
(2007) 12 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9284 of 2007

Saurabh Basu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Insurance Act, 1938 — Section 45

Citation : (2007) 12 AHC CK 0069

Hon'ble Judges : Shishir Kumar, J

Final Decision : Disposed Of

Judgement

Shishir Kumar, J.—The present writ petition has been filed for b quashing the order dated 30. 4. 2004 passed by the Divisional Manager, Life Insurance Corporation, Allahabad. By order dated 12. 2. 2005 passed by Zonal Manager, Life Insurance Corporation, Kanpur as communicated by order dated 17. 3. 2005 and order dated 19. 6. 2006 passed by the Insurance Ombudsman (Annexures 3,4 and 6 to the writ petition). Further a writ in the nature of mandamus commanding the respondents to make payment of the policy amount as C claimed with interest at the rate of 18% till date.

2. The facts arising out of the writ petition are that the petitioner who is a nominee in the Life Insurance Corporation Policy No. 310239615 for Rs. 1 lakh only taken by the mother of the petitioner Smt. (Late) Sharmistha Basu from Life Insurance Corporation on yearly premium of Rs. 5. 543. 30. Smt. Sharmistha, Basu was an Income Tax assessee. The policy for the sum assured was Rs. 1 lakh was taken by the petitioner's mother on 3. 3. 2000. Whereafter petitioner's mother died on 8. 12. 2001 at All India Institute of Medical Science, New Delhi. Petitioner being the nominee under the policy filed a claim of the sum assured with the Senior Branch Manager, Direct Agents Branch, Life Insurance Corporation of India on 15. 2. 2003. The claim has been repudiated by the Divisional Manager on 30. 4. 2004. A copy of the same has been annexed as Annexure 3 to the writ petition. Thereafter, the petitioner filed a detailed

representation for correct consideration of the claim on merits the Death Claim Division Zonal Office but the same has also been rejected by its order dated 17. 3. 2005. Aggrieved by the aforesaid action of the Life Insurance Corporation officials, the petitioner preferred a complaint the Insurance Ombudsman. The same was filed on 9. 4. 2006. The said authority by impugned award dated 19. 6. 2006 has refused to relief to the petitioner and disposed of the claim without considering the material and relief facts of the case. The said action of the respondents is arbitrary, unjustified and is also without any reason.

3. It was submitted by the petitioner that mother of the petitioner was a healthy lady, as such, she filed a proposal form on 3. 3. 2000 when she was completely fit. The proposal form was thoroughly examined by the panel of doctors duly appointed by Life Insurance Corporation. Their medical report also confirmed to be of stable health and to be absolutely fit for her life to be ensured. Then the agent of the Life Insurance Corporation submitted the moral hazard report after witnessing the insuree at the time of the submission of the proposal form to this effect that she was perfectly in good health. The report was extracted and the Senior Branch Manager has accepted the amount after accepting the proposal and a policy was issued to the petitioner's mother. Therefore, the contract of insurance was complete and therefore, both the parties of the contract are bound by the terms and conditions. The mother of the petitioner suddenly became ill and for better checkup she was taken to All India Institute of Medical Science, New Delhi but unfortunately, she died on 8. 12. 2001, having a disease of cancer. The letter of repudiation has wrongly alleged that certain facts have been concealed at the time of proposal in the question given in 11 (a)(b) (d) and (e), though they were correctly answered.

4. The insurer can repudiate the death claim in the policy in exercise of powers conferred by Section 45 of the Insurance Act. For the ready reference it is being quoted below:

"17. That an insurer can repudiate a death claim against a policy in exercise of such a right having been conferred by Section 45 of the Insurance Act, 1938, which reference is quoted below for ready reference:

"Policy not to be called in question on ground of misstatement after two years. No policy of the Insurance effected the commencement of this Act shall after the expiry of two years from the date of commencement 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, (1) 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 (2) 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 that the age of life insurer was incorrectly stated in the proposal). "

5. In such situation, learned Counsel for the petitioner submits that the orders passed by the respondents are liable to be quashed.

6. Before entering into the dispute, this Court has to consider the scope and ambit of writ jurisdiction as it has been held in 2001 (2) SCC 160 (Life Insurance Corporation of India and others v. Asha Goel (Smt) and others). The Supreme Court held that the determination of questions under the writ jurisdiction will depend on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issue; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution of India cannot be denied altogether, Court must bear in mind the selfimposed restriction consistently followed by the High Courts all these years after the constitutional power came into existence in not entertain writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The Insurance Act, 1938 with the latest amendment is a beneficial piece of legislation. Therefore, if a benefit which the petitioner is legally entitled has been refused, Court can enter upon the arena to render equitable justice. The Court of equity cannot shut out the eyes taking plea that there is mere or bare disputed questions of fact. The disputed questions of fact cannot be ground for rejection unless or until it is proved beyond the doubt Court of equity under Article 226 of the Constitution of India and the dispute is such that cannot be resolved by way of writ petition. If he thinks the factum of the case within the guidelines of the Supreme Court in Asha Goel (supra), there is no doubt that the writ petition can be invoked in this circumstances.

7. In this case, it has been contended by the learned Counsel appearing for the petitioner that on the date when the proposal form was prepared on 3. 3. 2000, the mother of the petitioner was completely fit and she was not having any disease as the same was examined by the doctor of Life Insurance Corporation duly appointed by the LIC. He was not under treatment for any disease to be treated by any doctor at that time. However, if she was suffering from hypertension in common parlance this hypertension is not a disease as such, to which an expert can give an opinion regarding the life. A hypertension patient is always remains normal unless and until sometimes the blood pressure is high. Hypertension patient can do his all work even the office work day to day. The death of the petitioner caused due to cancer and it was subsequently deducted. Cancer is such disease, which according to the doctors opinion is always deducted at a very later stage. It is not the case of the respondents that on the date of policy she was suffering from cancer and there is no evidence on record to show by any doctor that she was suffering from cancer on the date when the

proposal and policy was done. There is no specific denial available whether the disease was medically treated at anywhere prior to the date of policy. Nobody was examined on behalf of the hospital. Only on the basis of the certificate that she was suffering from hypertension, the concerned ombudsman upheld the repudiation of insurance agreement.

8. Petitioner has placed reliance upon two Division Bench judgments reported in 2007(1) ADJ 11 (DB), Umesh Narain Sharma v. New India Insurance Company Ltd. and 2007 ESC 1026 (All) (DB), Smt. Ramkali; v. New India Insurance Company to establish his case.

9. In the first case, the mediclaim insurance policy was rejected and this Court has taken into consideration Clause IV of the terms and conditions of the policy which reads as under:

Clause 4. 1 of the terms and conditions of the insurance policy reads as under:

"4. Exclusions. 4. 1 Such diseases which have been in existence at the time of proposing this insurance preexisting condition means any injury which existed prior to the effective date of this insurance. Preexisting conditions also means any sickness or its symptoms which existed prior to the insured person had knowledge that the symptoms were relating to the sickness. Complications arising from preexisting disease will be considered part of that preexisting condition. "

10. In such circumstances, the Division Bench held that we find that it will apply to such diseases which were in existence at the time of proposing the insurance policy deems prior to the effective date of the insurance. It is the own case of the respondents that at the time of policy the petitioner had declared that there was no preexisting complaint regarding his health. It is presumed that the respondents had checked and verified all the informations given in the proposal form by the petitioner issuing the policy. Thus, it is not right to say that the petitioner is known case of CAD since 2000.

11. In the counter affidavit except for a bald statement of the petitioner it is a known case of CAD since 2000, neither any document nor any material was brought on record to establish the said averment. Taking into the facts and circumstances of that case, the claim of the petitioner was rejected.

12. In the second judgment, the Division Bench has taken the same view. This case is better footing than the case mentioned above. In that case the premium was not paid but the insurer died and subsequently policy was renewed and was continued. Respondents contended that the statement given at the time of reviving the policy was found to be false as husband of the petitioner was suffering from cancer. The Division Bench of this Court has taken a view that once a policy is renewed or revived, even though afresh contract has come into existence, it amounts to renewal of the old policy on the same terms and conditions in the original policy.

13. Sri Prakash Padia, learned Counsel . appearing for the Insurance Company cited the judgement reported in AIR 1962 SC 814, (Mitthoo Lal Nayak v. Life Insurance Corporation of India) to establish that second part of Section 45 of the Insurance Act, 1938 applies in the following circumstances (a) the statement must be on material fact 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 be known at the time of making the statement that it was false or that it suppressed facts, which it was material to disclose.

14. According to the law laid down by the Apex Court in Mitthoo Lal Nayak case reported in AIR 1962 SC 184, and Asha Goel's case reported in AIR 2001 SC 549, the burden of proving concealment lies on the insurer. There is no evidence whatsoever indicating that the petitioner's mother late Smt. Sharmistha Basu was suffering from any disease prior to 3. 3. 2000 when the proposal was taken by her in taking the policy in dispute. First time the premium was paid on 3. 3. 2000 and second time was paid on 10. 4. 2001. The Medical Attendant Certificate was issued by Dr. N. P. Gupta the then Head of Department Urology, All India Institute of Medical Science, New Delhi dated 10. 6. 2002, which was sent to the petitioner on 6. 2. 2003. The report of Dr. N. P. Gupta clearly rule out any concealment as alleged in the repudiation letter dated 30. 4. 2004. The further rejection do not also indicate that any illness of Sharmistha Basu was known to her taking of the proposal dated 3. 3. 2000. The hypertension and diabetes have got no nexus with the primary cause of death, which has been indicated. There is no evidence with the respondents to reject the claim. As the physical condition of the policy holder was examined by the doctor, who is an authorised doctor of Life Insurance Corporation in the panel and he has issued a fitness certificate and the Corporation has accepted the proposal and medical fitness, therefore, it cannot be rejected on the ground that in case the petitioner was hypertension patient the claim of the petitioner is liable to be rejected. There is no material disclosed by the respondents that the policy holder has made any deliberate intention to cause loss to the Corporation. It was noticed in the month of July, 2000, when the treatment for pain in stomach, she was admitted in All India Institute of Medical Science, New Delhi.

15. Second part of Section 45 of the Act cannot be taken into account in isolation but it should be taken in the context of the first part. If somebody makes a policy by misstatement that can be taken care of making it. In the case of Mitthoo Lal Nayak (supra) the insurance policy was extended on 18th October, 1945. The policy holder expired on 12th November, 1946. The claim was repudiated for some reason or other on 10th October, 1947. Therefore, misstatement, if any, was taken care by the authority within such period. But in the present case, the policy holder expired on 18. 12. 2001 and the repudiation of the policy order was made on 30. 4. 2004. Taking a plea that she was suffering from hypertension, therefore, this fact has not been disclosed in the proposal form dated 3. 3. 2000 and this fact has not been disclosed in her personal statement, instead she gave false answer therein. Therefore, it is evident that she has made deliberate

misstatement and withhold the correct material information regarding her health at the time of effecting the insurance and hence in terms of the policy contract and the declaration as contained in the form of proposal for insurance. We are hereby repudiated the claim and accordingly we are not liable for any payment under the above policy and all the money that have been paid in consequence thereof be longs to us.

16. Secondly Section 45 speaks for statement in the proposal for Insurance. It has been taken care of by the Supreme Court in Mitthoo Nayak's case (supra) and the Apex Court has held as follows:

"that the insured Mahajan Deolal had been guilty of deliberate misstatements and fraudulent suppression of material information in answers to questions in proposal form and the personal statement, which formed the basis of the contract between the insurer and the insured. "

17. In view of the aforesaid fact, I am of the view that the incident subsequent to the execution of the document if not related to the execution of the policy and about two years being the reasonable ground cannot be a valid ground for the purpose of repudiation. Suffering of a disease or any death not arising out of any false or misstatement at the time of making the policy cannot be a ground for repudiation by the Insurance Company as alleged. It has to be related to the execution of the document.

18. From paragraph 15 of the judgment reported in Umesh Narain Sharma (supra) a Division Bench of this Court has made such aspect of the matter explicit on the basis of the terms and conditions of the Insurance policy. Lastly, it has to be seen that how the ombudsman proceeded in the matter of this case. In the present case on the basis of the fact that as she was suffering from hypertension on the date when the contract was executed and she was suffering from that disease one year prior to the date of proposal for which she has taken a treatment and consulted the doctors . It was therefore, established that there was material misstatement suppression of material fact by the deceased and she has deliberately gave false answer to the questions in the proposal form/personal statement. The claim, therefore, have been repudiated as per terms of the policy contract and declaration given in the proposal form.

19. In my opinion, after this finding of the doctor that the deceased was suffering from hypertension and Diabetic nothing to said in the hospital during 26. 7. 2000 to 19. 9. 2000, was mere specific whether it is stated that she was having history of hypertension since last one year and she was also suffering from hyperprodechemia.

20. The order to this effect that as she was suffering from hypertension and diabetes going to the insurance, though the claim has no doubt being repudiated two years after the date on which the policy was effected but I find that all these ingredients of Section 45 of the Insurance Act are fulfilled in the instant case.

21. In such situation, the fraud and equity cannot run together. If it is a question of genuine fraud then there is no scope of exercising any equitable justice and exercise of power under Article 226 of the Constitution towards any insured but if the authorities were not sure on the basis of relevant record and there was no proof that the deceased was suffering from such disease, which can lead to in violation of the contract and policy and there is a deliberate intention of concealment, then the claim can be rejected. The Insurance Company itself was not in a position to come to define finding about the concealment of the deceased. There fore, it can safely be presumed that question of any false statement does not arise.

22. In view of the aforesaid submissions and judgment passed by this Court I do not find that any such case has been made out on behalf of the Insurance Company to repudiate the agreement ignoring payment of the amount of Rs. 1 lakh to the petitioner. It is also to be noted that this Court is coming across various cases in which the Life Insurance Corporation respondent is rejecting the claims of various persons without any cogent reasons. If a person is not suffering from any disease which can be said to be leading to a certain death after a very short period then it is not open to the respondents to say or held that at the time of agreement or at the time of proposal if a person was suffering from diseases like Jaundice, Hypertension or diabetes, and if that fact has not been disclosed in the proposal and after two or three years some serious disease took place to the insurer and he died due to that disease and a claim is forwarded, it can be lead or held by the respondents that this fact was not disclosed in the proposal, therefore, it amounts to breach of Clause 11 of the proposal. As similar type of controversy arose the Division Bench of this Court consisting of Hon''ble Amitava Lala and Hon''ble Shishir Kumar, JJ. (one of us) arose in Writ Petition No. 69235 of 2005 decided on 20. 11. 2007. In that case also the claim was rejected on a very technical ground. After considering the cases the Division Bench held that the payment be released with 12% interest per annum at a simple rate from the date of first refusal till the date of actual payment.

23. In the present case also, admittedly from the record, it is clear that the deceased was not suffering from any disease, which can be treated to be so serious and there is no proof on behalf of the respondents or they have not examined any doctor to show thereof that the statement given by the deceased was in any way false. As in the Division Bench judgment. I have already held that the Insurance Act is a beneficial piece of legislation, therefore, the officers of the respondents have to take into consideration all these factors and unless and until there is a very serious material on record that a policy has been obtained by; concealing certain material facts and there is no evidence to that effect, then it can be refused. But like cases mentioned above and the present case as the case where the heirs of the deceased are being harassed after the death of the insurer. For getting the meagre amount of one lakh from pillar to post and ultimately after rejection has to approached the Court for his own money. The Court is astonished to see the order dated 30. 4. 2004 to this effect "We are

hereby repudiate the claim and accordingly we are not liable for any payment under the above policy and all moneys that have been paid in consequence thereof belongs to us". Meaning thereby the money only deposited by mother of the petitioner has been forfeited. This should not be the intention of the organisation who has been established for the purposes of benefit of the public.

24. In view of the aforesaid fact, the orders dated 30. 4. 2004 passed by the Divisional Manager, Life Insurance Corporation, Allahabad order dated 12. 2. 2005 passed by Zonal Officer, C. R. C, Kanpur as communicated by order dated 17. 3. 2005 and order dated 19. 6. 2006 passed by the Insurance Ombudsman (Annexures 3, 4 and 6 to the writ petition) are hereby quashed. The writ petition is allowed. As a result thereof, the petitioner is entitled for the said sum which will be released by the Insurance Company in favour of the petitioner as early as possible but not beyond the period of six weeks from the date of communication of this order along with interest at the rate of 12% per annum at simple rate from the date of first refusal till the date of actual payment, finding that the same is reasonable accordingly.

25. However, no order as to costs.

26. One thing is important to state here that this Court has come across various cases like this by which unnecessarily the holder of the policy after his death, the family of the deceased has suffered a great loss and has run pillar to post yet to approach the Courts for their own money. The effect of the delayed payment and initially refusal by the officers of the Life Insurance Corporation unnecessarily puts burden upon the Corporation to pay the interest like in the case of Shanti Devi (supra) and in the present case. As such, the Chairman of the Life Insurance Corporation is directed to hold an enquiry that on whose deliberate action the payment of the policy has been withheld. An enquiry to this effect be held and person responsible for rejection of the claim of the petitioner on flimsy grounds, a liability should be fixed to that effect and the interest which has been paid, the same should be recovered from the personal account of that particular officer. This direction is being issued only to save the unnecessarily money of interest, which is being paid to the policy holders, who is not being paid the amount within time and genuine claims are being refused on the whims of the Life Insurance Corporation only on technical ground. The result of the enquiry as well as the liability fixed be communicated to this Court within a period of three months from the date of receipt of the certified copy of this order to the Chairman of the Life Insurance Corporation, Allahabad.

27. The Registrar General of this Court is directed to send a copy of this judgment to the Chairman, Life Insurance Corporation of India, Allahabad for compliance of the aforesaid order immediately within a week from the date of receipt.