(2009) 08 OHC CK 0071

In the Orissa High Court

Kuni Lata Sahoo — APPELLANT

Vs

Senior Divisional Manager, L.I.C. of India and Another — RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:
Insurance Act, 1938 — Section 45

Citation : (2011) ACJ 1001 : AIR 2010 Ori 19 : (2010) 109 CLT 94 : (2009) OLR 353 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.;S.C. Parija, J

Bench : Division Bench

Judgement

S.C. Parija, J.—The widow of the deceased insured has filed this Writ Petition assailing the action of the Life Insurance Corporation of India (for short "L.I.C.") in repudiating all liabilities under the insurance policy bearing No. 580572572 on the ground that the deceased insured had withheld correct informations regarding his health at the time of effecting the insurance policy with L.I.C. Accordingly the Petitioner has prayed for quashing of the letter of repudiation dated 18.3.1997 (Annexure-6) & to direct payment of the sum assured under the said policy.

2. The brief facts of the case is that the husband of the Petitioner Babaji Charan Sahoo submitted a proposal for taking a life insurance policy with the L.I.C, Branch Office, Nimapara, in the district of Puri, on 21.2.1992.The proposal was accepted by the L.I.C. on 28.3.1992 & the insurance policy bearing No. 580572572 for an assured sum of Rs. 40,000 was issued by the L.I.C. in favour of the insured. The insured Babaji Charan Sahoo died on 4.6.1993 at the age of 31 years, leaving behind his wife, a daughter & a son along with his old parents. The death of insured Babaji Charan Sahoo, as certified by the doctor was due to Viral Encephalitis & Cardio Respiratory arrest. After the death of her husband, the Petitioner submitted claim application in the prescribed form along with original Insurance Policy & Death Certificate on 2.7.1993, for getting the sum assured under the policy.

3. L.I.C. kept the matter pending & after a lapse of about 3 1/2 years, the Cuttack Divisional Office of L.I.C., vide their letter dated 18.3.1997 intimated the Petitioner that the L.I.C. has decided to repudiate all liabilities under the policy on the ground that the deceased insured had withheld material informations regarding his health at the time of effecting the assurance with them. It was further mentioned in the said letter that at the time of submitting the proposal for assurance dated 21.2.1992, the deceased insured had stated his usual state of health as good & that he had not consulted any Medical Practitioner for any ailment requiring treatment for more than a week. Similarly he had answered some other questions in negative as mentioned in the said letter dtd. 18.3.1997. According to Divisional Office of LIC, the answers given by the deceased insured were found to be false & the insured had infact suffered severe Gastritis & Pyloric Canal Ulcer with gross deformity for which he had consulted a doctor & had taken treatment only one year before he took the policy. Accordingly, the Petitioner was intimated that as the deceased insured had not disclosed these facts & gave false answers regarding his health at the time of taking the policy, the LIC has repudiated the policy & forfeited all amounts paid by the deceased insured towards insurance premium.

4. Learned Counsel for the Petitioner submits that as the Petitioner suffered from Gastritis & Peptic Ulcer, which was not a serious disease at all & as the deceased insured admittedly died of Viral Encephalitis & Cardio Respiratory arrest, which had no remote nexus with the ailments which the deceased insured was suffering prior to taking of the policy, the non-disclosure of such fact cannot be a ground for rejecting the claim. Accordingly it is submitted that LIC has repudiated the claim mechanically & without application of mind.

5. Learned Counsel appearing for the LIC, Opposite Party Nos. 1 & 2, with reference to the counter affidavit filed submitted that the deceased insured had withheld material informations regarding his health while submitting the proposal for taking insurance coverage of his life on 21.2.1992. The deceased insured expired on 4.6.1993. As the claim was an early death claim, an enquiry was made by the LIC for settlement of the claim made by the Petitioner. On enquiry, it came to the knowledge of the LIC that the deceased insured was suffering from Peptic Ulcer prior to the date of proposal & as such was not in a good health condition at the time of effecting the insurance policy. In this regard, it is submitted that the deceased insured had given false statement to the questionnaire contained in the proposal form, as per Sl. No. 11, which was with regard to the personal history of the proposed insured. From Sl. No. A to E, the deceased insured had answered in the negative as ''No'' & in Sl. No. 1, the deceased insured had answered as ''Good'', The questions & the answers furnished by the deceased insured in the proposal form, as contained in the letter of repudiation dated 18.3.1997 is extracted below:

11. A. During the last five years did you consult a Medical Practitioner for any ailment requiring treatment or more than a week? No

B. Have you ever been admitted to any Hospital or Nursing Home for General check-up, observation, treatment or operation? No

C. Have you remained absent from place of work on grounds of Health during the last five years.? No

D. Are you suffering from or have you ever suffered from ailments pertaining to lever, stomach, heart, lunge, kidney, brain or nervous system? No

E. Are you suffering from or have you ever suffered from Diabetes, Tuberculosis,'' High Blood Pressure,/Low blood pressure, Cancer: Epilepsy, Hernia, Hydrocele,'' Leprosy or any other disease? No

I. What has been your usual state of Health? Good

6. Accordingly, Learned Counsel for the LIC submitted that in view of such false statements furnished by the deceased insured at the time of effecting the insurance policy, the LIC is entitled to repudiate all liabilities under the said policy, as per Section 45 of the Insurance Act.

Section 45 of the Insurance Act reads as under:

Policy not to be called in question on ground of misstatement after two years. No policy of life insurance effected before the commencement of this Act shall, after the expiry of two years from the date of commencement of this Act & 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 made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, 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 or suppressed facts which it was material to disclose & that it was fraudulently made by the policy-holder & that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

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7. There are three conditions for application of the second part of Section 45 of the Insurance Act, which are:

a. the statement must be on a material matter or must suppress facts which it was material to disclose;

b. the suppression must be fraudulently made by the policy-holder; &

c. the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

8. In the case of Rohini Nandan Goswami Vs. Ocean Accident and Guarantee Corporation Ltd., , while considering the duty of a insured to disclose material facts & the right of the insurer to avoid the insurance policy in case of such non-

disclosure, the Hon''ble Court observed that where to a claim under the policy of insurance concealment of material fact is alleged by the insurer as entitling him to avoid the policy, the Court has to consider what is a material fact. Whether a particular fact is material depends upon the circumstances of a particular case. Evidence of materiality is not always necessary. Materiality of a particular fact may be obvious from its very nature. The test to determine materiality is whether the fact has any bearing on the risk undertaken by the insurer. If the fact has any bearing on the risk, it is a material fact, if not it is immaterial.

9. While interpreting a contract of life insurance, a Division Bench of Punjab High Court in the case of Lakshmi Insurance Co. Ltd. Vs. Bibi Padma Wati, , observed as under:

The contract of life insurance being one of utmost good faith & the probable expectancy or duration of the life of policy-holder being an important element in it, the controlling factor in the construction of terms "sickness, ailment or injury" in the application by insured for revival of his lapsed insurance policy must necessarily be the intent of the parties without attaching to anyone of these terms any technical or theoretical meaning. Whatever the term ''ailment'', or ''sickness'' may mean in the medical sense, or in accordance with their dictionary meaning, they cannot embrace merely transitory & temporary illness in its accepted sense, as they are not material to the risk insured. These terms refer to disorders of substantially serious nature affecting general health & do not include passing indispositions which do not affect the applicant''s general health. No embargo, therefore, can be placed on the insured, in not declaring occasional physical disturbances of a trivial character. These terms are to be restricted to such illnesses which impair the constitution of the insured or interrupt the performance of vital functions. xxx xxx xxx.

10. Considering the effect of Section 45 of the Insurance Act & whether the policy holder had made an inaccurate or false statement on a material matter or suppressed facts which it was material to disclose & it was fraudulently made by the policy holder & the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose, the Division Bench of Madras High Court in the case of Life Insurance Corporation of India v. Janaki Ammal AIR 1968 Mad 324, proceeded to observe as under:

Thus, there is ample authority for the proposition that, an insurer could avoid a contract of insurance after the expiry of period of two years mentioned in the first part of Section 45 of the Insurance Act only on the ground of suppression of illness, which affects the expectation of life of the insured & not mere temporary or trivial illness & that unless the disease he was suffering from is clearly established & it is also established that disease would have a material bearing on the insurability of the policy holder, the policy cannot be invalidated. We are, therefore, clear that in the circumstances of this case, the mere fact that the deceased had been taking medicines & injections without proof of anything more would not be sufficient to invalidate the policy.

11. Learned Counsel for the Petitioner relied upon a decision of the Apex Court in the case of Life Insurance Corporation of India and Ors. v. Smt. Asha Goel and Anr. 2001 SCW 161, wherein the Hon''ble Court observed as follows:

In course of time the Corporation has grown in size & at present it is one of the largest public sector financial undertakings. The public in general & crores of policy-holders in particulars look forward to prompt & efficient service from the Corporation. Therefore the authorities in-charge of Management of the affairs of the Corporation should bear in mind that its credibility & reputation depend on its prompt & efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it should be one of extreme care & caution. It should not be dealt with any mechanical & routine manner.

12. Learned Counsel for the Petitioner has also relied upon a division Bench decision of this Court in the case of Smt. Gouri Sethi Vs. The Divisional Manager of L.I.C. and Others, , where in a similar situation the LIC had repudiated the claim on the ground that the deceased insured had furnished false statement to the questionnaire contained in the proposal form & had suppressed his age & physical deformity. This Court while referring to the aforementioned decision of the Madras High Court AIR 1968 Mad 324 came to hold that the deceased insured had not stated in the proposal form that he was suffering from Acid Peptic disease & Allergic & has been treated for Hypertension prior to his taking the insurance policy & admittedly the deceased insured died of Cardiac Vascular Arrest & Hemiplegia, the suppression of prior ailment not affecting the expectation of life cannot be a ground to repudiate the policy. Accordingly, this Court directed the LIC to release the claim of the Petitioner therein.

13. Learned Counsel for the LIC has relied upon a decision of the Apex Court in the case of P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India and Others, , in support of his contention that a deliberate wrong answer in the proposal form which has a great bearing on the contract of insurance, if discovered, may lead to the policy being vitiated in law & therefore the proposal can be repudiated if a fraudulent act has been discovered. In the said case, the deceased insured while submitting the proposal form had not disclosed that he had undergone an operation for Adenoma Thyroid. Subsequently, the deceased insured died of Polyneuritis. The Hon''ble Court, in the facts of the case, came to hold that since the deceased insured had undergone an operation for Adenoma Thyroid, which was a major operation, which fact he did not disclose prior to obtaining the insurance policy & died within six months from the date of taking the policy, the LIC is entitled to repudiate all liability under the policy.

14. The legal position which emerges from the aforementioned judicial pronouncements is that the test to determine materiality is whether the fact not disclosed has any bearing on the risk undertaken by the insurer. If the fact has any bearing on the risk, it is a material fact. If the insured failed to disclose in the proposal form trivial ailments suffered by him temporarily on some

occasions, the same cannot be construed as fraudulent suppression of materiel facts, so as to repudiate the contract of insurance.

15. The Insurance policy, apart from its special feature, is a contract between a person seeking to be insured & the insurer. In interpreting the terms of contract of insurance, they should receive fair, reasonable & sensible construction in consonance with the purpose of the contract as intended by the parties. Emphasis in such cases is laid more upon a practical & reasonable, rather than on a literal & strained construction. In interpreting the contract of insurance neither the coverage under a policy should be unnecessarily broadened, nor should the policy be rendered ineffective in consequence of unnatural or unreasonable construction. An attempt should be to construe a contract in liberal manner so as to accomplish the purpose or the object for which it is made. In the absence of ambiguity, neither party can be favoured but where the construction is doubtful, the Courts lean strongly against the party who prepared the contract. Where there is a susceptibility of 2 interpretations, the one favourable to the insured is to be preferred.

16. In the present case, the deceased insured was suffering from Gastritis with superficial Stomach Ulcer & was under medication for some time, as would be evident from the Doctor''s report (Annexure-K) to the counter affidavit. Admittedly, the deceased insured died of Viral Encephalitis & Cardic Respirator arrest & suffered from the same only ten hours before his death, as would be evident from the Medical Attendant Certificate (Annexure-4 series) to the Writ Petition.

17. In view of the principles of law as discussed above, we are of the considered view that as the deceased insured was suffering from minor ailments like Gastritis with superficial Stomach Ulcer, which is not a serious disease having any bearing on the risk undertaken by the L.I.C., the non-disclosure of the same cannot be said to be material, especially when the same did not affect the life expectancy of the deceased insured Moreover as the cause of death of the insured was admitted due to Viral Encephalitis coupled with Cardio Respiratory arrest, which had no nexus with the previous ailments of the deceased insured, the repudiation of the policy & rejection of the claim by the L.I.C. was not proper & justified.

18. In view of the above findings the Writ Petition is allowed & the LIC, Opposite Party Nos. 1 & 2 are directed to pay the sum assured under the policy of insurance other Petitioner, which shall be paid within a period of three months.

I.M. Quddusi, A.C.J.

I agree.

