

(1932) 04 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 348 of 1927

Lakshmishankar Kanji Rawal

APPELLANT

Vs

The Gresham Life Assurance Society Ltd.

RESPONDENT

Date of Decision : 05-04-1932

Acts Referred:

Citation : AIR 1932 Bom 582 : (1932) 34 BOMLR 1295

Hon'ble Judges : Patkar, J; Barlee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Patkar, J.—This was a suit brought by the plaintiff, the brother of one Maganlal, whose life was insured with the defendant company, on May 8, 1924, for Rs. 5,000.

2. In the proposal form, Exhibit 74, the deceased Maganlal agreed that the proposal and the declaration as well as the replies to the questions put to him by the medical examiner shall be the basis of the contract between him and the said company, and the same agreement is embodied in the policy, Exhibit 17.

3. The lower Court has found that the answers in the proposal form to questions Nos. 8 and 9 are false. Those questions are "Has your life been previously proposed for assurance ?" The answer is "No." Question No. 9: "Is your life now assured, and for what amount ?" The answer is " No ". There is no doubt that the answer to the question No. 8 is false but it is urged on behalf of the appellant that the answer in the negative was not false to the knowledge of Maganlal for it had been written not by Maganlal but by the agent of the company Mr. Pandit, Exhibit 89. In *Dawaons Ld. v. Bonnin* (1921) 2 A.C. 413 a blunder of the agent of the insurance company in filling the proposal form was considered not to make any difference, but the point was not specifically taken, and the question how far the insurance company can take advantage of a mistake in the answer for which their agent was responsible was not raised. I may, however, refer in this

connection to Halsbury's Laws of England, Vol. XVII, para. 1061, page 533.

4. In *Newsholme Bros. v. Rood Transport and General Insurance Co.* (1929) 2 K.B. 366 a proposal form for the insurance of a motor bus was signed by the person wishing to effect the insurance, but the answers to the questions therein, which were warranted to be true and to form the basis of the contract, were filled in by the insurance company's agent who, although told the true facts, wrote, for some unexplained reason, answers which were untrue in a material respect. It was held that the agent of the insurance company in filling in the proposal form was merely the amanuensis of the proposer, that the knowledge of the true facts by the agent could not be imputed to the insurance company, and therefore the insurance company was entitled to repudiate liability on the ground of the untrue statements in the proposal form. It appears from the evidence in the case that Mr. Pandit the agent of the company acted as the agent of the insured in filling up some of the answers in the proposal form.

5. It appears that when Maganlal was examined by Dr. C.M. Chanpura, he was questioned " Have you ever been medically examined with a view to assurance ", and Maganlal answered in the negative. It appears from the note printed on the medical report that no third party must be present and the answer from the person examined must be as far as possible recorded in his own words. We must, therefore, presume, that Maganlal answered the question in the negative. In the absence of the examination of Dr. Chanpura in this case and having regard to the instructions accompanying the medical report, we must take it as established that Maganlal answered the question in the negative. It is clear that that statement is false. It is not necessary to go into the question as to whether the question and the answer were in any way material, In *The Great Eastern Life Assurance Co. Ltd. Vs. Bai Hira*, it was held, following the decision in the case of *Dawsons, Ltd. v. Bonnin* (1922) 2 A.C. 413 that where the representations, statement and agreements made by an assured in his application for a policy of life assurance are made a basic condition of the contract by the policy of life assurance, the truth of the statements contained in the proposal are, apart from the question of their materiality, the condition of the liability of the assurance company. It would, therefore, follow that the defendant company was entitled to repudiate its liability on account of the untrue statement contained in the proposal form and in the examination by the medical examiner.

6. The result, therefore, is that the decision of the lower Court is right, and the appeal must be dismissed with costs.

Barlee, J.

7. The basis of the contract between the assured and the company was that the answers given by the assured on the proposal form and to the doctor were correct. Three of these answers—one given to the doctor and two on the proposal form were incorrect. There is no explanation of the incorrect reply to the doctor, and on this ground alone, the plaintiff must fail.

8. It is suggested that the company is bound to pay in spite of the untrue and incorrect statements in the proposal form and in spite of the fact that they agreed to pay only if the answers were correct, and the reason given is that it is not the assured who gave the answers but the company's agent. I cannot accept this proposition. Either the assured authorised these answers to be given or by his negligence he made it possible for the agent to deceive the company. In neither case can the plaintiff succeed, and the appeal must be dismissed with costs.