

(1952) 12 KAR CK 0001
In the Karnataka High Court
Case No : Second Appeal No. 438 of 1949-50

Kesave Seethamma

APPELLANT

Vs

Bombay Life Assurance Co. Ltd.

RESPONDENT

Date of Decision : 17-12-1952

Acts Referred:

Contract Act, 1872 — Section 17
Insurance Act, 1938 — Section 45

Citation : AIR 1954 Kar 134

Hon'ble Judges : Vasudevamurthy, J

Bench : Single Bench

Advocate : A.R. Somanatha Iyer, for the Appellant; K. Prahlad Rao, for the Respondent

Judgement

Vasudevamurthy, J

1. The plaintiff is the widow of one K. Srinivasaiya who died on 8-9-1945 at Koppa. He had insured his life with the defendant company for Rs. 3000/- and the plaintiff sued to recover that sum after the death of the insured. The defendant company denied their liability to pay any sum under the policies on three grounds: first that the insured had suppressed certain material facts and had made some false and fraudulent statements in his proposal and personal declaration forms, which circumstance vitiated the policy; secondly, that the insured had committed suicide and as the same was within 13 months of the date of insurance the contract under the insurance policy had become void and could not be enforced: and thirdly, that the insured had speculated on his life by insuring for much larger sums than he could afford and his taking up the insurance policies of the company in those circumstances was not a "bona fide" act on his part. The Additional Subordinate Judge, Chickmagalur, who tried the plaintiff's suit decreed it. On appeal, the District Judge of Shimoga reversed that decision and dismissed her claim. The plaintiff has now come up in second appeal.

2. The two latter pleas, viz. that the deceased had committed suicide and that he

had speculated on his life have been found against the defendant company by both the Courts below, and the same cannot and are not pressed before me. It has not been explained what exactly the company meant by the third plea and it does not seem to be by itself any proper defence to a claim on an insurance policy though it might be a piece of evidence and might probabalize other pleas such as suicide or misrepresentation.

3. The first plea of fraudulent misrepresentation or suppression of material facts by the insured is with regard to statements recorded in columns 8 and 9 of the proposal form Ex. I. Under column 8, the insured was asked to state whether his life had ever been insured in any other company and to give particulars. He has answered that query by stating that he had done so in the Empire of India Life Insurance Co. Ltd., under four endowment policies aggregating Rs. 6000/- and that they were accepted as proposed at ordinary rates without any extra premium being charged or lien or condition imposed. The insured has made a formal declaration at the end of the proposal form that the particulars given by him in the proposal forms were true and that he agreed that the said proposal and any declaration to be made before the Medical Examiner should be the basis of the contract between him and the defendant company. These statements are "prima facie" false. (After discussion of the evidence His Lordship proceeded :) It must therefore be held that the deceased made a false declaration in his proposal form Ex. I knowing it to be false and the point that falls for consideration is whether the-same vitiates his contract of insurance with the defendant company.

4. It is next contended by the learned counsel for the appellant that u/s 45 of the Mysore Insurance Act (22 of 1039) no policy of life insurance effected before the commencement of the Act shall, after the expiry of two years from the date of the commencement of the Act and no policy of life insurance effected after the coming into force of this Act, shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement in the proposal for insurance, or in any report of a medical officer or referee, or in any other document leading to the issue of the policy was inaccurate or false, unless the insurer shows that such statement was on a material matter and fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false. He urges that the statement of the insured regarding the details of his insurance with the Empire of India Life Insurance Co., was not on a material matter and was not fraudulently made. He has relied on a case in -- "Joel v. Law Union and Crown Insurance Co." (1908) 2 KB 863 (A) where it has been held that the non-disclosure of certain facts in answer to questions put by the medical referee of the insurer were not, in the absence of fraud, sufficient to vitiate the contract of insurance. In that case the insured had been asked some questions in the form of declaration to the medical referee regarding the state of her health prior to the proposal. That declaration form did not state that the answers were to form a part of the basis of the contract. It was found that she had foolishly, but not

fraudulently, concealed the fact that she had a nervous breakdown which had necessitated her being confined in an asylum for sometime. It was held that, having regard to the nature and purpose of those questions, the truth of the answers to them was not on the true construction of the documents made part of the basis of the contract and, therefore, could not vitiate the policy. It has further been pointed out by Fletcher Moulton L.J. in that case that the contract of life insurance is one "*uberrima fidei*" and that the insurer is entitled to be put in possession of all material information possessed by the insured. The opinion of the insured as to the materiality of that knowledge is of no moment; if a reasonable man would have recognized that it was material to disclose the knowledge in question, it was no excuse to say that the insured had not recognized it to be so.

5. The next case relied on for the appellant is -- "*Mutual Life Insurance Co. of New York v. Ontario Metal Products Co.*" 1925 AC 344 (B) where similarly it has been held that when statements made by an insured person in his application for a policy of life insurance are not made the basis of the contract but are to be treated as merely representations, an inaccurate statement is material so as to vitiate the policy if the matters concealed or misrepresented, had they truly been disclosed would have influenced a reasonable insurer to decline the risk or to have stipulated for a higher premium. It is not sufficient that they have merely caused delay in the issue of the policy while further inquiries were being made. In that case the insured, who had been in constant attendance in his office during the five years preceding the date of his policy and was never for a single day laid aside from work, had received some injections by way of tonic under medical advice. Their Lordships held, agreeing with the Judges of the Supreme Court, that those injections were not in the nature of a surgical operation which he should have disclosed and that his omitting any reference to the condition for which he received them were merely in respect of trivial ailments and the insured was not guilty of any inaccuracy in omitting to refer to them.

6. The next case sought to be relied on for the appellant is -- *Haridasi Debi and Others Vs. Manufacturers Life Assurance Co. Ltd.*, , But the decision in that case was reversed on appeal by a Bench in -- *Manufacturers Life Insurance Co. Ltd. Vs. Sm. Haridasi Debi and Another*, . In that case the insured was asked by the Medical Examiner of an Insurance Company whether any members of his family had ever suffered from consumption or insanity, or whether the insured had lived in the same house or associated in any way with a case of tuberculosis. It appeared that the insured, even though he knew that the medical practitioners had diagnosed the disease that his paternal aunt was suffering from as tuberculosis and had arranged for treatment on the basis of that diagnosis, had answered the question in the negative. It was held that the answer was fraudulent since it would amount to active concealment of a fact by one having knowledge or belief of the fact within the meaning of Section 17 of the Contract Act and that the company was therefore, entitled to repudiate the claim on the policy.

7. Maneklal Kalidas Shah Vs. The Yorkshire Insurance Company Limited, is the next case relied on for the appellant. In that case the age of the insured had been admitted and the burden of proving that such admission was procured by fraud was clearly on the Insurance Company. It was, therefore, held that the company must be held bound by their representation that they would not dispute the correctness of the age admitted by them. In -- Indian Equitable Insurance Co. Ltd. Vs. Onkarappa, , which is another case relied on for the appellant, in a declaration for the purpose of reviving a policy the insured had stated that he was having good health for a continuous period, taut it was found that for sometime between the date of the original policy and the date of the declaration he had suffered from a mild attack of dyspepsia for which he underwent some treatment; it was held that this was not a mis-statement, much less a wilful misrepresentation. These cases, therefore, do not help the appellant.

8. The non-disclosure of the details regarding the previous insurance does not appear to be innocent and seems to have been deliberate and fraudulent. The insured had been examined on 11-8-1943 by an Assistant Surgeon on the Govern ment McGan Hospital, Shimoga, holding an M.B.B.S. degree. While answering questions put by him to the insured, the insured has stated that his father had died at the age of 48 years on account of chronic malaria and anaemia and was ill for about a month before he died and that his mother died at the age of 35 years on ac count of secondary anaemia and that she was ill for about 3 or 4 weeks. On that, that Medical Officer reported that since the weight and measurements of the insured were below average, and his family history were not very good, he could be accepted on a load. While giving answers to the Medical Examiner of the defendant company, one Dr. K. Narasinga, an L.M.P. of the Rayapuram Medical School and a private Medical Practitioner who examined the insured on 19-8- 44, the insured declared that his father had died at the age of 40, of Typhoid after being ill for 20 days and that his mother had died at the age of 35 of dysentery, having been ill for 30 days. Apparently family history is considered import ant. In determining the family history it is required, for instance, that if either the father or the mother had died from tuberculosis, the Insured should state if the deceased ever lived in the same house as the proposer and the year in which the death occurred. This direction has been printed in red ink prominently in Col. 12 of the Medical Officer's report of the Empire of India Life Insurance Co., Ltd. showing the value attached to such family history. The insured must have known or thought that if he informed the defendant company that his proposal to the Empire of India Life Insurance Co., had not been accepted as proposed and also had been loaded, the defendant company would make independent enquiries of their own and would very easily discover about the false statements made in the family history columns.

9. Mr. Prahlada Rao, learned counsel for the respondent, has also referred to a number of cases. In -- "Lond Assurance v. Mansel" (1879) 11 ChD 363 (G), in the proposal in answer to a question similar to the one in the present case, the insured had stated that he had insured already in two offices at ordinary rates. It

was, however, found that his life had been declined by several other insurance companies, and it was held that there had been a material concealment and that the insurance company was entitled to have the contract set aside. It was pointed out by Jessel, M.R. that in cases of insurance a party is required not only to state all matters within his knowledge, which he believes to be material to the questions of insurance but all which are in point of fact so. If he conceals anything that he knows to be material it is a fraud. But besides that if he conceals anything that may influence the rate of premium which the underwriter may require although he does not know that it would have that effect, such concealment entirely vitiates the policy.

10. In -- "*Lindenau v. Desborough*" (1828) 108 ER 1160 (H), it has been held that it is the duty of a party effecting an insurance on life or property to communicate to the under-writer all material facts within his knowledge touching the subject-matter of the insurance and it is a question for the Jury whether any particular fact was or was not material. In that case also Bayley J. remarked:

"I think that in all cases of insurance, whether of ships, houses or lives, the underwriter should be informed of every material circumstance within the knowledge of the assured and that the proper question is whether any particular circumstance was in fact material and not whether the party believed it to be so. The contrary doctrine would lead to frequent suppression of information, and it would often extremely be difficult to show that the party neglecting to give information thought it material."

In -- "*Wainwright v. Bland*" (1936) 150 ER 334 (I), the suppression or false representation of facts material to be known by the insurers was held to vitiate a policy of insurance although it was in answer to a parol enquiry and the policy was, by the articles of the insurance office, to be void on false answers being given to certain written enquiries. Where a party gave false answers to verbal enquiries, whether she had effected similar insurances at other office it was held that the policy was thereby avoided as from the nature of the contract, the suppression of any material fact or a false answer to a material question must avoid the policy.

11. "*Shivkumar v. North British & Mercantile Insurance Co., Ltd.* AIR 1936 Sind 222 (J) was a case very similar to the present. In that case in answer to the query whether his life had in the past been proposed for assurance at any office, the insured stated that it had been insured in two companies and that his proposal had not been dropped or withdrawn or accepted by any other office at any extra premium or special terms or had been declined or deferred. It turned out that at the time when these answers were given the assured knew that his proposal of one of those companies had not matured into a policy and that that company and he had been carrying on some correspondence as the former were not prepared to accept the proposal of the insured at the rates of premium prescribed in their table for insuring a first class life and had made counter proposals and no policy had, as a matter of fact, been issued. It was held that

the contracts of insurance were "uberrima fidei" and that what facts are material is a question of fact in each case. All such facts which would influence a reasonable man either to accept or decline a risk or stipulate for a higher premium would be material. The failure by the insured to mention, the fact that his proposal to another Insurance Company had not matured into a policy and the circumstances under which it fell through, and the fact that he was twice insured with a third company were errors and omissions made wilfully or intentionally to induce the defendant company to accept his proposal and so vitiated the policy as these facts were material. In --(1925) AC 344 (B)", it has been observed by the House of Lords that it is a question of fact in each case whether, if the matters concealed or misrepresented had been truly disclosed, they would on a fair consideration of the evidence have influenced a reasonable insurer to decline the risk or to have stipulated for a higher premium. See also --AIR 1935 1 (Privy Council) . It is certain in any event in this case that the defendant company would not have agreed to issue a policy at normal rates, even if they did not reject the proposal, if they had been told that another responsible insurance company had done so shortly before. In that latter case they would have made counter proposals and the insured might or might not have accepted it and the contract might not have materialised at all.

12. The representation that one company had accepted or refused to accept as normal a proposal on the life of the insured would in my opinion be clearly a circumstance which would materially affect the decision of another company and to induce the latter to either refuse or accept the proposal on similar terms, see -- "Gordan v. Street" (1899) 2 QB 641 (L).

13. D.W. 1, the Deputy Manager of the defendant company, has stated that if at the time of the proposal it had been brought to the notice of the defendant company that the Empire of India Life Insurance Co., had accepted the insured's proposal with a load of five years, he very much doubted whether his company would have accepted it. "Fraud" has been described in Section 17 of the Indian Contract Act as meaning and including the active concealment of a fact by one having knowledge of it with intent to deceive another party, or to induce him to enter into a contract. I think it must be held in this case that there has been such a fraud on the part of the insured as would vitiate his contract of insurance with the defendant company and that Section 45 of the Insurance Act does not help the plaintiff. The decision of the lower appellate Court is, therefore, correct.

14. In the result this appeal fails and is dismissed. As regards costs the lower appellate Court has awarded costs to the defendant. I think this is not a case in which costs should be so awarded. The defendant company did not repudiate the contract till the plaintiff filed her present suit on 11-8-47 though they were given notice of the claim so far back as on 24-5-45. They have pleaded in their written statement that the plaintiff's claim was still under consideration and that the plaintiff had precipitated matters by rushing to Court. They also put forward other objections to the plaintiff's claim which they have not been able to make

out. If they had explained to the plaintiff the grounds on which they have now contested her claim and not held out hopes to her that the matter was still under consideration, she might or might not have wasted her time and money to bring this action. I think, therefore, in the circumstances this is a proper case in which the parties should bear their own costs throughout this litigation and I order accordingly.

15. Appeal dismissed.