(1947) 02 MAD CK 0009

In the Madras High Court

Kalinadhabatla Susila Devi APPELLANT

Vs

The Oriental Government Security, Life Assurance Company Limited RESPONDENT

Date of Decision : 26-02-1947

Acts Referred:

Citation : (1947) 60 LW 537 : (1947) 2 MLJ 227

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The husband of the appellant sent in a proposal for an insurance policy to the respondent company, the Oriental Government

Security Life Assurance Co., Ltd., Bombay. It is not alleged that there was anything untrue or incomplete in the form filled up by the applicant; but

just before the proposal was accepted in the Bombay office, the appellant''s husband contracted a chill after playing tennis and his temperature

immediately began to rise. During the course of the next few days his temperature rose to 1050 ; and on the 7th day (12th February, 1937) his

temperature dropped to normal. After remaining at almost normal for about three days, it began to rise again ; and throughout the month he had

temperatures ranging from 99ï¿½ to 101ï¿½ ; which led his Doctor, D.W. 1, to come to the conclusion that there was something wrong with the

applicant which needed further investigation. He then found that there was a patch of infection on the base of the lung of the applicant. The

temperature did not drop ; and so the applicant left the village for a sanatorium in Mysore, where he subsequently died of Tuberculosis, which had

presumably been existing for a considerable time before his death. While receiving attention from D.W. 1 after his high temperature between the

6th and the 12th had subsided and his temperature had begun to rise again, he received a letter of acceptance from the Insurance Company,

forwarded to him from the Vizagapatam office. In that letter of acceptance there was this note:

It is most important to note that if any adverse circumstance connected with your... general health ...however unimportant you may consider the

same, occur between the date of proposal and date of completion of the payment of the first premium in full or the date of issue of this acceptance,

whichever is later... the assurance will be invalid unless intimation of such event be made to me in writing and this acceptance of your proposal be

re-approved by the directors."" After the death of the assured person on 14th May 1937, five months after the date of acceptance, the widow filed

the suit out of which this second appeal arises, for the insurance money, the Insurance Company having repudiated her claim on the ground that the

failure of the deceased to report his illness to the Company in a validated the contract. The District Munsiff of Tanuku, who tried the suit, found

that the illness was not material and that the non-disclosure of it did not invalidate the contract ; but in appeal, although the learned Subordinate

Judge was inclined to think that the non-disclosure of his illness did not affect the conduct of the Company, which would probably have granted a

policy despite the illness, yet he held that the illness was sufficiently serious to necessitate its communication to the Insurance Company and that

since he did not do so, he was guilty of breach of warranty and that the Insurance Company was therefore absolved from all liability.

2. I have no doubt that there was a warranty of continued good health upto the date when the policy was issued on the 24th of February, 1937. It

was on the basis of the applicant''s representations that the policy was issued. He was particularly asked questions with regard to his health, and on

the basis of the answers given to the various questions the policy was issued. In Halsbury''s Laws of England, Volume 18, Article 386, a warranty

is defined inter alia as a statement by the assured which affirms or negatives the existence of a particular state of facts, the fact in the present case

being that he was in a sound state of health. In the same volume, it is pointed out that:

A policy of non-marine insurance usually contains an express condition relating to disclosure, and providing for the avoidance of the policy in the event of non-compliance with the condition. This condition, as a general rule, varies the common law duty of disclosure by extending or less

frequently, by restricting it. In any case, the effect of the condition is to make the duty contractual, as the condition is part of the contract between

the parties ; it becomes a term of that contract that disclosures shall be made in accordance with the condition, and a failure to make such

disclosure is therefore a breach of the contract, rendering the policy voidable.

Even in the passage in the same volume relied on by the learned advocate for the appellant, the contractual nature of the answers to the questions is

pointed out. In Article 585, page 407, it is said:

In the case of non-marine insurance, however, it is usual to introduce into the contract special stipulations by which the duty of disclosure is defined

and regulated and to require from the assured a variety of express statements of fact which, by the insertion of appropriate words are made

contractual conditions ; the performance of the duty is then subject to the terms of the contract.

It is true that in this case the failure to disclose was not made in the original proposal, but after the letter of acceptance had been sent. It is however

seen from the passage set out in paragraph I above that the acceptance was conditional upon the continued good health of the applicant and laid

upon him the same obligation as at the time of the proposal to inform the Insurance Company of any adverse circumstances connected with his

general health. It was made to ensure that the condition of the applicant was the same at the time when the letter of acceptance was received as it

was when his proposal form was sent in. The insurance was thus meant to have reference to the actual circumstances existing on the day on which

the contract was completed, and not to the state of health of the applicant on the day when the proposal form was sent in. I have no doubt that the

circumstance that the failure to disclose was after the letter of acceptance was sent makes no difference at all.

3. The learned advocate for the appellant has referred at length to two English decisions which he considers support his argument that non-

disclosure did not amount to a representation, and that in the absence of proof that the Insurance Company would not have issued the policy had

this disclosure been made, the plaintiff is entitled to succeed. The first of these cases is Joel v. Law Union and Crown Insurance Co. (1908) 2

K.B. 863. That was not a case in which there was a failure to disclose in reply to a questionaire issued by the Company, but one in which an

untrue answer was made to the doctor who examined the assured for the purpose of sending a report to the Insurance Company on her state of

health. The learned Judges pointed out that the questions and answers put by the doctor who examined her had no connection with the contract

and were merely intended to assist the doctor in giving a full report to the Insurance Company. Having come to that conclusion, they considered

whether the appellant had not committed a breach of the common law obligation to reveal all material facts independently of any particular set of

questions that might have been put or answered ; and they held that there might have been such a concealment. They therefore remitted the case

for a fresh trial, pointing out that when there is no contract the Insurance Company would have to prove that the non-disclosure was material.

4. The other case relied on is Mutual Life Insurance Co. of New York v. Ontario Metal Products Co. (1925) A.C. 344 where it was laid down

that:

When statements made by an insured person upon his application for a policy of life insurance are not made the basis of the contract but are to be

treated merely as representations, an inaccurate statement is material so as to vitiate the policy if the matters concealed or misrepresented, had they

been truly disclosed, would have influenced a reasonable insurer to decline the risk, or to have stipulated for a higher premium.

The case was one coming from Canada, where there is a statute which contains this clause:

The proposals or application of the assured shall not as against him be deemed a part of or considered with the contract of insurance except in so

far as the Court may determine that it contains a material misrepresentation by which the insurer was induced to enter into the contract.

Their Lordships there held that the representation made by the insured person was not a term of the contract, and therefore it was incumbent on

the society, if it was to avoid the contract, to show that the misrepresentation was material. As to the facts, they found in the Company''s doctor''s

own evidence that even if the illness had not been disclosed, he would still have recommended to the Company the acceptance of the applicant''s

proposal.

5. It is thus seen that both the cases relied on are cases in which the misrepresentation arose out of statements which were not part of the contract

and so differ from the present case in which the obligation to disclose was part of the contract.

6. Although it is not necessary to decide the question whether the misrepresentation was material or not, I have no doubt that the Insurance

Company was right in saying that it was material. An illness in which the temperature rose to 105 and did not remain at normal for more than 2 or 3

days and then began to rise again was a serious illness. It caused anxiety to D.W. I and led him to examine the deceased very much more carefully

than he had done before, and to discover a patch of infection on a lung of the deceased. This was not so trivial an illness that reference to it was

not to be expected. It was an illness of which the company would necessarily have had to take serious notice.

7. The appeal is dismissed with costs.