
(2004) 07 MP CK 0068
In the Madhya Pradesh High Court
Case No : First Appeal No. 9 of 1997

Life Insurance Corporation of India

APPELLANT

Vs

Smt. Gitadevi Rathi

RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Insurance Act, 1938 — Section 45

Citation : (2005) 2 BC 7

Hon'ble Judges : A.K. Awasthy, J

Bench : Single Bench

Advocate : R.C. Chhazed, for the Appellant; M.L. Bonsal, for the Respondent

Final Decision : Allowed

Judgement

A.K. Awasthy, J.—The appellant Insurance Company (LIC) has filed the appeal u/s 96 of the CPC against the judgment and decree dated 28.10.1996 passed by learned IInd Additional District Judge, Indore in Civil Suit No. 112-B/88 decreeing the suit for Rs. 45,000/- with interest and the cost.

2. The admitted facts of the case are that the husband of respondent/plaintiff Gitadevi was insured by the appellant vide Policy No. 5760193 commencement date 9.8.82, Policy No. 57605860 commencement date 28.7.82 and Policy No. 57631757 commencement date 10.4.83 which are marked as Policy Exs. P/61, P/7 and P/8. It is the common ground that the policy holder Girdhargopal Rathi has expired on 5.4.84. That the appellant defendant has declined to pay the amount of the policy on the ground that the policy holder has suppressed the facts regarding his disease and ailments and provided the false declaration in the proposal for the insurance policy. It is also the common ground that the policy holder has expired within 2 years of the proposals for the policy.

3. It is laid down in Section 45 of the Insurance Act, 1938 that no policy of life Insurance will be called in question by an insurer on the ground that a statement

made in the proposal for the insurance or in any report of the Medical Officer was inaccurate or false after 2 years of the issuance of the policy unless the insurer shows that such statement by the policy holder was wilfully suppressed. It is observed in case of Life Insurance Corporation of India and Ors. v. Asha Goel and Anr. I (2001) SLT 89 : (2001) 2 SCC 160 that for the purpose of repudiation of the claim of the insured or nominee by the Corporation under the provisions of Section 45 of the Insurance Act, the Insurance Company should show that the insured has failed to disclose or give the false statement in the proposal of the policy.

4. Dr. Satish Shukla (DW5) has stated that in June, 1982 he has treated deceased Girdhargopal Rathi and thereafter Ex. D/9 certificate was given by him to the Life Insurance Corporation. From the statement of Dr. Satish Shukla (DW5) and Ex. D/9 it is clear, that the deceased was admitted in the hospital known as Indore Cloth Market and he was given the treatment for some of the diseases and ailments. Dr. Satish Shukla (DW5) is a Professor in M.Y. Hospital, Indore and there is no doubt about the veracity of the certificate given by him vide Ex. D/9. The appellant defendant has also submitted the X-ray Ex. D5 of the deceased and the certificate of Dr. K.K. Naga and other Doctors to show that before giving the declaration in the proposals of the policy, the deceased was examined and his heart was found enlarged and he was provided with the medical treatment. The appellant has also filed the report of Dr. Singhal about the treatment of the deceased 3 months before the declaration by him in the proposals.

5. The plaintiff has examined Gita (PW1) who is the wife of Girdhargopal but in her statement she has given the evasive replies and the answers are very unnatural and she has tried to suppress the facts. From the statement of Gita (PW1) it is clear, that there is nothing on the record that the deceased was not suffering from any ailment at the time of filling the declaration.

6. The insurer has died within 2 years of the proposal and from the evidence on record, it is clear, that the appellant has suppressed the fact of his ailment and treatment in the hospital. The deceased has mentioned in his proposal that he was not suffering from any ailment whatsoever. In these circumstances, it is held that deceased was guilty of suppressing the disease and ailment and he has not furnished the required information in the proposal of the Insurance Policy. The learned Trial Court has erred in passing the decree in favour of the respondent.

7. The appeal is hereby allowed. The judgment and decree of the learned Trial Court is set aside. The suit filed by the respondent/plaintiff is dismissed. Parties to bear their own costs of the appeal and of the Trial Court.