

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3944 OF 2019
(@ SLP(C) No.5001/2019)

LIFE INSURANCE CORPORATION OF INDIA

APPELLANT(s)

VERSUS

MANISH GUPTA

RESPONDENT(s)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

Leave granted.

The District Consumer Disputes Redressal Forum, Ambala¹ allowed a consumer complaint instituted by the respondent on the basis of a mediclaim policy. The District Forum directed the appellant to pay a sum of Rs 2,21,990, together with interest at the rate of 9% per annum from 29 October 2009, which is the date on which the claim was repudiated. Compensation of Rs 10,000 was awarded towards mental harassment and Rs 10,000 towards litigation expenses. Failing payment within the stipulated period, the amount awarded was directed to carry interest at 12% per annum. This order of the District Forum was affirmed in appeal by the State Consumer Disputes Redressal Commission². The National Consumer Disputes Redressal Commission³ dismissed a

1 “District Forum”

2 “SCDRC”

3 “NCDRC”

revision filed by the appellant. This has given rise to the present appeal.

The respondent obtained a Mediclaim policy from the appellant. On 7 June 2008, he had submitted a proposal form for a Health Plus policy. The policy was issued on 25 June 2008 under the category of 'Non-Medical General'⁴ for a sum of Rs 1,60,000. The proposal form required a disclosure of health details and medical information. Among them was whether the proposer had suffered from "cardiovascular disease e.g.: Palpitations, heart attack, stroke, chest pain". The proposal form contained a response in the negative to the above query.

The Third Party Administrator received a hospital claim form on 7 August 2009, submitted by the respondent, which was certified by a doctor at Fortis Hospital, Mohali on 4 August 2009, during which period he had undergone a Mitral Valve Replacement⁵ surgery. The claim was repudiated by the appellant on 29 October 2009 on the ground that the respondent was suffering from a pre-existing illness.

The expression "pre-existing condition" is defined in the exclusions under the policy in the following terms:

"ii. "Pre-existing condition" - any medical condition or any related condition (e.g. illnesses, symptoms, treatments, surgery, pains) that have arisen at some point prior to the

4 "NMG"

5 "MVR"

commencement of this coverage, irrespective of whether any medical treatment or advice was sought. Any such condition or related condition about which the Principal Insured or insured dependent know, knew or could reasonably have been assumed to have known, will be deemed to be pre-existing. The following conditions will also be deemed to be "pre-existing":

ii. Any Sickness, illness, complication or ailment arising out of or connected to the pre-existing illness."

The District Forum held in favour of the respondent. The NCDRC, while affirming the SCDRC, held that though the treating doctor had recorded, under the column of 'past history', that this was a known case of rheumatic heart disease since childhood, the doctor had not been examined in order to prove how the information had been recorded in his report. According to the NCDRC, the notes of the doctor did not indicate that it had been recorded on the basis of the information furnished by the patient. In this view of the matter, the decision of the District Forum, as affirmed by the SCDRC, has not been interfered with.

Learned counsel appearing on behalf of the appellant submitted that the Health-plus policy falls in the NMG category where the insured is not subjected to a medical examination before the issuance of the policy. Hence, it is a solemn obligation of the proposer to truthfully fill out the details required by the insurer in the proposal form on the basis of which the insurer takes a decision

in regard to the issuance of the policy. Hence, it was urged that the onus was on the insured to provide material particulars of his health since no medical examination was mandated. In the present case, it has been submitted that, *ex facie*, there was a breach on the part of the insured in suppressing information pertaining to the fact that he had been suffering from rheumatic heart disease since childhood. Hence, on this ground, the repudiation was sought to be justified.

On the other hand, the respondent, who has appeared in person, submits that while the information which has been recorded by the doctor in the column titled 'past history' would be based on the disclosure made by the patient, he had merely informed the doctor that he was suffering from fever and joint pains since childhood. The respondent submitted that apart from this, he was not suffering from any other ailment and, hence, he cannot be faulted for any noting which has been made by the doctor in the course of treatment.

We have adverted to the specific disclosure which was required in the proposal form in regard to whether the proposer had suffered or was suffering from cardiovascular disease. Illustrations of cardiovascular disease are given in entry 6(c) of para E of the proposal form. These are: palpitations, heart attack, stroke and chest pain. These are only illustrations. Significantly, the declaration by the proposer is in the

following terms:

"I Munish Gupta hereby declare that I have read the proposal form fully and the same was interpreted to me by the agent and also declare that I have understood the nature of the questions and the importance of disclosing all material information while answering such questions. I hereby declare that the foregoing statements and answers to all questions, including those in the annexures signed by me, have been given by me after fully understanding the questions and the same are true and complete in every particular and that I have not withheld any information and I do hereby agree and declare that these statements and this declaration shall be the basis of the contract of assurance between me and the Life Insurance Corporation and that if any untrue averment be contained therein, the said contract shall be absolutely null and void and all monies which shall have been paid in respect thereof shall stand forfeited to the Corporation..."

Moreover, non-disclosure of any health event is specifically set out as a ground for excluding the liability of the insurer. The terms of the policy envisage:

"xii. Fraud

If any of the Insured or the Claimant shall make or advance any claim knowing the same to be false or fraudulent as regards amount or otherwise, this Policy shall immediately become void and all claims or payments in respect of all the insured under this Policy shall be forfeited. Non-disclosure of any health event or ailment/condition/sickness/Surgery which occurred prior to the taking of this Policy, whether such condition is relevant or not to the ailment/disease/Surgery for which the Insured is admitted/treated, shall also constitute Fraud."

The declaration which was furnished by the proposer constituted the basis for the issuance of the policy. This was particularly so in a case such as the present where no medical examination has been held, for a policy under the NMG category.

The discharge card of the Department of Cardiovascular and Thoracic Surgery at Fortis Hospital specifically contains a resume of the history of the patient and reads thus:

"Resume of History

H/O Presenting complaints; PATIENT PRESENTED WITH ONE EPISODE OF COUGH ASSOCIATED WITH FEVER 1 MONTH BACK AFTER WHICH HE STARTED TO HAVE PAIN IN HIS JOINTS (ANKLE & KNEES) ASSOC WITH MUSCLE SPASMS. PATIENT ALSO HAD SYNCOPAL EPISODES SINCE LAST SIX MONTHS.

Past History: K/C/O RHEUMATIC HEART DISEASE SINCE CHILDHOOD"

(emphasis supplied)

The past history has been adverted to as a **"known case of rheumatic heart disease since childhood"**. Apart from the fact that this information would be recorded on the basis of information divulged by the patient, this aspect of the recording of the past history by Fortis Hospital was never in dispute. The treatment record indicates that the respondent was operated for MVR. The nature of the diagnosis has been reflected as rheumatic heart disease. The hospital treatment form is along the

same lines.

A contract of insurance involves utmost good faith. In Satwant Kaur Sandhu Vs. New India Assurance Company Ltd.⁶, this Court has held thus:

"...Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. 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. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment."

The consumer fora have made a fundamental error in allowing the claim for reimbursement of medical expenses in the face of the uncontroverted material on record. The documentary material indicates that there was a clear failure on the part of the respondent to disclose that he had suffered from rheumatic heart disease since childhood. The ground for repudiation was in terms of the exclusions contained in the policy. The failure of the insured to disclose the past history of cardiovascular disease was a valid ground for repudiation.

We accordingly allow the appeal and set aside the impugned judgment and order dated 10 December 2018 of the

NCDRC. The complaint filed by the respondent shall stand dismissed. There shall be no order as to costs.

.....J.
(DR DHANANJAYA Y CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
APRIL 15, 2019

ITEM NO.52

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 15-04-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Ashok Panigrahi, AOR
Mr. Anmol Tayal, Adv.
Mr. vinay Ratnakar, Adv.

For Respondent(s) Respondent-in-person

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Appeal is allowed in terms of the signed
reportable judgment. No costs.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed reportable judgment is placed on the file)