

(2022) 04 OHC CK 0101
In the Orissa High Court
Case No : Writ Petition (C) No. 1672 Of 2011

Susanta Kumar Dash

APPELLANT

Vs

SBI Life Insurance Co. Ltd. And Others

RESPONDENT

Date of Decision : 19-04-2022

Acts Referred:

Citation : (2022) 04 OHC CK 0101

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Sidhartha Mallick, R.C. Mohanty, Behera

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Mallick, learned advocate appears on behalf of petitioner and submits, his client is husband of the deceased, who took life insurance policy under a group scheme in availing housing loan. He submits, the deceased had bronchial asthma, which she admittedly did not disclose. She died of cardiac arrest. Bronchial asthma was a minor ailment and had nothing to do with the cause of death. He relies on judgment of a Division Bench of this Court in Kuni Lata Sahoo v. Senior Divisional Manager, L.I.C. of India reported in 109 (2010) CLT 94, paragraphs 14 and 16. The paragraphs are reproduced below.

"14. The legal position which emerges from the aforementioned judicial pronouncements is that the test to determine materiality is whether the fact not disclosed has any bearing on the risk undertaken by the insurer. If the fact has any bearing on the risk, it is a material fact. If the insured failed to disclose in the proposal form trivial ailments suffered by him temporarily on some occasions, the same cannot be construed as fraudulent suppression of material facts so as to repudiate the contract of insurance.

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16. In the present case, the deceased insured was suffering from Gastritis with superficial Stomach Ulcer and was under medication for some time, as would be evident from the Doctor's report (Annexure-k) to the counter affidavit. Admittedly, the deceased insured died of Viral Encephalitis and Cardio Respiratory arrest and suffered from the same only ten hours before his death, as would be evident from the Medical Attendant Certificate (Annexure-4 series) to the Writ Petition."

He also relies on judgment of the Supreme Court in D. Srinivas v. SBI Life Insurance Co. Ltd. reported in (2018) 3 Supreme Court Cases 653, paragraphs 8, 10 and 13.

2. Mr. Mohanty, learned advocate appears on behalf of the insurance company and submits, the writ petition is not maintainable. He refers to annexure-B1 in the counter filed by his client to submit that his client is a private sector life insurance company. He submits further, impugned repudiation dated 29th December, 2010 clearly informed petitioner of alternative efficacious remedies available to him, in event he was not satisfied with the reasons for repudiation. As such also the writ petition is not maintainable. Without prejudice to above contention he submits, the deceased had signed good health declaration being clause-7 in the proposal form. There was suppression of material fact of ailment suffered by the deceased. He relies on judgment of the Supreme Court in Satwant Kaur Sandhu v. New India Assurance Company Ltd. reported in (2009) 8 Supreme Court Cases 316, paragraphs 27 to 29.

3. Mr. Behera, learned advocate appears on behalf of the bank and submits, in event Court is inclined to interfere then there should be direction for the payment to be made to his client for adjustment against the housing loan.

4. Facts in the case are that the deceased had put her signature in the good health declaration being clause-7 in the proposal form. It is a printed declaration requiring signature on statement that the executant is presently in sound, mental and physical health. Further statement of declaration in the clause is that the executant does not suffer from any physical default/deformity and can perform routine activities independently. Certain ailments have been mentioned. Statement on the ailments is that the executant never suffered nor currently suffering from diabetes, hypertension (high blood pressure), epilepsy or tuberculosis or genetic disorders. There are other statements regarding hospitalization, critical ailments like cancer and heart disease, surgery undergone requiring full anesthesia during the last 12 months, major organ transplantation, suffered or suffering from stroke, paralysis or any mental illness like chronic irreversible disease of the lungs or brain or livers and diseases like, inter alia, AIDS. On query from Court Mr. Mohanty submits, from the case summary dated 9th August, 2010 (annexure-3 in the writ petition) given by the hospital regarding death of the deceased, his client came to know that the deceased had

known case of bronchial asthma for last 3-4 years. This was the material suppression, which was to knowledge of the deceased and not made known for his client to take a call on whether it would take the risk.

5. Impugned repudiation gives reason for it to be that the deceased was suffering from and was under treatment from bronchial asthma prior to date of enrolment of the policy. There is no dispute the deceased had bronchial asthma. Impugned repudiation also says that against the repudiation there could be a representation made to the claims review committee, within a month, for reconsideration of the claim and thereafter for further consideration, representation may be made to the insurance ombudsmen. Petitioner instead filed the writ on 24th January, 2011, which is just under a month after the repudiation. Obviously petitioner felt that the informed available remedies were not as efficacious for remedy on moving Court. The writ petition was admitted by a Division Bench upon hearing on 4th May, 2011. The insurance company filed its counter on 7th April, 2016 and thereafter it remained pending. The writ petition was called on by this Bench on 31st March, 2022 and listed today under heading 'Old Matters'. The Supreme Court in *Hirday Narain v. Income-Tax Officer, Bareilly* reported in AIR 1971 SC 33 said, inter alia, as extracted from paragraph 12 of the report.

"12. xx xx xx We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income-tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits xx xx xx."

The other contention, of opposite party no.1 being a private insurance company, is not accepted because said opposite party solicits insurance cover to the public and there is undeniable public element involved in its activities.

6. It appears from clause-7 in the proposal (good health declaration) that specific diseases and ailments were mentioned therein. The good health declaration, as aforesaid, was a printed part of the proposal form requiring the proposer to put signature. Facts in the case show that the proposer did not suffer from any of the ailments/diseases mentioned in the printed good health declaration clause-7 in the proposal. Bronchial asthma was not mentioned in the printed declaration, signed by the deceased.

7. The case summary dated 9th August, 2010, issued by the hospital, has been relied upon by the insurance company for discovery that the deceased was said to have been a known case of bronchial asthma for last 3-4 years. However, the relied upon document also says that the patient was managed in the line of meningitis and severe sepsis with septic shock. The patient had sudden cardiac arrest on 8th August, 2010 and thereafter again on 9th August, 2010, after which she passed away.

8. In *Kuni Lata Sahoo* (supra) view expressed was that test to determine

whether something is a material fact has to be determined on whether the fact had any bearing on the risk. The Bench opined that if the insured failed to disclose in the proposal form trivial ailments suffered temporarily on some occasions, same cannot be construed as fraudulent suppression of material facts, so as to repudiate the contract of insurance. Facts in that case were that the deceased insured was suffering from gastritis with superficial stomach ulcer and was under medication for some time. Admittedly, the insured died of viral encephalitis and cardio respiratory arrest, suffered from the same only ten hours before his death. The Court, on those facts and applying the law, allowed the writ petition and directed the insurance company to pay. Facts in this case are similar. The difference is regarding contents of clause-7 in the proposal form being a printed declaration, requiring the proposer's signature. It is a comprehensive printed declaration covering several ailments and diseases as referred to above. There is no mention of bronchial asthma. The deceased had signed the declaration.

9. D. Srinivas (*supra*), relied upon by petitioner, is not applicable in the facts since therein the proposer on having availed housing loan of an amount, which required medical examination, was not made to undergo medical examination by the insurance company and thereafter, there was refund of premium on delay.

10. Paragraphs 27, 28, and 29 from Satwant Kaur Sandhu (*supra*) are reproduced below.

"27. It would be beyond anybody's comprehension that the insured was not aware of the state of his health and the fact that he was suffering from Diabetes as also chronic Renal failure, more so when he was stated to be on regular haemodialysis. There can hardly be any scope for doubt that the information required in the afore- extracted questions was on material facts and answers given to those questions were definitely factors which would have influenced and guided the respondent - Insurance Company to enter into the Contract of Mediclaim Insurance with the insured.

28. It is also pertinent to note that in the claim form the appellant had stated that the deceased was suffering from Chronic Renal Failure and Diabetic Nephropathy from 1st June, 1990, i.e. within three weeks of taking the policy.

29. Judged from any angle, we have no hesitation in coming to the conclusion that the statement made by the insured in the proposal form as to the state of his health was palpably untrue to his knowledge. There was clear suppression of material facts in regard to the health of the insured and, therefore, the respondent - insurer was fully justified in repudiating the insurance contract. We do not find any substance in the contention of learned counsel for the appellant that reliance could not be placed on the certificate obtained by the respondent from the hospital, where the insured was treated."

There was suppression by therein proposer of his suffering from diabetes as also chronic renal failure and he was stated to be on regular haemodialysis. This was

gross suppression. The Supreme Court found it was suppression of material fact. Such is not the case of petitioner where the insured had signed the printed declaration form.

11. Court finds with petitioner. The writ petition succeeds. The insurance company (opposite party nos. 1 and 2) are directed to forthwith pay to the beneficiary, the sum assured along with interest at 5% per annum commencing from 1st January, 2011 till date of payment. So far as recovery on the housing loan is concerned, the bank is left to seek the same in terms of the conditions of the loan.

12. The writ petition is disposed of.

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