**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**NEW DELHI**

**FIRST APPEAL NO.292 of 2007**

(From the order dated 04.04.2007 in Complaint No.115/2001 of the

State Commission, Uttar Pradesh)

Smt.Kamna Bajpai …Appellant

Versus

Life Insurance Corporation of India …Respondent

**BEFORE:**

**HON’BLE MR. JUSTICE ASHOK BHAN, PRESIDENT**

**HON’BLE MRS. VINEETA RAI, MEMBER**

For the Appellant : Mr.Rakesh Kumar Gupta, Advocate

For the Respondent : Mr.S.P. Mittal, Advocate

**Pronounced on 31st August, 2012**

**ORDER**

**PER VINEETA RAI, MEMBER**

This Appeal has been filed by Smt.Kamna Bajpai, Appellant herein and original complainant before the State Commission being aggrieved by the order of the State Consumer Disputes Redressal Commission, Uttar Pradesh (hereinafter referred to as the ‘State Commission’) which had only partly allowed her complaint. Life Insurance Corporation of India, opposite party before the State Commission is Respondent herein.

The facts of the case are that the late husband of the Appellant, Shri Satya Prakash Bajpai(hereinafter referred to as the ‘life assured’) had taken three life insurance policies with accidental benefit from the Respondent/Insurance Corporation for Rs.1 lakh each plus accident benefit of Rs.1 lakh in the years 1994, 1997 and 1998 respectively. The Appellant was the nominee in respect of all these policies. On 11.05.1999, Appellant’s husband while changing an electric bulb by standing on a stool in his house fell down and sustained serious head injuries for which he was hospitalized. He expired on 16.05.1999 at the Gandhi Memorial & Associated Hospitals, Lucknow. Post-mortem of the deceased concluded that the cause of death was the result of anti-mortem head injuries. The Appellant as the nominee of the life assured filed her claim along with all the necessary documents in respect of all three policies for the assured sum of Rs.3 lakhs plus accident benefit of Rs.3 lakhs, totaling Rs.6 lakhs. However, Respondent/Insurance Corporation repudiated all three claims vide their letter dated 25.02.2002 on the grounds that the deceased had given incorrect replies in the Insurance Proposal Form regarding his health. Being aggrieved, Appellant filed a complaint before the State Commission on grounds of deficiency in service and requested that Respondent/Insurance Corporation be directed to pay her Rs.6 lakhs as insurance claim including accidental benefit with interest @ 18% per annum and Rs.50,000/- as litigation costs.

Respondent on being served put in appearance and contended that the claim was rightly repudiated since the deceased had made deliberate mis-statements and suppressed material information regarding his health at the time of taking/reviving the insurance policies because there was indisputable evidence to show that he was suffering from hypertension and acute enteritis for which he had taken medical treatment from the years 1995 to 1998 and also medical leave for on 4 occasions ranging from 2 to 6 days. These facts were not disclosed in the insurance proposal form and since insurance is a contract based on the principle of *ubberima fides* i.e. utmost good faith, as per the terms of the insurance policy the claim was rightly repudiated.

The State Commission after hearing the parties and on the basis of evidence filed before it partly allowed the complaint by directing the Respondent/Insurance Corporation to indemnify the claim in respect of Policy No.211096229 taken in the year 1994 since at that time there was no evidence/medical certificate that the life assured had taken medical treatment for any ailment. However, the State Commission concluded that the Respondent was justified in repudiating the claims in respect of the other two policies since there was documentary evidence that the life assured was a patient of hypertension and enteritis for which he had taken medical treatment as also medical leave ranging from 3 to 6 days on at least 4 occasions and had suppressed this material information in response to specific queries regarding his health in the insurance proposal form.

Hence, the present First Appeal.

Counsel for both parties made oral submissions. Counsel for Appellant contended that the State Commission erred in concluding that the Respondent/Insurance Corporation was justified in repudiating the claim in respect of two insurance policies on the grounds that Appellant’s late husband had suppressed material information regarding his health in the insurance proposal form by replying in the negative to the following specific questions: (i) whether the insuree had been absent from work on grounds of ill health during the last 5 years; and (ii) whether insuree was suffering from diabetes, TB, high or low blood pressure or any other disease. The insuree had taken only a few days leave for acute enteritis as also hypertension from which he recovered. He did not suffer from any permanent ailments or congenital disease and there was also no nexus between the cause of his death and his temporary ailments for which he took only 3 or 4 days’ rest. In other words, he enjoyed good health and therefore, there was no suppression of material facts regarding his health and thus there was no justification for repudiation of the insurance claim.

Counsel for Respondent submitted that it is a cardinal principle of an insurance policy that it is a contract based on ‘utmost good faith’ between the parties and any breach of the terms and conditions of the same would justify repudiation of the claim. In the instant case, it is an admitted fact that the life assured had replied in the negative in respect of specific questions regarding his health whereas there is documentary evidence on record that he had taken leave for hypertension ranging from 3 to 6 days on each occasion in addition to leave for acute enteritis. The claim was, therefore, rightly repudiated.

We have considered the submissions of learned Counsel for both parties and have gone through the evidence on record. The fact that the Appellant had taken three insurance policies with accidental benefit as also his death due to head injuries during the validity of these policies is not in dispute. It is also a fact that Respondent/Insurance Corporation had repudiated the claim on the ground that the life assured had suppressed material facts pertaining to his health by replying in the negative to specific questions relating to whether he had taken leave for any medical treatment and that he had been suffering from various diseases including hypertension.

We have gone through the evidence filed by the Respondent on whom there was onus to do so in support of its repudiation which includes documentary evidence that the life assured had taken leave for 2 days because of acute enteritis in 1995 and for 3 days in 1998 and on two occasions for hypertension i.e. 3 days in 1995 and 4 days in 1998. It is medically established fact that Enteritis is a temporary medical condition caused by eating or drinking contaminated substances resulting in inflammation and swelling of small intestine and it is quite a common ailment in our country and is easily treated and thus curable. In the instant case, the life assured had this common infection for which he was advised rest for only 2 to 3 days on each occasion and there is no evidence that he suffered any lifelong disability due to this. Similarly, hypertension is more of a lifestyle problem and again there is no evidence filed by the Respondent/Insurance Corporation on whom there was onus to do so to indicate that the life assured suffered from severe hypertension with serious impact on his health condition/longevity. It is also a fact that the death of the life assured was not caused because of any of these ailments and that he died because of head injuries following an accident while fixing a bulb in his house.

What constitutes suppression of material fact in the context of insurance policies is well established through a number of judgments including of the Hon’ble Apex court [Mithoo Lal Nayak **Vs. LIC of India - AIR 1962 SC 814**, Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.- **(2009) 8 SCC 316**]. The test to determine as to what is a ‘material fact’ is whether that fact has any bearing on the risk undertaken by the insurer. If the fact has any bearing, it is a material fact and if not, it is not material. In the life insurance policies, the risk covered is death of the life assured. Therefore, any facts that tend to suggest that the life assured is likely to fall short of the average would be a material fact. Applying this principle in the instant case, we are unable to agree with the State Commission that the life assured suppressed material facts pertaining to his health. As per the evidence on record, from 1995 to 1998, life assured had consulted a doctor on 4 occasions i.e. twice for an intestinal problem which is as discussed earlier is a temporary medical condition and which is fully curable, and twice for hypertension. We find force in the contention of Counsel for Appellant that hypertension was temporary and was not such that would constitute any serious health condition impacting adversely on the general health of the life assured. The Respondent/Insurance Corporation on whom there was onus to establish otherwise has not been able to do so. In view of these facts, we are unable to agree with the findings of the State Commission that the life assured by suppressing material facts pertaining to his health had breached the principle of utmost good faith which justified repudiation of the claim by Respondent. We, therefore, set aside the order of the State Commission and allow the First Appeal. Respondent/Insurance Corporation is directed to indemnify the claim of the Appellant in respect of the Policies No.211787754 and 212034404 for Rs.1 lakh each plus accidental benefit of Rs.1 lakh, totaling Rs.4 lakhs with interest @ 9% per annum from the date of filing of the complaint till its realization within two months from the date of receipt of this order.

The First Appeal is allowed on the above terms.

**Sd/-**

**…………..…………………**

**(ASHOK BHAN J.)**

**PRESIDENT**

**Sd/-**

**………….……………….**

**(VINEETA RAI)**

**MEMBER**

*/sks/*