.10.2015,

learned President of the District Commission has dismissed the consumer complaint, whereas per dissenting judgment and order of the even date, the Male Member of the District Commission has allowed the consumer complaint, directing the appellant / opposite party to pay the insured amount of the policy amounting to Rs. 2,50,000/- to respondent / complainant together with interest @6% p.a. from the date of institution of the consumer complaint till payment. Vide 2nd impugned judgment and order dated 22.02.2019, the Female Member of the District Commission has gone by the judgment and order dated 20.10.2015 passed by the Male Member, allowing the consumer complaint and has passed the same order.

2. The facts giving rise to the present appeal, in brief, are, as such that during her lifetime, late Smt. Lata Joshi, the deceased wife of respondent / complainant – Sh. Kailash Chand Joshi, had taken an insurance policy, namely, Jeevan Saral (With-Profits) bearing policy No. 273532214 from the appellant / opposite party (insurance company) on dated 09.02.2012, having maturity date as 09.02.2028. At the time of obtaining the insurance policy, the life assured was hale & hearty and the authorised doctor of the insurance company had medically examined the life assured and found her in perfect health condition; thereafter, the insurance policy was issued. During the subsistence of the insurance policy, the life assured fell ill and she remained under treatment in Metro Hospitals & Heart Institute as well as in other hospitals, but she could not be saved and the life assured died on 11.01.2014 at New Delhi. The complainant lodged claim with the insurance company and submitted all the requisite documents. However, the insurance company through letter dated 30.10.2014 repudiated the claim on wrong basis, thereby committing deficiency in

service. The complainant has suffered gross mental agony and financial loss. Thus, the consumer complaint was submitted by the complainant before the District Commission.

3. The appellant / opposite party has pleaded in its written statement filed before the District Commission that the above-mentioned insurance policy was issued in the name of the life assured. The consumer complaint has been submitted on wrong, false and imaginary facts and the same is liable to be dismissed. It was further pleaded that the contract of insurance is based on utmost good faith between the parties and the insured is under a solemn obligation to disclose all the relevant information to the insurer at the time of submitting the proposal form. In the instant case, the life assured had obtained the insurance policy by concealing the material facts with regard to her health. Therefore, there was breach of trust by the life assured. The life assured was suffering from pre-existing disease, for which she was admitted in the hospital and was operated upon, but the said fact was concealed by the life assured. As per the declaration given in the insurance policy, it was mandatory that the life assured should disclose all the material facts and should not conceal anything from the insurance company. If any disclosure is found to be untrue or suppression of material fact is revealed, the policy shall be treated as cancelled. It is true that the authorised doctor of the insurance company had physically examined the life assured, but the life assured has concealed the material fact regarding her illness. Upon investigation, it was found that as per the discharge summary issued by A.I.I.M.S., New Delhi, the life assured was operated for posterior fossa epidermoid in the year 2004, but the said fact was concealed by her. On the said ground, the claim was repudiated by the insurance company through letter dated 30.10.2014.

The repudiation order is correct and valid. There has not been any deficiency in service on the part of the insurance company.

4. After hearing both the parties and after taking into consideration the material available on record, learned President of the District Commission has dismissed the consumer complaint vide impugned judgment and order dated 20.10.2015, whereas the Male Member per his dissenting judgment and order of the even date, allowed the consumer complaint in the above terms. Thereafter, the Female Member of the District Commission vide 2nd judgment and order dated 22.02.2019, has accorded her consent to the judgment and order dated 20.10.2015 passed by the Male Member of the District Commission, allowing the consumer complaint.

5. On having been aggrieved by the impugned judgments and orders, the present appeal has been set in motion by the insurance company as an appellant, stating that the arguments in the consumer complaint were heard by two Members, i.e., learned President and Male Member of the District Commission and both of them had passed different judgment and order on 20.10.2015 and consequently, the aforesaid judgments and orders can not be construed to be the judgment of the District Commission in the eyes of law. The consumer complaint was dismissed by learned President of the District Commission, whereas the Male Member of the District Commission has allowed the consumer complaint, directing the appellant to pay a sum of Rs. 2,50,000/- along with interest @6% p.a. from the date of institution of the consumer complaint till payment and both the judgments and orders were passed on 20.10.2015. It was further stated that after sometime, another Member (Female Member) of the District

Commission, who was appointed subsequently, has passed an unreasoned judgment and order dated 22.02.2019, confirming the judgment and order dated 20.10.2015 passed by the Male Member of the District Commission, without following the procedure prescribed under Section 14(2A) of the Consumer Protection Act, 1986. Learned counsel for the appellant also submitted that no point or points of difference to the other Member (3rd Member) and no hearing at all was conducted by the 3rd Member on such point or points, therefore, the impugned judgments and orders are liable to be set aside and the appeal deserves to be allowed.

6. Learned counsel for respondent / complainant has contended that the judgments and orders passed by both the Members of the District Commission on 20.10.2015 and 22.02.2019 respectively are legal and perfectly justified, hence deserves to be confirmed.

7. We have heard learned counsel for the parties through video conferencing mode and perused the record. Section 14(2A) of the Consumer Protection Act, 1986 reads as under:

“(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the

opinion of the majority shall be the order of the District Forum.”

8. We have perused the aforesaid Section 14(2A) of the Consumer Protection Act, 1986. It is true that on date 20.10.2015, learned President and Male Member of the District Commission have passed dissenting judgment & order and they differed from each other's opinion. We have also perused the impugned judgment and order dated 20.10.2015, wherein the point or points of difference were not stated.

9. The original record of the District Commission has been summoned by this Commission. We have gone through the order-sheet of the consumer complaint, which shows that after passing of the impugned judgment and order dated 20.10.2015, the matter was fixed for 06.02.2016 for putting up the file before the 3rd Member. The order dated 20.10.2015 passed by the District Commission reads as under:

“20-10-15
निर्णय के मत भिन्न है। पत्रावली तीसरे
सदस्य के समक्ष दिनांक 6-2-16 को
पेश हो।

सदस्य
जिला उप0वि0प्रति
फोरम, हरिद्वार

अध्यक्ष
जिला उप0वि0प्रति
फोरम, हरिद्वार”

10. As is stated above, after passing of the dissenting impugned judgment and order dated 20.10.2015, the point or points of difference were not stated by learned President and Male Member of the District Commission and the said point or points of difference were not referred to the other Member for hearing. The order-sheet of the consumer

complaint further shows that from 06.02.2016 to 17.12.2016 was fixed for arguments before the 3rd Member and none of the parties ever appeared before the District Commission on the dates fixed between the aforesaid period. On 04.03.2017, learned counsel for the insurance company did not appear before the District Commission, hence it was directed that learned counsel for the parties be informed. On dated 15.03.2017, the complainant along with his learned counsel as well as learned counsel for the insurance company appeared before the District Commission and the matter was fixed for 15.05.2017 for re-arguments. On 15.05.2017, learned counsel for the opposite party (insurance company) moved an application dated 15.05.2017 bearing Paper No. 16 of the original record, with a prayer to get the signatures of the life assured on the discharge summary issued by A.I.I.M.S. examined through handwriting expert. Against the said application, objections dated 22.02.2019 (Paper No. 19 of the original record) were submitted on behalf of the complainant, but the application was not then disposed of by the District Commission and the 3rd Member of the District Commission has passed the final order dated 22.02.2019, affirming the judgment and order dated 20.10.2015 passed by the Male Member of the District Commission.

11. In view of above, it is crystal clear that both the impugned judgments and orders are non-est in the eyes of law, hence can not be legally sustained, hence liable to be set aside. Resultantly, the appeal is fit to be allowed and the matter needs to be remanded back to the District Commission for decision afresh on merits, after providing proper opportunity of hearing to the parties. It is hereby made clear that we have not expressed any opinion on the merits of the case.

12. Appeal is allowed. Impugned judgments and orders dated 20.10.2015 and 22.02.2019 passed by the District Commission are set aside. The matter is remanded back to the District Commission for deciding the consumer complaint afresh on merits as per law, after providing proper opportunity of hearing to the parties. The District Commission is also directed to decide / dispose of the application dated 15.05.2017 (Paper No. 16 of the original record) moved on behalf of the insurance company by a reasoned order and before proceeding further in the matter. The parties are directed to appear before the District Commission on 20.08.2024. No order as to costs of the appeal. The amount deposited by the appellant with this Commission, be released in its favour.

13. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information. The original record of the District Commission be also remitted back forthwith

14. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 18.07.2024