NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 291 OF 2020

(Against the Order dated 22/03/2018 in Appeal No. 1277/2013 of the State Commission Telangana)

1. LIFE INSURANCE CORPORATION OF INDIA
THROUGH ASSTT. SECRETARY LEGAL DEPTT. H-39,
NEW ASIATIC BUILDING CONNAUGHT PLACE
NEW DELHI-110001 .....Petitioner(s)

Versus

1. HEMA AGARWAL & ANR.
W/O. LATE MUKESH KUMAR AGARWAL, R/O. H.NO. 21-7-565, KOKHARWADI, CHARKAMAN GHANSI BAZAR,
HYDERABAD
TELANGANA
2. G. SUNITHA,
AGENT OF LIC OF INDIA, BEARING AGENCY NO. 01037804, AT 21-7-761, OPP. HIGH COURT POST OFFICE, GHANSI BAZAR,
HYDERABAD .....Respondent(s)

BEFORE:
HON'BLE MR. JUSTICE SUDIP AHLUWALIA,PRESIDING MEMBER

FOR THE PETITIONER : MR. RAJESH K. GUPTA, ADVOCATE
FOR THE RESPONDENT : MR. KARTIK BRUNDAVAN, ADVOCATE.

Dated : 05 December 2023

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

IA/2537/2020 (Condonation of delay)

1. The Petitioner has filed this application for condonation of delay in filing the Revision Petition. It is stated in the application that there is a delay of 580 days. The Petitioner has further stated that the reason for the delay is that the office of the Petitioner at Hyderabad was shifted and because of this reason, the free certified copy of the impugned Order was not received; That when reviewing the status of cases pending it was found that the impugned Order had been passed by the State Commission on 22.03.2018, thereafter the Petitioner immediately applied for a certified copy which was delivered on 31.12.2019. After receipt of the same, the entire file was forwarded to the Head Office at Mumbai explaining the circumstances of the case. Subsequently, the Head Office recommended filing the present

Revision Petition; the requisite files and papers were forwarded to the Counsel on 13.02.2020, and on 13.02.2020, the present Petition was filed.

2. It has been made out in the application that the delay had occurred on account of shifting of the Petitioner's office, which contention has been opposed on behalf of Respondents/Complainants who alongwith their written arguments have also filed a web print out of the Petitioner's website showing location of its Branch Office in Hyderabad to show that the concerned office located at House No. 23-1-71 Near Sardar Mahal did exist. But Ld. Counsel for the Petitioner drew attention to the very next page from the aforesaid website print out to show that the said office bearing the same Code number "500002" had shifted to 5-9-211/2, Second Floor, Chirag Ali Lane, Hyderabad, and had been designated as a Branch Office from its earlier description of a "Satellite Office".

3. To that extent, the basic contention raised in the instant application seeking condonation of delay cannot be summarily dismissed even though there are certain clerical errors in the first para of the same pertaining to the number and date of the final judgment and order passed by the Ld. State Commission, West Bengal, whereas the impugned Order happens to be issued by the Ld. State Commission of Telangana at Hyderabad in a different First Appeal on a different order.

4. The Hon'ble Supreme Court in "***Esha Bhattacharjee Vs. Managing Committee of RaghunathpurNafar Academy and Others, (2013) 12 SCC 649***", in which it had observed *inter alia –*

> "***21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of."***

5. By applying the ratio of the aforesaid decision of the Hon'ble Supreme Court in "***Esha Bhattacharjee"*** (supra) and also in ***"N. Balakrishnan Vs. M. Krishnamurthy, (1998) Supp. 1 SCR 403***", and of this Commission ***in "FA No. 321 of 2012- M/s. Damden Properties Vs. Dr. M.V. Paranjyothi"*** where it had condoned the delay by awarding a cost of Rs.2.00 lakhs to the Respondent/Complainant, and after considering that the contention raised by the Petitioner regarding the delay having occurred on account of shifting of its office/alteration for its Satellite Office to Branch office was not altogether without substance, the delay of 580 days in filing this Revision Petition is also condoned after awarding costs of Rs. 1.00 lakh to the Respondent/Complainant.

6. The application is, thus, disposed off.

RP/291/2020

7. The present Revision Petition has been filed by Petitioner/LIC under Section 21(b) of the Consumer Protection Act, 1986 against the impugned Order dated 22.03.2018 passed by the State Consumer Disputes Redressal Commission, Telangana, Hyderabad in F.A. No. 1227 of 2013, vide which the Appeal filed by the Complainant was allowed and the Order of the District Forum was set-aside.

8. In essence, the Complainant's case revolves around her husband's acquisition of LIC's Jeevan Tarang Policy (T.No. 178), bearing No. 645784306, with an assured sum of Re. 9,90,000/-. The Policy commenced on 24.11.2009, facilitated by the Respondent No. 2/Agent who was informed about his previous Insurance Policy. The Complainant, nominated as the beneficiary, faced issues when her husband passed away on 10.08.2010 due to a heart attack. Upon submitting the claim, she received a letter dated 19.02.2011 from the Petitioner/LIC rejecting the claim. The reason cited was the alleged suppression of the previous Policy during the Proposal Form filling. She clarified that the Agent had all the necessary details and that there was no suppression. Despite receiving a subsequent letter on 03.03.2011 to submit documents for claim settlement, she later received another letter dated 08.08.2011 from the Zonal office affirming the initial decision and advising her to appeal to the Central Office within three months. It is the case of the Complainant that this is an act of deficiency in service. Aggrieved by the actions of the Respondents, the Complainant filed her complaint before the Ld. District Forum-II, Hyderabad.

9. The District Forum vide its Order dated 20.11.2013 dismissed the Complaint. The relevant extracts of the Order of the District Forum are set out as below –

"17. As per the decisions relied on by the complainant and opposite party both the judgments are applicable to the facts of the case on hand. If the judgment relied on by the complainant reported in Revision Petition no.4502 of 2010 delivered on 06-07-2011 is accepted, the non-disclosure of previous policies are not material, the repudiation of the opposite party is illegal and deficiency of service.

18. Whereas, the latest judgment of the National Commission delivered on 16-07-2012 is taken into consideration, the non-disclosure of existence of previous policies is suppression of the material fact, the repudiation of the claim by the insurance company is not deficiency of service.

19. As per the precedent, if there are two judgments of the National Commission is existing on the same point, the latest judgment of the National Commission can be taken into consideration. The latest judgement dated 16-07-2012 is delivered by Justice J.M. Malik, Presiding Member and previous judgment dated 06-07-2011 was delivered by presiding member Sri Suresh Chandra.

20. We have gone through the judgements relied on by the learned advocates of the complainant and opposite parties, as per the latest judgment, the non-disclosure of existence of previous policies is a material suppression, therefore the repudiation of the insurance company/opposite party is not deficiency of service. In our case on hand also the husband of the complainant did not disclose, the existence of previous four policies i.e., sum assured Rs. 8.00 Lakhs, therefore the non-disclosure of the previous policies is suppression of material facts, the repudiation of the opposite party is not a deficiency of service, hence these points are decided in favour of the opposite party against the complainant.

<u>Point No. 3</u> The complaint of the Complainant is dismissed in the circumstances, each party to bear their own costs…."

10. Aggrieved by the Order of the District Forum, the Complainant filed the Appeal before the State Commission. The State Commission allowed the Appeal vide the impugned Order dated 22.03.2018. The relevant extracts of the impugned Order are set out as below –

"17). After considering the foregoing facts and circumstances and also having regard to the contentions raised on both sides, this Commission is of the view that the 1®^ respondent/ opposite party Insurance company is liable to pay to the appellant/complainant the insured sum of Rs.9,90,000/- under Jeewan Tarang (T.No. 178) policy with interest @ 9% p.a from the date of filing of the complaint before the District Forum , i.e., 21.12.2011 till the date of realization, to pay compensation of Rs. 10,000/- towards mental agony etc. and costs of Rs.5,000/-. Since the second respondent/second opposite party is only an agent and hence she cannot be made liable for payment of insurance claim keeping in view the prevailing circumstances of the case and therefore the claim against the second respondent/second opposite party is liable to be dismissed.

18). Point No. 2 :

In the result, the appeal is allowed setting aside the order dated 20.11.2013 in CC 47 of 2012 on the file of the District Forum 11, Hyderabad and consequently the complaint is allowed in part directing the 1st respondent/ 1st opposite party to pay to the appellant/complainant the insured sum of Rs.9,90,000/- under Jeevan Tarang (T.No. 178) policy with interest @ 9% P.A. from the date of filing of the complaint before the District Forum , i.e., 21.12.2011 till the date of realization, to pay compensation of Rs. 10,000/- towards mental agony etc. and costs of Rs.5,000/-. Time for compliance four weeks.

The claim against second respondent/2nd opposite party is dismissed."

11. Aggrieved by the Order of the State Commission, the Petitioner filed the present Revision Petition raising the following contentions –

a. That there are important and substantial questions of law of general public importance for determination by this Hon'ble Commission;
b. That in the Proposal Form dated 14.11.2009 the deceased Life Assured suppressed details of previous Policies and gave incorrect answer to Q. No. 9 as under stating "NIL" for the question "Please give details of your previous Insurance (including Policies surrendered/lapsed during last 3 years) which is false as he already had 4 Policies;
c. That the Life Assured breached the principle of utmost good faith – bedrock of all insurance contracts. Cases in support of this contention are ***"Vikram Greentech India Limited and Another v. New India Assurance Co. Limited, (2009) 5 SCC 599", "Satwant Kaur Sandhu v. New India Assurance Co. Ltd. (2009) 8 SCC 316", "LIC v. Pravabti Devi, RP No. 2771 of 2012", "Dineshbhai Chandarana and Anr. v. Life***

Insurance Corporation, F.A. No. 242 of 2006" and **"Reliance Life Insurance Co. Ltd. and Anr. v. Rekhaben Nareshbhai Rathod, Civil Appeal No. 4261 of 2019"**.

12. Ld. Counsel for the Petitioner has argued that the suppression of previous Policies is material and entitles the insurer to repudiate the Contract of Insurance. The same view was held by the Hon'ble Supreme Court in the cases of "***LIC v. Pravabati Devi"*** (supra), "***Dineshbhai Chandarana"*** (supra); That the submission of the Complainant that her husband had signed on a blank form and the Agent assured to fill the rest of the information was not accepted by the Hon'ble Supreme Court in "***Rekhaben Nareshbhai Rathod"*** (supra).

13. *Per Contra*, Ld. Counsel for Respondent No. 1 contended that the ground for repudiation of the Policy by the Petitioner is false and baseless as the Respondent No. 1 vide letter dated 23.03.2011 had informed the Petitioner that the Policy Form was filed by the Agent and the husband of the Petitioner had signed only on a blank form; That the State Commission rightly observed that the Petitioner had the knowledge of existence of the previous Policy and therefore there is no suppression of material fact; That the State Commission correctly observed that the Petitioner computerized all the Policies of the customers and hence if any person sends proposal for a new Policy, the computer would automatically show the other Policies of the said person, if any, without any effort. Ld. Counsel has also cited the cases of ***"LIC v. Shahida Begum, (2011) NCDRC 283)"*** and ***"Bhagwani Bai v. LIC (AIR 1984 MP 126)"*** in support of these contentions.

14. This Commission has heard Ld. Counsel for both sides and perused the material available on record.

15. It is seen that the Complainants/Respondents had sought to do away with the reasons assigned for repudiation by the Petitioner i.e. suppressing information about existence of the previous Policy by only contending the deceased life insured had signed only on a blank Form which was filled up by the Agent of the LIC, and that it was for the Insurer-Corporation to automatically know the existence of any previous Policies of the Insured from its own computerised records. The decision of this Commission in ***"LIC v. Shahida Begum"*** (supra) and ***"Bhagwani Bai v. LIC"*** (supra) have been cited in this regard. But, in its recent decision in **"*Reliance Life Insurance Co. Ltd. and Anr. v. Rekhaben Nareshbhai Rathod"*** (supra), the Hon'ble Apex Court did not give any credence to such submissions that repudiation of an Insurance claim by not disclosing about existence of any previous Insurance Policy on the ground that the Insured had signed upon the Proposal Form without being aware of its contents was not justified. The relevant detailed observations of the Hon'ble Apex Court in the aforesaid decision are set out as below –

> ***"11. While considering the rival submissions, it is necessary to preface our analysis with reference to two basic facts. The first pertains to the nature of the disclosure made by the insured in the proposal form. The second relates to the ground for repudiation of the claim. The proposal form required a specific disclosure of the life insurance policies held by the proposer and all proposals submitted to life insurance companies, including the Appellant. The proposer was called upon to furnish a full disclosure of covers for life insurance, critical illness or accident benefit under which the proposer was currently insured or for which the***

proposer had applied. The answer to this was given in the negative. Furthermore, item 17 of the proposal form required a detailed disclosure of the other insurance policies held by the proposer including the sum assured. A disclosure was also required of the status of pending proposals. <u>These were answered with a "not applicable" response, following the statement that the proposer did not hold any other insurance cover.</u> The fact that two months prior to the policy which was obtained from the Appellant on 16 September 2009, the insured had obtained a policy from Max New York Life Insurance Co. Ltd. in the amount of Rs.11 lakhs has now been admitted. <u>There was evidently a nondisclosure of the earlier cover for life insurance held by the insured……."</u>

"26. Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure. The duty of disclosure in insurance contracts was established in a King's Bench decision in Carter v. Boehm (1766) 3 burr 1905, where Lord Mansfield held thus:

> *Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risqué, as if it did not exist.*

It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement.

The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact if would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in Satwant Kaur (supra) "there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance".

Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms.

27. In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.

28. Learned Counsel appearing on behalf of the insurer submitted that where a warranty has been furnished by the proposer in terms of a declaration in the proposal form, the requirement of the information being material should not be insisted upon and the insurer would be at liberty to avoid its liability irrespective of whether the information which is sought is material or otherwise. For the purposes of the present case, it is sufficient for this Court to hold in the present facts that the information which was sought by the insurer was indeed material to its decision as to whether or not to undertake a risk. The proposer was aware of the fact, while making a declaration, that if any statements were untrue or inaccurate or if any matter material to the proposal was not disclosed, the insurer may cancel the contract and forfeit the premium. MacGillivray on Insurance Law8 formulates the principle thus:

> *... In more recent cases it has been held that all-important element in such a declaration is the phrase which makes the declaration the "basis of contract". These words alone show that the proposer is warranting the truth of his statements, so that in the event of a breach this warranty, the insurer can repudiate the liability on the policy irrespective of issues of materiality.*

29. We are not impressed with the submission that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and the grant of the insurance cover was on the basis of the statements contained in the proposal form. Barely two months before the contract of insurance was entered into with the Appellant, the insured had obtained another insurance cover for his life in the sum of Rs. 11 lakhs. We are of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

30. We may note at this stage, that the view which was taken by the NCDRC in the present case was contrary to its earlier decision in Vidya Devi (supra). In that case, the NCDRC upheld the repudiation of an insurance claim under a life insurance

cover by the LIC on the ground of a non-disclosure of previous insurance policies. In taking this view, the NCDRC relied on its earlier decision in Chandarana (supra). Subsequently in Sahara India (supra), the NCDRC took a contrary view. Having noticed its earlier decisions, the NCDRC did not even attempt to distinguish them. Indeed, the earlier decisions were binding on the NCDRC. This line of approach on the part of the NCDRC must be disapproved.

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. Ltd. MANU/KA/0032/1958 : AIR 1958 Mys 53 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 understating it. The 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. Further, apart from any question of imputed knowledge, the insured by signing that proposal adopts those answers and makes them his own and that would clearly be so, whether the insured signed the proposal without reading or understanding it, it being irrelevant to consider how the inaccuracy arose if he has contracted, as the Plaintiff has done in this case that his written answers shall be accurate."*

(Emphasis added)

16. The facts and circumstances in the present case are also squarely covered by the ratio of the aforesaid decision of the Hon'ble Supreme Court, since admittedly no information regarding existence of the previous Insurance Policy was conveyed by the Insured in his Proposal Form, and the contention that signatures of the Insured on the Form were taken without explaining the details to him, was not held to be acceptable by the Hon'ble Supreme Court.

17. For the aforesaid reasons, this finds merit in this Revision Petition which is therefore allowed after setting aside the impugned Orders passed by both the Ld. Fora below.

18. Consequently, the Complaint filed by the Complainants/ Respondents also stands dismissed. Parties to bear their own costs.

19. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

.....J
SUDIP AHLUWALIA
PRESIDING MEMBER