

(2017) 01 OHC CK 0073
In the Orissa High Court
Case No : W.P. (C) No. 5265 of 2009

Mrs. Mamata Satpathy

APPELLANT

Vs

Zonal Manager, LIC of India

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Insurance Act, 1938 — Section 45

Citation : (2017) AIR(Orissa) 54 : (2017) 123 CutLT 1136

Hon'ble Judges : Dr. D.P. Choudhury, J.

Bench : Single Bench

Advocate : M/s. D.K. Dwibedi, B. Guin, S. Mishra, G.M. Rath and S.S. Padhi, Advocates, for the Petitioner; M/s. G.D. Kar, A. Mohanty, J. Behera and P.K. Mallick, Advocates, for the Opposite Parties No. 1

Final Decision : Disposed Off

Judgement

Dr. D.P. Choudhury, J.—Challenge has been made to the order dated 27.8.2008 passed by the learned Insurance Ombudsman in Complaint No.21-001-0235 vide Annexure-12 under which the learned Insurance Ombudsman accepted the submissions of the insurer-opposite parties.

2. The unshorn details of the case of the petitioner is that the late husband of the petitioner was the policy-holder and the deceased policy holder has assured his life under the Life Insurance Corporation of India (hereinafter called as "the Corporation") vide Policy Nos. 580631663, 580631960, 584766253 and 585424076 commencing from 28.9.1992, 28.11.1992, 28.8.2002 and 28.3.2004 respectively. Be it stated, the deceased policy-holder was working as Joint Managing Partner of M/s.Durga Construction. During the year 2000 to 2002, due to illness of the mother of the deceased policy-holder, there was financial crunch for which the petitioner could not deposit the premium amount for the policy Nos. 580631663 and 580631960. In the year 2004, the Corporation floated an intensive revival campaign wherein on payment of interest at a reduced rate along with unpaid premium, the lapse policies can be revived. Since the financial

condition of the deceased policy-holder improved by then, said two policies were revived on 20.5.2004. On 22.8.2004, the deceased policy-holder fell ill and while being treated in SCB Medical College and Hospital, Cuttack, he expired on 26.8.2004 and the primary cause of death was diagnosed by the doctors to be "Septicaemia" and secondary cause as "Drug Rash". After the death of the deceased policy-holder, the petitioner obtained the legal heir certificate and made representation to the opposite parties 2 to 5 for settlement of the claims. But, the opposite parties, without settling the claim of the petitioner, repudiated the same under flimsy grounds vide Annexure-8 series stating that the deceased policy-holder had made deliberate mis-statements and withheld material information to the Corporation about the reasons of his health condition at the time of proposing his policies revived.

3. It is the further case of the petitioner that being aggrieved by the repudiation letters (Annexure-8 series), the petitioner made representation to the learned Insurance Ombudsman on 26.9.2006 for settlement of the claims and the Secretary of the learned Insurance Ombudsman, on receipt of the same, directed the petitioner to file a detailed complaint in the prescribed format. Accordingly, the petitioner, on 21.12.2006 filed a complaint before the learned Insurance Ombudsman, but the learned Insurance Ombudsman, without appreciating the materials, rejected the complaint filed by the petitioner. Learned Insurance Ombudsman relied upon the bed-head ticket of the deceased policy-holder wherein the doctor has observed that the deceased policy-holder had undertaken treatment for "Seizure Disorder" since 1995 and as such, he has suppressed material facts and since he has suppressed the material facts, learned Insurance Ombudsman rejected the claim of the present petitioner holding that she is not entitled to the claim amount as the deceased policy-holder has suppressed the material facts at the time of proposal made in the year 2002 and 2004. It is the further case of the petitioner that as Section 45 of the Insurance Act, 1938 (in short "the Act") has not been properly followed by the opposite parties, the petitioner is bound to knock the door of this Court under Articles 226 and 227 of the Constitution of India for the reliefs, as prayed for.

SUBMISSIONS

4. Mr. Dwibedi, learned counsel for the petitioner submitted that the deceased husband of the petitioner was admitted in SCB Medical College and Hospital, Cuttack on 26.8.2004 at 10:00 AM and died on the same day at 2:05 PM due to "Septicaemia" but not due to "Seizure Disorder". The claim of the petitioner was repudiated by the Corporation and the learned Insurance Ombudsman illegally rejected the complaint basing on no material on record. He referred to Annexure-3, the form to be used in every case of hospital death and it has been mentioned therein that the deceased policy-holder died due to suffering from "Septicaemia". He further submitted that the deceased policy-holder was examined medically at the time of taking the policies by the doctor of the Corporation and at that point of time, the doctor has certified him healthy and

basing on the report of the doctor, the policies have been issued to the deceased policy-holder. Therefore, there was no suppression of material facts while his policies were revived. He further submitted that the order of the learned Insurance Ombudsman rejecting the claim of the petitioner is based on no evidence and he has erred in law by relying on the submission of the Corporation inasmuch as the bed-head ticket cannot be final opinion of the doctor whereas the discharge certificate shows that the deceased policy-holder died having suffered from "Septicaemia" and "Drug Rash" which are also evident from Annexure-7 wherein the medical attendant has replied negative about any other disease the deceased policy-holder suffered being diagnosed in the hospital.

5. Learned counsel for the petitioner further submitted that the order of the learned Insurance Ombudsman suffers from material irregularity as there is no document of treatment to show that the deceased policy holder was being treated for Seizure Disorder from 1995 and stopped medication in 2001 and the finding of the learned Insurance Ombudsman, basing on the endorsement of the doctor in the bed-head ticket on this score, as a wrong finding in absence of the examination of the concerned doctor to prove the basis of his information or diagnosis made to prove the same. On the other hand, he submitted that the finding of the learned Insurance Ombudsman is based on no evidence for which it is illegal and improper.

6. Mr. Dwibedi, learned counsel for the petitioner, referring to the provisions of Section 45 of the Act, further contended that the pre-condition for refusing the claim as required being not met by the insurer, the order of the learned Insurance Ombudsman is otherwise illegal and in-intelligible. In support of his contention, he relied upon the decision rendered in the case of Mithoolal Nayak v. Life Insurance Corporation of India; AIR 1962 SC 814. So, he submitted to quash the order passed by the learned Insurance Ombudsman and to direct the Corporation to allow the claim made by the petitioner.

7. Mr. Kar, learned counsel for the Corporation submitted that since the deceased policy-holder has suppressed the material facts with regard to his health while giving answers to the necessary questions regarding the disease, the concerned authorities are justified in refuting the claim of the petitioner. He further submitted that on 28.9.1992, the deceased policy-holder proposed the policies which are lapsed and subsequently revived in the year 2002. Since there is suppression of material facts by the deceased policy-holder at the time of taking policies and made misstatement, the Corporation was correct in its approach to stop the settlement of the claim under Section 45 of the Act. He submitted that the order of the learned Insurance Ombudsman, being proper and legal, should be upheld.

POINTS FOR DISCUSSION

8. The main points for consideration are as to whether (i) the deceased policy-holder had fraudulently suppressed any material facts with regard to his health

condition at the time of proposal/revival in the year 2002 and 2004 by making misstatement; and (ii) whether the petitioner is entitled to any claim made in the writ petition?

DISCUSSIONS

9. It is admitted fact that the deceased policy-holder had two policies originally and revived the same in 2002 and 2004. It is admitted fact that the insurer has refuted the claim in respect of Policy Nos. 584766253 and 585424076 wherein the present petitioner is the nominee. It is not in dispute that revived Policy No. 584766253 commenced on 28.8.2002 and revived Policy No. 585424076 commenced on 28.3.2004. It is also not in dispute that the deceased policy-holder died on 26.8.2004 and the learned Insurance Ombudsman has rejected the claim of the present petitioner by observing that the insurer has established that there was material suppression by the deceased policy-holder at the time of proposal.

10. Before proceeding further, it is relevant to go through the provisions of law governing the field on the issue in question. Section 45 of the Act states as follows:

"45. Policy not to be called in question on ground of mis-statement 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 facts which it was material to disclose and that it was fraudulently made by the policy-holder and 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:

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."

11. The aforesaid provisions of law is well discussed in the decision reported in the case of Mithoolal Nayak v. Life Insurance Corporation Of India; AIR 1962 SC 814 and at paragraphs-7 and 8, Their Lordships, have observed as follows

"7. Xx xx xx xx

It would be noticed that the operating part of Section 45 states in effect (so far as it is relevant for our purpose) that no policy of life insurance effected after the coming into force of the 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; the second part of the section is in the nature of a proviso which creates an exception. It says in effect that if the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and 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, then the insurer can call in question the policy effected as a result of such inaccurate or false statement. In the case before us the policy was issued on March 13, 1945, and it was to come into effect from January 15, 1945. The amount insured was payable after January 15, 1968, or at the death of the insured, if earlier. The respondent company repudiated the claim by its letter dated October 10, 1947. Obviously, therefore, two years had expired from the date on which the policy was effected. We are clearly of the opinion that section 45 of the Insurance Act applies in the present case in view of the clear terms in which the section is worded, though learned counsel for the respondent company sought, at one stage, to argue that the revival of the policy some time in July, 1946, constituted in law a new contract between the parties and if two years were to be counted from July, 1946, then the period of two years had not expired from the date of the revival. Whether the revival of a lapsed policy constitutes a new contract or not for other purposes, it is clear from the wording of the operative part of section 45 that the period of two years for the purpose of the section has to be calculated from the date on which the policy was originally effected; in the present case this can only mean the date on which the policy (Ex. P-2) was effected. From that date a period of two years had clearly expired when the respondent company repudiated the claim. As we think that section 45 of the Insurance Act applies in the present case, we are relieved of the task of examining the legal position that would follow as a result of inaccurate statements made by the insured in the proposal form or the personal statement etc. in a case where section 45 does not apply and where the averments made in the proposal form and in the personal statement are made the basis of the contract.

8. The three conditions for the application of the second part of section 45 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; 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."

12. With due regard to the above decision, it appears that second part is exception to first part of Section 45 of the Act. On the other hand, if the three conditions as discussed above at paragraph-8 of the judgment are proved, then the claim can be repudiated by the insurer and the onus lies on the insurer to prove the above three pre-conditions for the application of the second part of Section 45 of the Act.

13. It is reported in the case of Life Insurance Corporation of India v Smt. G.M. Channabasemma; AIR 1991 SC 392 and at paragraph-7 of the said judgment, Their Lordships have held in the following manner:

"7.xx xx xx xx

It is well settled that a contract of insurance is contract uberrim fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured state them correctly cannot be diluted. Section 45 of the Act has made special provisions for a life insurance policy if it is called in question by the insurer after the expiry of two years from the date on which it was effected. Having regard to the facts of the present case, learned Counsel for the parties have rightly stated that this distinction is not material in the present appeal. If the allegations of fact made on behalf of the appellant Company are found to be correct, all the three conditions mentioned in the section and discussed in Mithoolal Nayak v. Life Insurance Corporation of India (1962) Supp. 2 SCR 571, must be held to have been satisfied. We must, therefore, proceed to examine the evidence led by the parties in the case."

14. With due respect to the aforesaid decision, it is clear that Section 45 of the Act has made special provision for a life insurance policy if it is called in question by the insurer after expiry of two years from the date on which it was effected. Moreover, all the three conditions as mentioned in the Section as discussed above in the case of Mithoolal Nayak v. Life Insurance Corporation Of India (Supra) are proved by the Corporation by leading evidence. So, it is for the insurer to prove the facts in issue by leading the evidence. As such, the aforesaid decision has been well followed in the decision reported in the case of Life Insurance Corporation of India and others v. Smt. Asha Goel and another; AIR 2001 SC 549. Moreover, Their Lordship in the said case, at paragraph-16, have observed as follows:

"16. In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policy-holders in particular look forward to prompt and 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 and reputation depend on its prompt and 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 and caution. It should not be dealt with in a mechanical and routine manner."

15. With due respect to the above decision, learned counsel for the petitioner asserted that the approach of the Corporation in the matter of repudiation of a policy should be made with one extreme care and caution and the same should not be dealt with in a mechanical and routine manner.

16. Thus, learned counsel for the petitioner, while relying upon the aforesaid decision, submitted that no evidence whatsoever has been led by the present Corporation before the learned Insurance Ombudsman except producing the bed-head tickets to show that deceased policy-holder has suppressed his illness while the insurance policies were taken by him. He further submitted that the pre-conditions of Section 45 have not been proved by evidence by the Corporation for which the conclusion arrived at by the learned Insurance Ombudsman is indefensible. Contravening the contention of the learned counsel for the petitioner, learned counsel for the Corporation has relied upon the decision rendered in the case of P.C. Chacko and another v. Chairman, LIC of India and others; AIR 2008 SC 424 and at paragraph-16 of the said judgment, Their Lordships have observed as follows:

"16. The purpose for taking a policy of insurance is not, in our opinion, very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered. The proposer must show that his intention was bona fide. It must appear from the face of the record. In a case of this nature it was not necessary for the insurer to establish that the suppression was fraudulently made by the policy-holder or that he must have been aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose. A deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law."

17. Mr. Kar, learned counsel for the Corporation, relying upon the said decision, submitted that it was not necessary for the insurer to establish that suppression was fraudulently made at the time of making proposal statement by assured or the same was false or that the fact suppressed was material one.

18. After going through the above decision, with due respect it appears in that case, the deceased policy-holder died within six months from the date of taking the policy and he had undergone major operation of Adenoma Thyroid four years prior to the date of proposal made by him but did not disclose about the same while proposing the insurance policy. Moreover, in the said case, the insured's brother being an agent of the Corporation, was presumed to have got knowledge and mis-statement of facts by the policy-holder for which Their Lordships have observed that in case of such nature, it was not necessary for the insurer to

establish the pre-conditions as appears in the second part of Section 45 of the Act.

19. From the discussion of the aforesaid decisions, it is settled position of law that the onus always lies on the insurer to prove pre-conditions of second part of Section 45 of the Act but where on the face of the record, it appears that there was suppression of material facts fraudulently, the insurer is relieved of establishing fact of such suppression being made fraudulently by the policy-holder or that he must have aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose.

20. Now advertent to the case in hand, it appears that the Corporation has not filed the copy of the personal statement of policy-holder regarding his health before the learned Insurance Ombudsman to know about the statement of the policy-holder. So, this Court, vide order dated 25.9.2015, asked the Corporation to file the medical examination report of the policy-holder prepared by the doctors of the Corporation while proposal is made for the insurance policy by the deceased policy-holder, and documents were filed by the Corporation on 20.11.2015 before this Court. On going through the medical examiner's confidential report in respect of Policy No.584766253, the doctor is found to have given the final report in the following manner:

"4.

Ascertain from the life to be assured whether at any time in the past he/she

i) has been hospitalized?

No

ii) was involved in accident?

No

iii) he undergone any Radiological, Cardiological, Pathological or any other tests?

No

iv) is currently under any treatment/

No

IF THE ANSWER TO ANY OF THE NEXT 9 QUESTIONS (QN.5 TO QN.13) IS "YES" PLEASE GIVE FULL DETAILS.

5.

Is there any abnormality of the Cardiovascular system?

No

6.

Is there any swelling of joints enlargement of thyroid lymphatic, glands or scars (for earlier surgery)?

No

7.

Is any abnormality found on examination of Mouth, Ear, Nose, Throat Eyes?

No

8.

Is there partial total blindness or deafness or any other physical impairment?

No

9.

Are there any symptoms or signs suggesting abnormality or disease of the Respiratory system?

No

10.

Is there any evidence of enlargement of liver or spleen ?

No.

11.

Is there any abnormality in abdomen or abnormality of pelvis?

No.

12.

Is Hernia present?

No

13.

Is there any evidence of disease of Central peripheral Nervous System?

No

14.

Is there any evidence of operation?

If so state?

a) The year of operation

b) Its nature and cause

c) Its location, size and condition of scar

d) degree of impairment, if any

No

15.

Is there any evidence of injury due to accident or otherwise? If so, state.

i) the year in which the injury occurred

ii) nature of injury

iii) degree of impairment, if any

iv) duration so unconsciousness in the case of head injury

No

16.

Is there any other adverse feature in health or habit, past or present, which you consider relevant?

If so, give details

No

17.

For female lives only

a) Is there any disease of breasts ?

b) Is there any evidence of pregnancy ?

c) If so, give duration.

d) Do you suspect any disease of uterus, cervix or ovaries?

I hereby certify that I have, this day examined the above life to be assured personally, in private and recorded in my own hand (i) the true and correct findings (ii) the answers to Question No.4 as ascertained from the person examined.

I declare that the person examined signed (affixed his/her thumb impression) in the space marked below in my presence and that I am not related to him/her or the Agent or the Development officer.

Dated at Cuttack on the 31st day of (month) Aug., 2002 at 7.00 p.m.

Sd/-Ranjan Kumar Satpathy Sd/-Dr.Sukanta Ku. Nanda"

So far as Policy No. 585424076 is concerned, the relevant portion of the medical examiner's confidential report of the Corporation is also produced below:

"5.

Ascertain from the L.A. whether at any time in the past he/she

a) was hospitalized

No

b) was operated

c) met with accident

d) has undergone any bio-chemical, radiological, Cardiological or other test.

e) is currently under any treatment

6.

Is there any abnormality observed on examination of Eyes (partial/total blindness.) Ears (deafness). Nose, Throat or Mouth or any physical impairment.

No

7.

Is there any externally visible swelling of lymph glands joints or other organ

No

8.

Are there any symptoms and/or signs suggestive of abnormality of

(a) Cardiovascular system

No

(b) Respiratory system

(c) Central or peripheral nervous system

(d) Abdomen or pelvis

9.

Is there evidence of enlargement of liver or spleen?

No

10.

Is hernia present?

No

11.

Is there any evidence of operation, if so state-

(a) Date of operation

No

(b) Nature & Cause

(c) Location, size & condition of scar

(d) Degree of impairment.

12.

Is there any evidence of injury due to accident or otherwise-

No

(a) Date of injury

(b) Nature of injury

(c) Degree of impairment.

(d) Duration of unconsciousness, if any,

13.

Are there any other adverse features in habit or health past or present. Which you consider relevant, if so give detailsj.

No

14.

For female only

(a) Is there any disease of breasts ?

(b) Do you suspect any disease of uterus, cervix or ovaries?

(c) Is there any evidence of pregnancy, if so give duration?

15.

On examination whether he/she appears health?

Yes

I certify that I have, this day, examined the above life to be assured personally, in private and recorded in my own hand (i) the true correct findings (ii) the answers to Question No.5 as ascertained from the person examined.

I declare that the person examined, signed (affixed his/her thumb impression) in the space ear marked below in my presence and that I am not related to him/her or the Agent or the Development Officer.

Dated at Cuttack on the 31st day of March, 2004 at 10 AM

Sd/-Ranjan Kumar Satpathy Sd/-Dr.Hemana Ku. Nayak"

21. From the aforesaid material, it appears that except question No.4 in respect of Policy No. 584766253 and question no.5 in respect of Policy No. 585424076, all other answers have been prepared by the doctor after examining the deceased policy-holder. With reference to question nos. 4 and 5, the questions have been answered in negative by the policy-holder to the doctor for which the same was recorded accordingly. On the other hand, on the date of proposing the policy, the doctor of the Corporation did not find any infirmity with the policy-holder to insure his life under the relevant policy.

22. The opposite party-Corporation has taken a plea that the answer given by the deceased policy-holder was not correct and he has fraudulently suppressed the material facts because while he was treated as an indoor patient before his death, there was an endorsement of the doctor to the effect that he was suffering from "Seizure Disorder" since 1995 and stopped medication since 2001. It is not brought out by the learned counsel for the Corporation as to who has made such statement to the doctor of the Corporation and the said endorsement does not disclose that for such disease, he was ever hospitalized. Moreover, such endorsement does not disclose that he has undergone any test for such disease. It may not be out of place to mention here that the Corporation has not examined any doctor to prove such endorsement. It may not be also out of place to mention here that the deceased policy-holder died on 26.9.2004 after remaining for five days as an indoor patient. The deceased policy-holder took the policies in the year 2002 and 2004. Even if assuming that his medication continued up to 2001, obviously on the date of policy undertaken, he was not suffering from any serious illness and Annexure-7, which is the opinion of the treating doctor of SCB Medical College and Hospital, Cuttack shows that the deceased policy-holder died due to "Septicaemia" as primary cause and "Drug Rash" is a secondary cause. The doctor has not been examined to prove the basic source of information about "Seizure Disorder" the deceased policy-holder was suffering from 1995 till 2001 and thereafter on the date of taking the policies also, the policy-holder was suffering from such disease.

23. The form supplied by SCB Medical College and Hospital, Cuttack used in every case of hospital death (Annexure-3) indicates that the deceased policy-holder was suffering from "Septicaemia" has provisional diagnosis as per Column No.6 of that form. In Column Nos.12 and 13, such "Septicaemia" has been also taken as a final diagnosis. It is utter surprise to find out that "Seizure Disorder" and "Drug Rash" have been entered subsequently as clear from the face of the report. Moreover, Annexure-3 shows the provisional diagnosis and final diagnosis relates to "Septicaemia" as observed earlier. Therefore, it cannot be said on the face of the record that the answers made by the deceased policy-holder to the doctor of the Corporation at Column Nos-4 and 5 in the respective policies are false and such misstatement was made fraudulently suppressing the material fact with regard to his health.

24. From the foregoing discussions, the opinion of the doctor that the cause of death after diagnosis was due to suffering from "Septicaemia" and not due to "Seizure Disorder" being proved, it must be held that neither the deceased policy-holder has given any misstatement before the doctor of the Corporation by suppressing any material facts of serious illness nor the doctor, while examining the deceased policy-holder, has given any wrong report. Moreover, this Court is of the view that when there is nothing available from the face of the record that the policy-holder had fraudulently made suppression of material facts while undertaking the policy, it was incumbent on the part of the Corporation to lead evidence to prove the conditions of Section 45 of the Act, but has not done so. Therefore, this Court is of the view that the conclusion arrived at paragraph-15 by the learned Insurance Ombudsman is based on no evidence. On the other hand, the Court is of the view that the deceased policy-holder has not made any misstatement by fraudulently suppressing any material facts with regard to his health while he was insured under the relevant policies. Issue No.1 is answered accordingly.

ISSUE NO. II

25. Mr. Dwibedi, learned counsel for the petitioner submitted that the present petitioner is the widow and legal heir of the deceased policy-holder as per the legal heir certificate (Annexure-5) and she has made representation time to time under relevant form but the claim has been repudiated by the Corporation illegally and finally she approached the learned Insurance Ombudsman which created by Grievance Redressal Rules framed under the Act, but the learned Insurance Ombudsman also without appreciating the claim of the petitioner, denied to settle the same in her favour. On the other hand, learned counsel for the Corporation supports the finding given by the learned Insurance Ombudsman.

26. It has been already held in the aforesaid paragraphs that the deceased policy-holder has neither made any misstatement nor fraudulently suppressed any material fact of illness while proposing the policies. It has also been observed that the learned Insurance Ombudsman gave the finding in favour of the insurer without appreciating any evidence in its proper perspective. Where there is no fraudulent suppression of material fact by deceased policy-holder or he made statement falsely within his knowledge while making statement with regard to material fact which he was required to disclose at the time of undertaking the policies, the finding of the learned Insurance Ombudsman is otherwise illegal and improper. Thus, the Court is of the opinion that the petitioner, being the widow and legal heir of her deceased husband, is entitled to the claim made by her before the insurer. Issue No.II is answered accordingly.

CONCLUSION

27. From the foregoing discussions, the Court is of the view that the deceased policy-holder has neither made any fraudulent suppression of material fact nor made any statement falsely as to material fact with regard to his health and he

died out of "Septicaemia" only after two years of Policy No. 584766253 commenced on 28.8.2002 and after six months from Policy No.585424076 commenced on 28.3.2004. It is also observed above that the finding of the learned Insurance Ombudsman vide Annexure-12 is not based on evidence for which the Court is of the view that the same should be quashed and the Court do so. Since the petitioner, being the widow and legal heir of the deceased policy-holder, is entitled to the claim under said policies as admissible under the provisions of law, the opposite party no.1-Corporation is directed to release the claim amount under the policies of the deceased policy-holder by making payment of money under the respective policies with interest @ 9% per annum from 3.11.2005 when the Corporation repudiated the claim of the petitioner, till actual payment to the petitioner within three months from today failing which, the same shall be payable by opposite party no.1-Corporation @ 12% interest per annum till actual payment.

13. The writ petition is disposed of accordingly.