

(2014) 08 DEL CK 0115

In the Delhi High Court

Case No : Writ Petition (Civil) 3396/2010 and CM 6823/2010, 6824/2010 and 11333/2013

Birla Sunlife Insurance Company Limited

APPELLANT

Vs

Sunil Yadav

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0115

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Pratima N. Chauhan, Advocate for the Appellant; Sana Ansari and Ina Javed, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioner is an insurance company and has filed the present petition impugning the award dated 21.05.2009 passed by the Insurance Ombudsman (hereinafter referred to as the "impugned order") . By the impugned order, the claim made in respect of life insurance policy issued by the petitioner to Mamchand Yadav (hereinafter referred to as the "policy holder") has been allowed.

2. Brief facts of the case are that the father of the respondent - Lt. Sh. Mamchand Yadav approached the petitioner for issuance of an insurance policy under the Dream Plan Policy, on 10.08.2007, for an assured sum of Rs. 10,93,834 vide application/proposal form bearing No. A7069913. After a medical examination of the policy holder, the application was accepted by the petitioner and, on 05.09.2007, a policy being No.0001157621 was issued to the policy holder. The Policy holder met with an unfortunate motor vehicle accident on 17.10.2007 and was admitted in hospital with a head injury and a leg injury. The policy holder succumbed to his injuries on 20.10.2007. After the demise of the policy holder, the respondent being the nominee under the policy, submitted a claim for the insured amount on 14.03.2008, which was received by the petitioner on 19.03.2008.

3. After receiving the claim, the petitioner carried out an investigation and, it is asserted that the said investigations revealed that the policy holder was "suffering from high blood pressure, CVA for the past 3 years and was a diabetic on insulin". These alleged ailments were not disclosed by the policy holder in his application nor at the time of his medical examination and thus did not find mention in the Medical Examiner's Report (MER) . The petitioner, on the basis of the alleged misrepresentation by the policy holder regarding his past medical history, repudiated the claim of the respondent. Thereafter, the respondent filed a complaint before the Insurance Ombudsman for payment of the amount claim, which was allowed by the impugned order dated 21.05.2009.

4. It is contended on behalf of the petitioner that the life insurance policy issued to the policy holder was void as the policy holder had misrepresented the medical information in the application form. It is contended that the medical information provided by the policy holder was incorrect inasmuch as the policy holder has responded to the following questions in the negative:-

1. Are you on diet or any other medicine of any kind prescribed by a doctor?

2. Within the past five years, have you :

a) Consulted any doctor or other health practitioner?

b) Submitted to ECG, X-rays, blood test or other tests?

3. Have you ever had or sought advice for the following:

a) Chest pain, high blood pressure, stroke, heart attack, heart murmur or other heart disorder?

b) Diabetes or sugar in the urine?

5. It is stated that the information furnished by the policy holder was accepted and the policy in question was issued on 05.09.2007.

6. It is further asserted by the petitioner that the medical records of the policy holder indicated that he was suffering from high blood pressure and CVA since the past three years besides being diabetic on insulin. In support of this contention, the learned counsel for the petitioner has referred to the "death summary" prepared by Saroj Hospital and Heart Institute at the time of the demise of the policy holder. It is material to note that no other document except the death summary has been produced in support of the contention that the policy holder had been suffering from the said ailments. The learned counsel for the petitioner has also referred to a decision of the Supreme Court *P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India and Others*, and contended that the contract of insurance is a contract of uberrima fides and if procured by mis- representation, is void. It is contended that the petitioner had, accordingly, repudiated the contract of insurance and, therefore, was not liable for any claim in respect of the policy in question.

7. The respondent, who is the son of the policy holder, has disputed that the policy holder was suffering from any disease. It is disputed that the policy holder was a patient of diabetes or had any history of cardiac problem.

8. In the present case, the only document that was relied upon by the petitioner in support of its contention that policy holder was suffering from high blood pressure and CVA since past three years is the death summary prepared at the hospital at the time of demise of the policy holder. A bare perusal of the document indicates that it is a hand written document and, in parts, illegible. In my view, repudiation of the insurance contract on the basis of the said "death summary" cannot be justified for the reasons that the portion of the "death summary" relied upon by the petitioner is, first of all, not legible and secondly, the interpretation sought to be given by the petitioner to the said illegible portion appears to be out of context.

9. The policy holder had met with a motor vehicle accident and had suffered a head injury and an injury in the leg and was brought to the hospital in a critical condition. The said incident had occurred on 17.10.2007 and the policy holder went into coma. He succumbed to his injuries three days later, on 20.10.2007. The respondent had asserted that the death summary does not record that the policy holder was suffering from high blood pressure and CVA as contended by the petitioner but in fact records ".. infrascan-cardin" which means brain death. This, it is contended, is being incorrectly read as "CVA three years back". The respondent has also referred to other medical reports which do not indicate any past medical history of blood pressure or diabetes.

10. Admittedly, the policy holder had died as a result of injuries suffered in a motor vehicle accident and as stated earlier, the question whether there was any past medical history of high blood pressure or diabetes has been disputed by the respondent. The petitioner has also not been able to furnish any material which would clearly establish that the petitioner had been suffering from the ailments as contended by the petitioner.

11. In my view, it would not be open for the petitioner to avoid his liability under the policy only by relying on interpretation of the death summary that is highly disputed and on a bare reading does not clearly support the claim of the petitioner that the policy holder had been suffering from the stated ailments three years prior to his demise. The policy holder was also examined by the petitioner's Doctor on 08.08.2007. The Medical Examiner's Report (MER) also indicates that the policy holder was not suffering from any high blood pressure or diabetes.

12. The reliance placed by the petitioner on the decision of Supreme Court in P.C. Chacko and Anr. (supra) is also misplaced. In that case, it was not in dispute that the policy in question had been obtained by misrepresentation. In that case, the policy holder had undergone a Adenoma Thyroid surgery and this fact had been concealed from the insurance company. The fact that there was no dispute that

the policy in question had been obtained by mis-representation was noted by the Supreme Court in paragraph 10 of the judgment, which reads as under :-

"11. The basic fact of the matter is not in dispute. The insured had undergone an operation for adenoma thyroid. It was a major operation. Although the said operation was undergone by him four years prior to the date of the proposal made by him, he did not disclose thereabout prior to obtaining the insurance policy. We may notice that he died within six months from the date of taking of the policy i.e. on 6-7-1987, policy having been taken on 21-2-1987."

13. It is in this context that the Supreme Court held that the contract of insurance including contract of life assurance is based upon uberrima fides and every material fact must be disclosed, failing which there is good ground for rescission.

14. The facts of the present case are materially different. The question whether there has been any misrepresentation on the part of the policy holder is stoutly disputed and the petitioner has been unable to establish the basis on which it has repudiated the policy in question. The Ombudsman considered all facts and circumstances of the case and concluded that since the proximate cause of death was due to head injury leading to coma and ultimate death, the same had nothing to do with an existence or absence of a pre-existing disease and, accordingly, allowed the claim.

15. In my view, the petitioner cannot avoid its liability by repudiating the policy not only because the cause of death was an accident but also because the petitioner has been unable to establish that the policy holder had any pre-existing ailment or had obtained the insurance policy by misrepresentation.

16. Accordingly, in the given circumstances of the case, no interference with the impugned order is called for. The present writ petition is dismissed.

17. The interim order granted on 18.05.2010 stands vacated. Accordingly, the application (CM No.6823/2010) also stands dismissed. For the reasons stated in the application, the application (CM No.6824/2010) seeking condonation of delay in re-filing is allowed.

18. This court by an order dated 18.05.2010 issued notice in the petition subject to the petitioner depositing a sum of Rs. 10,000/- towards litigation expenses payable to the respondent. The said amount was not deposited as directed. Thereafter, the petitioner moved an application (CM No.11333/2013) seeking permission to pay the said litigation expenses on the next date i.e. 07.08.2013. On 07.08.2013, this court directed the petitioner to remit the said amount to the respondent, by a cheque/pay order by way of registered post within three days. In view of the abovesaid direction, the application (CM No.11333/2013) stands disposed of.

19. This court by an order dated 10.01.2014 directed the petitioner to deposit the insured amount with the Registry of this court and directed the Registry to

deposit the said amount in interest bearing fixed deposit initially for a period of one year. In consequence of the said direction, the petitioner deposited a sum of Rs. 11,92,677.47/- by way of a Demand Draft No. 000449 dated 09.04.2014. The Registry is directed to remit the said amount alongwith interest to the respondent.

20. The parties are left to bear their own costs.