

2010 C L D 1171

[Lahore]

Before Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ

Mst. FATIMA BEGUM ---Appellant

Versus

STATE LIFE INSURANCE CORPORATION OF PAKISTAN and others---Respondents

Regular First Appeal No.440 of 2007, heard on 7th July, 2010.

(a) Insurance Ordinance (XXXIX of 2000)---

---S. 123-Widow of insured person filed application before Insurance Tribunal urging that her husband was policy holder for a sum of Rs.100,000 on non-medical grounds which Insurance Company had issued in his favour without medical examination--Insurance company contested application on the ground that insurance policy was obtained by misrepresentation and by suppression of facts by the policy holder---Insurance Tribunal dismissed application of the widow-Validity---Contention that insurance policy of deceased husband of the applicant was repudiated, was not supported by lawful repudiation order as no such order had been produced during trial of the application Insurance Company's witness did not produce any written report of his investigation and stated in the examination-in-chief that deceased remained under treatment in the hospital-In absence of any written report or of any record of the hospital, Insurance Company could not establish the' alleged fraudulent conduct or concealment of some facts prior to purchasing of insurance policy by the deceased-Company's witness did not even allege any misrepresentation having been made by policy-holder before purchasing insurance policy--High Court accepted the appeal and set aside impugned judgment and directed the Insurance Company to make payment under insurance policy to the applicant.

(b) Insurance Ordinance (XXXIX of 2000)---

----S. 123---Insurance claim---Application for---Plea of Insurance company that application was time-barred--Insurance Tribunal dismissed application for recovery of insurance claim---Validity---Contention that such application was time-barred was repelled as only upon the constitution of the Insurance Tribunal under the Insurance Ordinance, 2000, the right to keep remedy, by invoking the powers of the Tribunal, could be availed.

R.F.A. No.16 of 2008 rel.

Liaqat Ali Butt for Appellant.

Abrar Ahmad for Respondents.

Date of hearing: 7th July, 2007.

JUDGMENT

NASIR SAEED SHEIKH, J.---This R.F.A. is directed against the judgment dated 21-11-2007 passed by the learned Insurance Tribunal Punjab, Lahore whereby the appellant-widow of late Muhammad Akram submitted an application for the recovery of Insurance claim before the Insurance Tribunal which application was rejected.

2. Briefly stating the facts of the case are that Muhammad Akram was a policy-holder for a sum of rupees one lac on non-medical grounds which the respondent No.1 issued in his favour without medical examination conducted upon the said policy-holder. This policy was issued on 31-3-1996. The policy-holder unfortunately died on 31-1-1997. After his death, ultimately upon the constitution of Insurance Tribunal, the widow of Muhammad Akram instituted an application for the recovery of the policy proceeds under the Policy of Insurance bearing No.574632-2.

3. The application was resisted by the respondents. The learned Tribunal framed the following issues:--

Issues.

- 1) Whether the Tribunal lacks the jurisdiction to hear the petition? OPR.
- 2) Whether the petitioner has no cause of action? OPR.
- 3) Whether the petition is barred by principle of res judicata? OPR.
- 4) Whether the petition is barred by time? OPR.
- 5) Whether the petition is bad in view of preliminary objections Nos.7, 8 and 10? OPR.
- 6) Whether the petition is bad for misjoinder of the parties? OPR.
- 7) Whether the petitioner is entitled to policy proceeds, along with liquidated damages, if so, to what amount? OPR.
- 8) Relief.

4. The learned Tribunal vide judgment dated 21-11-2007 dismissed the application of the widow of Muhammad Akram. The learned Insurance Tribunal mainly focused on two grounds that it is barred by time and secondly that there was no pre-examination of ailment of the policy holder and that a misstatement was made by him.

5. This judgment of the learned Insurance Tribunal dated 21-11-2007 has been assailed through the instant R.F.A. by the widow Fatima Begum.

6. It is contended by the learned counsel for the appellant that in so far as the question of limitation is concerned this honourable Court in a recently pronounced judgment in R.F.A. No.16 of 2008 had already held that upon the constitution of the Tribunal under the Ordinance of 2000 the right to seek a remedy by invoking the powers of the Tribunal can be availed of. Paragraph No.12 of the our judgment is reproduced below:--

"In our view, the constitution of the Tribunal under the special law vide notification dated 20-6-2006, gave rise to an intimation to the insurance policy holders to seek enforcement of their claims from the learned Insurance Tribunal constituted under the Ordinance of 2000, therefore, in our opinion the limitation for moving the Tribunal for the enforcement of Insurance Policy claim will commence from the date when the Tribunal was constituted for the first time on 20-6-2006. In this context, the Article 86 of the Limitation Act of 1908, will not cover the cases of those claimants who move the learned Insurance Tribunal for the purposes of their insurance policies' claim through constitution of the Tribunal constituted under the Ordinance, 2000. Thus the finding of the learned Tribunal of holding the claim as moved before the Insurance Tribunal to be barred by time is not sustainable."

7. The learned counsel next contended that there is no legally admissible material produced by the respondent for the purposes of denying the entitlement of the appellant claim under the Insurance Policy.

8. The learned counsel for the respondents has argued that the insurance policy was obtained by misrepresentation and by suppression of facts by the policy-holder and therefore the respondents repudiated the policy contract. The learned counsel for he respondents has further argued that the officer of the respondent who conducted the investigation in the matter appeared as R.W. 1. However the learned counsel admitted that no report was prepared by R.W. 1 Nisar Khadim in pursuance to the alleged investigation made by him. It is also admitted fact by the learned counsel for the respondents that no such investigation report has been produced by the respondents during the trial of the application before the Tribunal.

9. We have considered the arguments of the learned counsel for the parties and have perused the record with their valuable assistance.

10. We have already decided the questions of limitation in our judgment in R.F.A. No.16 of 2008, paragraph No.12 of which is reproduced above.

11. The contentions of the learned counsel for the respondent that the insurance policy of the deceased husband of the appellant was repudiated is not supported by an lawful repudiation order as no such order has been produced during the trial of the application. R.W. 1 who appeared before the Tribunal in the evidence of the respondent did not produce any written report of his investigation. The respondent-corporation therefore did not produce any admissible piece of evidence to controvert the claim of the appellant. It is important to note that R.W. 1 Nisar

Khadim stated in the examination in chief that Muhammad Akram deceased remained under treatment in Shalimar Hospital and date of his admission is 18-1-1997. However in his cross-examination he admitted that he did not visit the Shalimar Hospital during the ailment of the deceased. The record of the Shalimar Hospital was also not taken into possession by the said witness nor was placed on record in support of his contention by the R.W. 1. Thus in the absence of any written report prepared by R.W. 1 nor of any copies of the record of the Shalimar Hospital, we do not consider that the respondent-State Life Insurance Corporation established the alleged fraudulent conduct or concealment of some facts prior to the purchasing of the insurance policy by the said Muhammad Akram from the respondent-Corporation. It is further important to note that the insurance policy was purchased by Muhammad Akram deceased on 31-3-1996 and the evidence of respondent No.1 is to the effect that said Muhammad Akram remained hospitalized in Shalimar Hospital from 18-1-1997 which date is after the purchasing of the policy by the said Muhammad Akram. The R.W. 1 did not even allege any misrepresentation having been made by the policy-holder Muhammad Akram before purchasing the insurance policy on 31-3-1996.

12. In view of the above circumstances we are of the opinion that the claim of the appellant was illegally denied to her by the Insurance Tribunal. Resultantly the impugned judgment dated 21-11-2007 is set aside and the application moved by the appellant for the recovery of the claim under the insurance policy of her late husband is accepted as prayed for. The respondent State Life Insurance Corporation is denied to make the payment under the insurance policy to the appellant. The R.F.A. is accepted and parties to bear their own costs.

M.U.Y./F-29/L

Appeal accepted.