

(1981) 08 AHC CK 0014
In the Allahabad High Court
Case No : Second Appeal No. 1548 of 1970

Smt. Kamla Wanti

APPELLANT

Vs

L.I.C. of India

RESPONDENT

Date of Decision : 03-08-1981

Acts Referred:

Contract Act, 1872 — Section 18, 19
Insurance Act, 1938 — Section 45

Citation : AIR 1981 All 366

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : S.K. Suri, for the Appellant; R.P. Goyal and B.D. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Deoki Nandan, J.—This is a plaintiff's second appeal in a suit for recovery of Rs. 13,300/- on the foot of an Insurance Policy on the life of one Nana Lal Jagjeewan Sanghavi deceased. The plaintiff was his widow and having died in the course of the appeal in this Court, she is now represented by her heirs and legal representatives.

2. The proposal for insurance is dated 30th March. 1964 and was accepted vide letter/receipt issued by the defendant Life Insurance Corporation of India, Ext. 8. The insured appears to have been aged about 56 years at the time of the proposal for insurance and died of "Heart Failure" on 29th October, 1965. The plaintiff, being the nominee appointed by the insured, claimed the amount of insurance, but her claim having been repudiated by the defendant Life Insurance Corporation of India, she filed the suit giving rise to this second appeal. The suit has been dismissed by both the courts below on the ground that the deceased had suffered from carbuncle and diabetes; that he suppressed this fact in the personal statement made by him along with his proposal for the insurance: and that the contract of insurance was void on account of the said misrepresentation.

3. I have heard learned counsel for the parties. It is common ground that the deceased having died within two years of taking the insurance policy; Section 45 of the Insurance Act, 1938, is out of the way, and the matter is governed by Section 19 of the Contract Act which runs as under:

"When consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true.

Exception:-- If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of Section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation:-- A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable." Misrepresentation is defined as under by Section 18:

"18. Misrepresentation means and includes:

(1) the positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement."

Although it has been suggested in paragraph 20 of the written statement that the misstatements and suppression were fraudulently made, but it does not appear that the defendant Corporation relied on any fraud having been practised by the deceased, within the meaning of Section 17 of the Contract Act. The following were the pleas taken by the defendant Corporation for avoiding all liability on the policy in question :

"13. That a proposal for being assured for a sum of Rs. 10,000/- was made by Nandlal Jagjiwan Lal Sanghvi on 30th March, 1964. In the said proposal Sri Sanghvi made a declaration that the statements and answers contained in the proposal form were true in every particular and further agreed and declared that those statements and declarations along with further statements made before the Medical Examiner shall be the basis of contract of insurance between him and the defendant and if any untrue averment be contained therein, the contract

shall be absolutely null and void and all moneys which shall have been paid in respect thereof, shall stand forfeited to the defendant.

"14. That in the Personal Statement dated 30th March 1964 made by the assured he declared that the answers given therein had been so given after fully understanding the questions and that the same were true in every particular and that he had not withheld any information. He further agreed that the declarations together with the proposal form of insurance shall be the basis of contract between him and the defendant.

"15. That the personal Statement inter alia contained the following questions the replies to which were false to the knowledge of the assured :

4 (d) Have you consulted a Medical practitioner within the last five years ?

6. Have you suffered from any of the following ailments ?

(e) Any skin eruption ?

(g) (i) Any affection of kidney or bladder ?

(k) (iii) Any other illness within the last five years requiring treatment for more than a week ?

"16. That he was also put in the same statement the following questions:

(7) Have you ever passed blood, pus, albumen or sugar in the urine ?

(8) Did you have any operation ?

"17. That the answer to all the aforesaid questions was in the negative.

"18. That on a claim being made so shortly after the date of assurance, the Corporation made investigations and it appeared therefrom that the assured had inter alia suffered from carbuncle and diabetes prior to his making proposal for the insurance and he had consulted and taken treatment from Medical Practitioner in regard to the same.

"19, That the averments in the plaint that the assured never suffered from any carbuncle or diabetes or did not consult any medical practitioner for the same is incorrect and has been made for the purposes of this suit.

"20. That on account of the misstatements made by the assured which were in respect of material matters and because the assured suppressed facts which it was material to disclose, the policy, is void, the misstatements and suppression being false to the knowledge of the policyholder and material to be disclosed. The misstatements and suppression were fraudulently made.

"21. That because of inaccurate and false answers given in the proposal and the personal statement, in terms of agreement between the parties as contained in the proposal, the personal statement and the policy, the policy became void and the claim, was therefore, rightly repudiated by the defendant.

"22. That both carbuncle and diabetes are such diseases which could not have been detected at the time of the Medical Examination. In any event because of the express stipulations and agreement between the parties, the mis-statements and Suppression aforesaid render the policy void and the assertion that the medical doctor could not detect the aforesaid diseases at the time of medical examination cannot help the plaintiff.

"23. That the acceptance of the proposal was recommended by the doctor and the agent because of the misstatements and suppressions made by the assured. The suggestion that the doctor verified by means other than the answers given by the assured that the assured had never suffered from carbuncle or diabetes is wholly incorrect. The plaintiff is put to strict proof thereof.

"24. That the report of the doctor or the agent is not binding on the Corporation more so when it is due to misstatement and suppression of material facts by the assured. The Corporation cannot be estopped from repudiating the claim on that ground."

4. I have examined the personal statement. A note at the very top of it shows that it was to be filled in either by (i) the life to be assured or (ii) the Agent or the Development Officer writing under the dictation of the life to be assured. Column No. 6 raises the question; "Have you suffered from any of the following ailments ?" It has 11 Clauses (a) to (k). These clauses mention numerous diseases. Diabetes and carbuncle significant in the present case are not one of the several diseases mentioned. therein. The last Clause (k) puts the question about any other illness within the last five years requiring treatment for more than a week.

5. The form has not been filled in by the deceased in his own hand, but Dr. K. P. Mehrotra who has signed a declaration to that effect. That was contrary to the instructions contained at the top of the form. Much reliance cannot be placed on the declaration signed by the deceased at the foot of the form as the place, for specifying the name of the person who is supposed to have explained the question to him has been left blank; and the signatures of the deceased appear after a "X" mark which is usually made when a person is asked to sign on the dotted line : obviously the Agent who canvassed the case did not do his duty. The Life Insurance Corporation of India appoints Agents and Development Officers for securing more business. They owe no responsibility to the persons to whom they sell insurance and they may be presumed to be acting in the interest of the Corporation, and their own interest, more particularly the latter. The defendant Life Insurance Corporation has the sole monopoly of life insurance business in India and that monopoly is sanctioned by the Constitution in derogation of the right of the citizens of India to practice any profession or to carry on any occupation, trade or business, including the business of life insurance, under Article 19(1)(g), only "in the interest of the general public". The defendant Life Insurance Corporation, therefore, owes a greater responsibility towards the citizens of India in the conduct of its business. than any private

insurer. It cannot easily rely on pleas or defences which any ordinary trader may take for avoiding a contract. Indeed, it is the duty of the defendant Corporation, its staff and its agents to so carry on their business as serves the public interest best, and in doing so, to properly advise the persons to whom insurance is sold, rather than to so trap them that if they die too soon, full advantage could be taken of their ignorance and/or negligence in signing the forms, which they are made to sign by the agents, without properly understanding the intricacies and pitfalls contained in them. The question is, was that done in the present case ? Far from doing so, even the place meant for specifying the name of the person who is supposed to have explained the questions in the form to the deceased in the declaration, signed by him at the foot of the form after the "X" mark, has been left blank. No reliance could be placed on that declaration. It is clear from the pleas taken in its defence by the Life Insurance Corporation, that it relies heavily on the letter of the contract for avoiding liability, unmindful of the trust and the responsibility reposed in it by the people of India when it was granted the sole monopoly of carrying on life insurance business. Indeed it even disclaims all liability for the acts or omissions of its agent, or even the medical practitioner appointed by it to examine the deceased before accepting the proposal.

6. The strangest part of this case, however, is that although diabetes and carbuncle are well known diseases and although all kinds of diseases are mentioned in Clauses (a) to (j) of para 6 of the personal statement, diabetes and carbuncle are both conspicuous by their absence. The deceased who answered the questions put by para 6, if he did so himself, could be under no duty to tell the Insurance Corporation whether he suffered from diabetes or carbuncle even if he did, when he was not specifically asked about it by any of the questions put in para 6. As to the passing of sugar in the urine under the question in para 7, I am told that all diabetes do not pass sugar in the urine and even if one does pass sugar in the urine one may not be aware physically of the presence of sugar in the urine. If a person were asked whether he had ever passed the sugar in his urine, he is most likely to say no, unless he has been particular about sugar passing in his urine. As to the question in the 8th paragraph, with regard to the deceased ever having had any operation, accident or injury, the very collation of the words put in the question, could hardly ever remind a person of the opening of an abscess which he might have had performed by a doctor some years ago, as the performing of an operation on him. unless of course, the whole thing was so serious as to have required hospitalisation. The question is whether the defendant Corporation could be said to have been misled into entering into the contract of insurance with the deceased by any such mis-representation as alleged. The alleged mis-representation was the suppression of information relating to the diseases of diabetes and carbuncle said to have been suffered by the deceased in the year 1959. There is no direct evidence on the point inasmuch as the defendant Life Insurance Corporation did not take the trouble of producing the officer who accepted, on its behalf, the proposal for insurance on the life of the deceased, to show that if he had known the facts which had now come to the

knowledge of the Corporation from Dr. T. B. Nigam, he would have declined to accept the proposal.

7. It has been seen above that in the personal statement which a person has to answer when making a proposal for insurance, there is no specific question about carbuncle and diabetes. These two diseases are now sought to be made out to be such dread diseases as to have made the life of the deceased un-insurable if the true facts were known to the Life Insurance Corporation. That does not, however, appear to be correct. Firstly, if these diseases were regarded to be so dangerous, the prescribed form of personal statement in which all kinds of questions about all kinds of diseases have been asked would have surely asked a question about carbuncle and diabetes. Secondly, according to the instructions contained in the Manual for Agents issued by the Life Insurance Corporation, a person suffering from diabetes is not regarded to be un-insurable. What is said in the said instructions is that a person suffering from diabetes is eligible for insurance provided he is a resident of one of the larger cities where adequate medical facilities are available, and he is not engaged in an unfavourable occupation like that of a travelling salesman. Kanpur is undoubtedly one of such big cities where adequate facilities for medical supervision of diabetics have been available. The second condition in the said instructions is that the diabetic under the age of 25 and over the age of 55 will not be accepted for insurance. This condition was violated in the present case inasmuch as the deceased was 56 years of age when the proposal for insurance was made and accepted. It has not been suggested by anything on the record that the deceased knew of these instructions so as to have cast any duty on him to disclose it to the defendant Corporation that he was a patient of diabetes, or that his conduct in not disclosing it in spite of such knowledge was such as to render the contract voidable at the instance of the Corporation. Indeed it was the duty of the Agent who canvassed the case to have verified by enquiry whether the deceased who was 56 years of age was a diabetic in view of the instruction that the case of a diabetic over the age of 55 was not to be accepted. What follows in the instructions thereafter, is instructive. A diabetic under the age of 35 years is not to be insured unless his case has been watched for 2 years while a diabetic over the age of 35 years could be insured if his condition had remained static for one year since the onset of the disease. In the present case Dr. T. B. Nigam stated specifically that the general condition of the health of the deceased was very good and according to the facts stated by him in spite of the chronic diabetes with which he suffered even his carbuncle was cured and on the date of the proposal he had already lived a healthy life for more than 4 years, 9 months, after the operation of carbuncle; and he lived for about a year and half more, and did not die of diabetes but of heart failure. There is evidence on the record in connection with the refusal by the Corporation of a proposal for insurance that was made by the deceased in the years 1965, that the report of his electrocardiogram was not satisfactory. It seems that the life of the deceased was not cut short on account of his being a chronic patient of diabetes. A look at the tables for insurance, particularly table

2, that is, whole life with profits, under which the life of the deceased was insured, would show that the normal expectancy of life on which the defendant Life Insurance Corporation works is taken to be 70 years. I am not an actuary. But it does appear to me that the defendant Life Insurance Corporation must accept the normal consequence of selling insurance to a man above the age of 55 years, for if a man of that age dies too soon or dies without attaining the age of 70 years, it is not easy to countenance a repudiation of the claim for the sum insured by the Life Insurance Corporation, unless there is good evidence to show that there was some such misrepresentation about some fact which if known, would have definitely led the Life Insurance Corporation to decline to sell insurance to that person. It is not possible to say on the facts of the present case that there was any such mis-representation of any fact, real or imaginary. The Life Insurance Corporation insured the life of the deceased who had already reached the age of 56 years, and it must be deemed to have accepted the risks which must normally go with the selling of insurance to persons of that age. It is, therefore, not easily possible to say that the consent of the Life Insurance Corporation to the contract of insurance was caused by any such misrepresentation as to make the contract voidable at the option of the defendant corporation.

8. I must now refer to the cases cited by Mr. R. P. Goel on behalf of the defendant Life Insurance Corporation. He first relied on paragraph 10 of the report of the case of Brahm Dutt Sharma Vs. Life Insurance Corporation of India, wherein it was observed that in *A. I. G. Insurance Co. v. S. P. Maheshwari* (AIR 1960 Mad 484), the learned Judges were of the opinion that the declarations in the application for policy amount to warranty and if it is found that the averments contained in the application are false the contract would be vitiated and become unenforceable in law. I do not see how this observation can in any way advance the case of the Corporation. The law on this point is that contained in Section 19 of the Contract Act. Indeed, the position on this point has been explained by the Supreme Court in *Mithoolal Nayak v. Life Insurance Corporation of India* (AIR 1982 SC 814) which was also cited by the learned counsel for the Life Insurance Corporation. It was said in that case that the principle underlying the Explanation to Section 19 of the Contract Act was that "a false representation, whether fraudulent or innocent, is irrelevant if it has not induced the party to whom it is made to act upon it by entering into a contract." But the said principle did not apply to that case because the terms of the policy made it clear that the averments made as to the state of health of the insured in the proposal form and the personal statement were the basis of the contract between the parties and the circumstance that the policy holder had taken pains to falsify or conceal that he had been treated for a serious ailment by a physician only a few months before the policy was taken showed that the falsification or concealment had an important bearing in obtaining the other party's consent, and further that "A man who has so acted cannot afterwards turn round and say, it could have made no difference if you had known the truth," That is not the

position here and the exceptional circumstance present in that case finds no place here.

9. I must however add that having looked into the facts of this case, I find it impossible to rely on the evidence of Dr. T. B. Nigam D. W. 1. which is the sheet anchor of the defence case. His name was not mentioned in the written statement. The circumstances in which he was contacted in the course of the alleged investigation into the case after the claim was lodged by the plaintiff have remained a mystery. No officer of the Corporation came forward to explain all this. Even the questionnaire which Dr. T. B. Nigam is supposed to have answered is dated 20th November, 1967. some two years after the claim was lodged, although the certificate given by him of having treated the deceased is dated 10th February, 1967. That too was more than a year after the claim was lodged. The facts deposed to by him are also improbable in the extreme. He said that he himself examined the urine of the deceased and did not set it examined by a pathologist and knew that the deceased suffered from the disease of passing sugar in the urine, and yet, he operated upon the carbuncle and the operation was successful and the carbuncle was cured and the deceased even then continued to suffer from diabetes and passing of sugar in his urine, as a chronic diabetic, and in spite of all this the general health of the deceased was very good. He claimed to be the family physician of the deceased but knew almost nothing about the family of the deceased when asked about the same in his cross-examination.

10. What has surprised me most is that the claim was made in December, 1965 vide-Ext. 9, and the first inkling of the information possessed by Dr. T. B. Nigam appears to have been passed on to the defendant Life Insurance Corporation for the first time on 16th Feb. 1967, vide Ext. A-13, and the certificate which is paper No. 37-I-Kha and filed between Ext. A-12 and Ext. A-13. The defendant Corporation has not given any explanation as to the circumstances in which it did not pay the claim from December, 1965 to February, 1967 a period of almost 15 months. The Corporation surely owed an explanation to the widow of the deceased as to why the claim was not promptly settled and the circumstances in which the Corporation kept on, so to say, waiting for the information to be given by Dr. T. B. Nigam some 15 months later in order to enable it to repudiate the claim. This circumstance makes it difficult to place any reliance on the evidence of Dr. Nigam.

11. The evidence of Dr. T. B. Nigam was rebutted by the direct evidence on oath of the plaintiff Smt. Kamlawanti, P. W. 1. the widow of the deceased and Rajnikant, P. W. 3, the son of the deceased both of whom stated on oath that deceased never suffered from diabetes or carbuncle. They were undoubtedly interested in the result of the suit. Dr. T. B. Nigam though apparently an independent witness and a medical practitioner, was one of the doctors on the approved list of the defendant Life Insurance Corporation. He was examined on 2nd May, 1969. In cross-examination he stated that he was approved by the Life

Insurance Corporation some 5 or 6 years before, which would place the year of his approval some time in the year 1963 or 1964, but added that his income from L. I. C. work was more or less nil. Dr. T. B. Nigam had corroborated his statement by producing accounts. Those accounts were on loose-sheets and the trial court had on having looked into them come to the conclusion that the accounts produced by Dr. T. B. Nigam could not be said to be maintained in the regular course of business and that they had "rather been used more or less to refresh memory." The copies of the entries from the account do not show that they relate to the deceased or that he suffered from carbuncle or diabetes. The certificate dated 16th February, 1967 endorsed on the top of the copies of those entries is a separate document, and the original of it is also on the record, vide paper No. 37-I-Kha, though not exhibited separately, Dr. T. B. Nigam also stated under cross-examination that he did not maintain any account of his income from the medical profession and paid Income Tax on the basis of estimate. It is, therefore, clear that the entries in the account books had no probative value apart from the oral testimony of Dr. T. B. Nigam. If he was the family physician of the deceased and the deceased was such a chronic case of diabetes as suggested by Dr. T. B. Nigam, it would not have been necessary for him to look into those accounts, which were not maintained in the regular course of business, to refresh his memory. The fact that these accounts were filed with a certificate of Dr. Nigam endorsed at the top of them would rather show that an attempt was made to create documentary evidence for the purposes of the case when there was in fact no reliable documentary evidence to support the statement of Dr. T. B. Nigam. This circumstance coupled with the fact that it is not usual for a family physician to appear as a witness for the Life Insurance Corporation after the death of his patient, makes it impossible to place any reliance on the testimony of Dr. T. B. Nigam, and there being no other evidence to the contrary, the sworn testimony of the plaintiff herself Smt. Kamlawanti, P. W. 1, the widow of the deceased, and Rajnikant, p. W. 3, the son of the deceased, who were both categorical in stating that the deceased never suffered from carbuncle and diabetes and that Dr. T. B. Nigam was not their family physician, cannot be brushed aside, more so particularly when nothing has been brought out from their cross examination which may suggest that they were not stating the truth. It may be that as a court of second appeal I should not have reappraised the evidence, but the basic question involved in the case being a mixed question of law and fact, I did have to ascertain the correct facts of the case in order to apply the law thereto, I find firstly that even if the deceased had suffered from carbuncle and diabetes as stated by Dr. T. B. Nigam, the non-disclosure of the same in the personal statement, made by him could not on the facts and in the circumstances of the case be said to amount to a mis-representation; secondly that there is no evidence to show that the defendant Life Insurance Corporation would not have consented to the contract but for the said mis-representation. Lastly while going through the material on the record I find that neither of the two courts below could be said to have approached the evidence from a Proper perspective; and the proper inference to be drawn from the evidence on the

record is that the deceased did not suffer from carbuncle or diabetes and that his life was not cut short by any such disease.

12. In the result, the appeal succeeds and is allowed with costs. The suit must be decreed for the recovery of the amount payable on Policy No. 7379395 on the life of Sri Nana Lal Jagjiwan Sanghavi. The claim for interest that has been made in the suit cannot be decreed because no notice appears to have been served on the defendant Life Insurance Corporation, when it delayed the settlement of the claim, that interest would be claimed by the plaintiff in default of payment within a reasonable time or within a time fixed by the notice. However, pendente lite and future interest can be awarded. The suit is decreed for the recovery of the amount of the said policy with profits, which the defendant Life Insurance Corporation must work out within two months from today, along with pendente lite and future interest thereon at the rate of 6% per annum and full costs throughout in all the three courts to the legal representatives of the plaintiff-appellant, since deceased.