

**(2010) 04 MAD CK 0344**

**In the Madras High Court**

**Case No :** S.A. No. 265 of 2008 and M.P. No. 1 of 2008 and M.P. No. 1 of 2010

Life Insurance Corporation of India

APPELLANT

Vs

A. Devaki

RESPONDENT

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**Date of Decision :** 29-04-2010

**Acts Referred:**

Insurance Act, 1938 — Section 45

**Citation :** (2010) 5 CTC 224

**Hon'ble Judges :** P.R. Shivakumar, J

**Bench :** Single Bench

**Advocate :** M.B. Gopalan, for the Appellant; P. Seshadri, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.R. Shivakumar, J.—The Life Insurance Corporation of India is the Appellant in the Second Appeal. Though the Life Insurance Corporation of India is a single juristic person, it is shown to be represented by its Divisional Manager, Vellore and by the Branch Manager, Sankaran Palayam, Vellore and hence inappropriately described to be two Appellants. The said mistake crept in since the Respondent/Plaintiff had chosen to file the Suit showing the Life Insurance Corporation of India represented by its Divisional Manager as the First Defendant and the Life Insurance Corporation of India represented by its Branch Manager, Sankaran Palayam, Vellore as the Second Defendant. Life Insurance Corporation of India, which figured as the Defendant should have pointed out the discrepancy in the Complaint and sought a direction to amend the cause title. However, the matter was allowed to be proceeded with the said mistake, which continued in the Appeal before the lower Appellate Court and the Registry of this Court has also blind-foldedly numbered the Appeal in which Life Insurance Corporation of India is shown to be the First and Second Appellants. Not harping on the technical defect, this Court wants to set it right by describing Life Insurance Corporation of India as the sole Appellant. Late Annadurai, the husband of the Respondent herein died on 13.07.1998. His life was insured with Life Insurance

Corporation of India on 20.12.1997 under the Life Insurance Policy marked as Ex.B2. After the death of Annadurai, the claim made by the Respondent for the assured amount was rejected by the Life Insurance Corporation of India/Appellant herein on the ground that there was suppression of material fact in the proposal form and hence the Appellant, namely Life Insurance Corporation of India was entitled to repudiate the contract of insurance. Therefore, the Respondent/Plaintiff was driven to file a Suit in O.S. No. 153 of 2004 on the file of District Munsif Court, Ami (Trial Court) for the recovery of a sum of Rs. 59,000/- (Rs. 50,000/- sum assured + 9,000/- interest from the date of claim) with subsequent interest @ 18% per annum from the date of Plaint. The Life Insurance Corporation of India, the Appellant herein, contested the suit contending that Annadurai was suffering with chronic "Duodenal Ulcer" for about five years for which he had taken treatment with one Dr. Soundarapandian of Kannamangalam and also at C.M.C. Hospital, Vellore prior to the date of proposal; that the fact of his suffering from the said disease and taking treatment for the same, was suppressed in the proposal form and that hence the policy was repudiated on 09.03.1999 by the Appellant/Defendant.

2. Based on the above said pleadings, the learned Trial Judge framed the following issues:

- i. Whether the Plaintiff is entitled to recover the assured sum with interest?
- ii. Whether the Plaintiff is entitled to recover interest on the assured sum @ 18% per annum?
- iii. Whether it is true to state that K. Annadurai, the husband of the Plaintiff suppressed the fact that he was suffering from disease?
- iv. To what relief the Plaintiff is entitled?

Including the Plaintiff, three witnesses were examined as P.Ws.1 to 3 and Ex.A1 to A3 were marked on the side of the Respondent herein/Plaintiff. Similarly, three witnesses were examined as D.Ws.1 to 2 and Exs.B1 to B8 were marked on the side of the Appellant/Defendant. The Trial Court, after hearing the arguments advanced on either side, considered the pleadings and evidence in the light of the points urged in the arguments and upon such consideration, came to the conclusion that the alleged suppression of fact pleaded by the Defendant was not proved and that the repudiation of the contract of insurance by the Appellant/Defendant was not legally sustainable. Based on the said findings, the learned Trial Judge answered all the issues in favour of the Respondent herein/Plaintiff and decreed the Suit as prayed for, directing the Appellant to pay a sum of Rs. 50,000/- being the sum assured together with an interest for the said amount @ 18% per annum upto the date of decree and thereafter @ 6% per annum till realisation and also with cost. Aggrieved by and challenging the said decree of the Trial Court, the Appellant herein/Defendant preferred an Appeal on the file of the learned Subordinate Judge, Arani in A.S. No. 19/2006. The learned Subordinate Judge, after hearing the Appeal, concurred with the findings of the

Trial Court and dismissed the Appeal confirming the judgment and decree of the Trial Court. As against the same the present Second Appeal has been preferred on various grounds set out in the memorandum of Second Appeal.

3. The Second Appeal was admitted citing the following questions to be substantial questions of law involved in the Second Appeal. They are:

1. Whether the Courts below have erred in decreeing the Suit without proper appreciation of Section 45 of Insurance Act and the legal position regarding suppression of facts ? and

2. Whether the Courts below have committed error of law in testing the validity of the contract of insurance on the basis of nexus between suppressed ailment and cause of death?

4. This Court, on the date of admission of the Second Appeal, passed an order in M.P. No. 1 of 2008 granting interim stay on condition that the entire amount as per the decree of the Trial Court dated 20.01.2006 should be deposited to the credit of the Suit within four weeks. Admittedly, the said condition was complied with and the amount is now lying in the Trial Court to the credit of the Original Suit. The Respondent herein/Plaintiff filed a Petition in M.P. No. 1 of 2010 seeking the permission of the Court to withdraw the said amount deposited into the Trial Court. The learned Counsel appearing on either side requested the hearing of Appeal itself on merit. Thus, the Appeal itself has been heard and this Court pronounces the judgment as follows:

5. Life Insurance Corporation of India, a single legal entity is shown to be two different persons, since it is represented by two persons, one by Divisional Manager and another by the Branch Manager. As pointed out supra, the Life Insurance Corporation of India, inappropriately shown as Appellants 1 and 2/ Defendant 1 and 2, is hereinafter referred to as "Appellant/Defendant". The admitted facts are that the deceased Annadurai's life was insured with the Life Insurance Corporation of India, the Appellant under the Insurance Policy dated 07.01.1998 marked as Ex.B2. The proposal submitted by Annadurai for the same has been produced and marked as Ex.B1. It is also an admitted fact that the said Annadurai died on 13.07.1998 pursuant to which a claim was made by the Respondent/Plaintiff for the assured amount. The claim was rejected by the Life Insurance Corporation of India, the Appellant herein, on the ground that a material fact, namely the fact of Annadurai suffering with chronic Duodenal Ulcer, was suppressed in the proposal form and hence the insurance contract was repudiated.

6. It is the contention of the Respondent/Plaintiff that her husband suffered natural death, namely death due to heart attack. On the other hand, an attempt was made on the part of the Appellant/Defendant to show that the death was accelerated by the disease, namely Duodenal Ulcer, which was chronic and for which deceased Annadurai was taking treatment for about five years prior to his death. But, both the Courts, on a thorough appreciation of evidence, both oral

and documentary, came to the conclusion that Duodenal Ulcer was not proved to be the cause of death and thus rejected the contention of the Appellant/Defendant that the death was caused due to the above said disease with which deceased Annadurai was labouring for about five years. Such a concurrent finding by the Courts below, on a factual issue cannot be interfered with in the Second Appeal.

7. However, the learned Counsel for the Appellant would contend that though the cause of death would not be the Duodenal Ulcer, suppression of the fact that the insured was suffering from such disease was enough to repudiate the contract of insurance, as the same is capable of influencing the decision of the Appellant/Insurer on the question whether to accept or reject the proposal or to demand the premium at a higher rate. In support of his contention, the learned Counsel for the Appellant relied on the following decisions:

- i. Satwant Kaur Sandhu Vs. New India Assurance Company Ltd.,
- ii. Life Insurance Corporation of India Vs. Janaki Ammal,
- iii. Life Insurance Corporation of India Vs. Smt. G.M. Channabasemma, and
- iv. P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India and Others,

The one point that was sought to be urged by the Appellant/Defendant, in support of which these judgments have been cited, is that there was a suppression of fact, which would have influenced the decision of the Insurer, on the question whether to accept or reject the proposal of insurance or to decide a higher rate of premium. Section 45 of the Insurance Act, 1938 reads as follows:

45. 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 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 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 the facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policyholder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:

Provided that nothing in this Section shall prevent the Insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

8. It is unnecessary to refer to the observations made in all those judgments. Suffice to state that the one proposition made therein and relied on by the Appellant herein is that when a material fact regarding a particular disease with which the insured was suffering at the time of making proposal would form the basis for the repudiation of the contract, as it is capable of influencing the decision to be made by the Insurer either to accept the proposal of insurance or to decide a higher rate of premium. In *P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India and Others*, the three conditions for the application of second part of Section 45 of Insurance Act, 1938 have been cited as follows:

- (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 policyholder; and
- (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.

It was also observed therein, --

If a person makes a wrong statement with knowledge of consequence therefor, he would ordinarily be estopped from pleading that even if such a fact had been disclosed, it would not have made any material change.

9. In this case, the learned Counsel for the Appellant is right in pointing out that the Appellant, namely Life Insurance Corporation of India, would have either declined the proposal or decided on levying a higher rate of premium, had the insured revealed the fact that he was suffering from Duodenal Ulcer and was taking treatment for the same. The Appellant shall be perfectly justified in repudiating the contract provided it establishes the fact of suppression of material fact, which would have influenced the decision of the Insurer on the question, whether to accept or reject the proposal or to claim higher rate of premium. In such an event, the repudiation of the contract by Life Insurance Corporation of India, the Appellant/Defendant could not be challenged on the ground that the death was not due to the above said disease and since the nexus between the disease and the death was not established the Insurer shall not be justified in repudiating the contract. The second substantial question of law framed in the Second Appeal is answered accordingly.

10. In the foregoing paragraphs, it has been held that the policy-holder or his nominee or the persons entitled to claim the amount under the policy, after the death of the insured cannot contend that the repudiation of the contract on the ground of suppression of material fact is improper on the ground that the death was not due to the disease which was suppressed to be mentioned in the proposal form. However, the finding of the second substantial question of law in favour of the Appellant will not help the Appellant in this case to succeed in its attempt to get the decree of the Trial Court, which stands confirmed by the

Lower Appellate Court, reversed and set aside for the simple reason that the alleged suppression of fact itself has not been proved.

11. According to the Insurer, namely the Appellant herein, while submitting the proposal for insurance coverage, the insured-Annadurai deliberately suppressed a fact that he was suffering from Duodenal Ulcer and wrongly mentioned in the proposal form that he was not suffering and was not treated for any disease. Of course, it is true that in Ex.B1-Proposal form, it has been stated that he was not suffering from and was not treated for any disease. It is the contention of the Respondent/Plaintiff that the deceased was not suffering from any disease to her knowledge and that the particulars furnished by the insured to fill up the proposal form, were believed to be true to the best of his knowledge. It is her further contention that the insured suddenly died of a heart attack. Under such circumstances, the Appellant/ Defendant has chosen to rely on the claim form and the Doctor's certificate allegedly submitted along with the claim form to prove its case that the deceased had suppressed the fact that he was suffering from chronic Duodenal Ulcer. Both the Courts below have concurrently held that the Doctor's certificates marked as Exs.B3, B6 and B7 allegedly furnished by the Respondent/Plaintiff was not proved to be furnished by her and that the same could be the documents obtained by the Appellant or its agent.

12. Ex.B1 is the proposal form given by the deceased Annadurai (insured) for taking the policy. The age of the insured at the time of proposal is given as 30 years. In Column 11, sub-columns (a) to (j), he has stated that he never had any disease or had treatment for any ailment for more than a week. Still in column 12, his case has been designated by the agent as "medical". When a proposal is designated as a medical case, an authorised Medical Practitioner approved by the Life Insurance Corporation of India should examine him and give a certificate regarding his general health. Ex.B8 is the Medical Examiner's confidential report issued by the authorised Medical Officer of Life Insurance of Corporation of India. The author of the document, namely Dr. D. Thiagarajan was not examined on the side of the Appellant/Defendant. He has given a certificate to the effect that on clinical examination and on the basis of the answers given by the insured, the said report was given to the effect that he was not suffering from any disease, that he was not hospitalised and that he was not involved in any accident at any time in the past. Therefore, it is quite clear that on clinical examination by the said Medical Officer of the Life Insurance Corporation of India, he was not found to be suffering from any kind of disease and the insured informed the Medical Officer that he did not have any disease for which he had treatment in the past. When that is so, the Appellant/Defendant has made an attempt to show that the deceased was suffering from chronic Duodenal Ulcer for about five years prior to his death and he underwent surgical intervention three years prior to his death and that the said material fact was suppressed by him while making the proposal for getting his life insured. In order to substantiate such a contention and with a view to succeed in such an attempt, the Appellant/Defendant has produced Exs.B3, B6 and B7, besides examining

D.Ws.1 to 3.

13. Ex.B3 is a certificate of hospital treatment issued by one Dr. S. Soundarapandian of Kannamangalam on 02.02.1999 i.e. after the death of the insured to the effect that the deceased Annadurai was a chronic Duodenal Ulcer patient taking treatment as an out patient. An attempt was made by the learned Counsel for the Appellant/Defendant to contend that the said certificate was obtained by the Respondent/Plaintiff and produced along with the claim form. But the Appellant/Defendant has not chosen to produce the claim form to be marked as documentary evidence. P.W.1 has given clear evidence to the effect that after the death of her husband a claim was made enclosing the Death Certificate of her husband and Legal Heir Certificate; that after she had submitted the said claim form along with the documents, she received Ex.A1-letter from the Appellant/Defendant repudiating the policy. It is obvious that in Ex.A1, the earliest communication received from the Appellant/Defendant, there is no reference to any document regarding the alleged ailment or medical treatment of Annadurai as the document furnished by the Respondent/Plaintiff. On the other hand, the recitals in Ex.A1 is capable of giving an inference that the Appellant/Defendant themselves had collected the documents to show that there was suppression of fact. The extraction of relevant paragraph found in Ex.A1 which runs as follows, shall help to understand this position:

We may, however state that all these answers were false as we hold indisputable proof to show that during the immediate pre-insurance period of five years before he proposed for the above policy he had taken on and off treatment from a medical man for chronic duodenal ulcer besides having an operation for the same in a private Nursing Home at Vellore. He had also taken treatment for upper epigastric pain and allied Complaints from a reputed Hospital in the month of September 1996. He did not, however disclose all these facts in his proposal. Instead he gave false answers therein as stated above.

14. A reading of the said paragraph will make it clear that none of the certificates produced as evidence on the side of the Appellant/Defendant in proof of their contention that there was suppression of the fact that Annadurai was suffering from chronic Duodenal Ulcer and he had taken treatment prior to the date of proposal was submitted by the Respondent/ Plaintiff and on the other hand all those documents were obtained either by the officials of the Life Insurance Corporation of India, namely the Appellant/Defendant or its agent. This shall be clear from the admissions made by D.W.1. He has admitted that Ex.B3 document was issued by Dr. Soundarapandian direct to the Life Insurance Corporation of India. The said document was issued after the death of Annadurai. It is not the case of the Appellant/Defendant that Annadurai died due to the disease for which he took treatment with the said Medical Officer, namely Dr. Soundarapandian. On the other hand, the following excerpt from the testimony of P.W.1 would make it clear that Ex.B3 was obtained by the Life Insurance Corporation of India from Dr. Soundarapandian:

It is pertinent to note that the author of the said document, namely Dr. Soundarapandian, was not examined as a witness on the side of the Appellant/Defendant. D.W.1, in his evidence, would state that he did not know whether the said Dr. Soundarapandian was a Government Medical Officer or private Medical Practitioner. It is also admitted that Annadurai was not alive when Ex.B3 was issued. D.W.1 has also admitted that he did not know on seeing which document, Dr. Soundarapandian issued Ex.B3 certificate. Therefore, the Courts below have rightly arrived at the conclusion that the contents of the said document have not been proved and that the document would not help the Appellant in any way to prove its case that there was suppression of fact.

15. The other documents relied on by the Appellant/Defendant are Exs.B6 and B7. Ex.B6 is a copy of the patient record maintained at Christian Medical College Hospital, Vellore. A Medical Record Officer from Christian Medical College Hospital, Vellore, by name Samuel Gladston has been examined as D.W.2. The document Ex.B2 relates to one Annadurai, son of Kannan of Bazaar Street, Ammapalayam. It may be true that the said document relates to deceased Annadurai. But the same shall not be enough to show that the insured was suffering from chronic Duodenal Ulcer and was treated continuously for more than a week, much less for about five years as contended by the Appellant. In his evidence, he has stated in clear terms that the said Annadurai mentioned in Ex.B2 was treated only as an out patient and that too he was given treatment as an out-patient on a single day, namely 18.09.1996 alone. The fact of having taken treatment for a single day as an out patient, a couple of years prior to the proposal, shall not amount to suppression of fact. Therefore, the document Ex.B6, shall not in any way help the Appellant/Defendant in establishing its case that there was suppression of fact of the insured suffering from chronic Duodenal Ulcer and taking treatment for about five years. Similarly, Ex.B7 is another certificate issued by Dr. Soundarapandian to the effect that Annadurai (deceased) of Ammapalayam village was suffering from chronic Duodenal Ulcer for the past five years and he was operated three years ago at a private hospital at Vellore for the same and that he used to go to Dr. Soundarapandian for treatment for the above said problem. The document was issued on 28.10.1998 i.e. after the death of Annadurai. The author of the said document was not examined on the side of the Appellant/Defendant. The same is not proved to be a document produced by the Respondent/Plaintiff. All the observations made in respect of Ex.B3, mutatis mutandis apply to Ex.B7 also. Therefore, no credence can be attached to either Ex.B3 or B7 as they shall not help the Appellant/Defendant in any way in substantiating their case that there was suppression of material fact which would enable the Life Insurance Corporation of India, namely the Appellant/Defendant to repudiate the contract of insurance.

16. On the other hand, clear and cogent evidence has been adduced on the side of the Respondent/Plaintiff through P.Ws.1 to 3 that the deceased was not suffering from any kind of ailment and he was not treated at any time for chronic Duodenal Ulcer. The suggestion that the insured suffered from Duodenal Ulcer

and for the said ailment he had undergone a surgery, has also been stoutly denied by P.W.1. P.W.1's evidence that her husband suddenly died due to heart attack is corroborated by the clear and cogent testimonies of P.Ws.2 and 3. Under such circumstances alone, the Courts below have come to a correct conclusion that the Appellant/Defendant failed to substantiate its contention that there was a suppression of material fact by the insured. The Courts below have rightly come to the conclusion that the repudiation of policy (the contract insurance) is not valid and that the Appellant/Defendant is bound to pay the sum assured. The Courts below have also held that since claim was not settled in time, the Appellant/Defendant is liable to pay interest @ 18% per annum. This Court finds no defect or infirmity in the said finding of the Courts below. The first substantial question of law is answered accordingly against the Appellant/Defendant and in favour of the Respondent/Plaintiff.

17. Before parting with the case, this Court wants to place on record its disapproval of the manner in which the Appellant/Defendant, namely the Life Insurance Corporation of India has behaved. A village rustic and agriculturist had obtained an LIC policy for a meager sum of Rs. 50,000/-. Since he died within seven months from the date of issuance of policy, the officials of the Appellant/Defendant, namely Life Insurance Corporation of India have chosen to show their disinclination to settle the claim by getting the documents like Exs.B3 and B7 and making an attempt to show that those documents were produced by the Plaintiff herself, which is not factually correct as could be ascertained from the particulars found in Ex.A1. The Life Insurance Corporation of India, being a Public Sector Undertaking, should not have acted in such a manner in the case of a peasant, whose life was assured for a paltry sum of Rs. 50,000/-.

18. For all the reasons stated above, this Court comes to the conclusion that there is no defect or infirmity in the judgment of the Lower Appellate Court confirming the judgment and decree of the Trial Court decreeing the Suit filed by the Respondent herein/Plaintiff directing the Appellant/Defendant to pay the assured sum with an interest @ 18% per annum from the date of claim till the date of decree and thereafter @ 6% per annum till the date of realisation; that hence no interference with the same is warranted and that the Appeal deserves to be dismissed with cost. In the result, the Appeal is dismissed with cost. The decree passed by the Trial Court and confirmed by the Lower Appellate Court shall stand confirmed. The Respondent/Plaintiff shall be entitled to withdraw the amount already deposited to the credit of O.S. No. 153 of 2004 on the file of District Munsif Court, Arani. Consequently, the connected Miscellaneous Petition is closed.

MEHEK