

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**OWP No.269/2005
OWP No. 274/2005**

Reserved on 10.10.2023

OWP No.269/2005

Pronounced on 17 .10.2023

Life Insurance Corporation of India th. Shri
B.L.Bhat age 53 years, son of Sh. S.N.Bhat
R/O Nanak Nagar Jammu, Manager (L/HPF)
Life Insurance Corporation of India, Railhead
Complex, Jammu

..... petitioners (s)

Through :- Mr.C.S.Gupta Advocate

V/s

.....Respondent(s)

1 State of Jammu and Kashmir through Commissioner/Secretary to
Government Food and Supplies and Consumer Affairs, Civil Secretariat
Jammu

2 State Commission constituted under Consumer Protection Act, Jammu and
Kashmir, Jammu

3.Divisional Forum, constituted under J&K Consumer Protection Act Jammu
and Kashmir Jammu

4 Smt. Suraj Kanta Wd/o late Sh. Dil Bagh Gupta resident of Ward No. 2 Near
Jhulla Bridge Rajouri.

Through Mr. G.S.Thakur Advocate vice
Mr. Sanjay Sharma Advocate

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Through :- Mr. G.S.Thakur Advocate vice
Mr. Sanjay Sharma Advocate

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

JUDGMENT

Sanjeev Kumar J.

1. These petitions are directed against a common judgment dated 06.12.2004 passed by the Jammu and Kashmir State Consumer Disputes Redressal Commission ["the Commission"] in two appeals (appeal No.2567/2003 and appeal No. 2568 titled 'Life Insurance Corporation of India vs Navneet Gupta' and 'Life Insurance Corporation of India vs. Smt. Suraj Kanta' whereby the Commission has dismissed the appeals of the petitioner and upheld an order dated 14.08.2003 passed by the Divisional Forum, Jammu ["the Divisional Forum"].

3. Deceased Dilbag Raj Gupta obtained two different insurance policies on different dates. Policy No. 140984457 was for a period of twelve years commencing from 14.07.1999 which was obtained from Rajouri Branch and Policy No. 141026308 which was for a period of 15 years commencing

from 20.07.1999 was obtained from Jammu Branch. The deceased died on 04.08.1999 due to heart attack suffered on 31.07.1999. The nominees of the deceased-insured i.e respondent No.4 in both the policies made claims before the Insurance Company. However, the Insurance Company repudiated both the claims on the ground of concealment of material facts.

4 Aggrieved by the action of the petitioner herein, the nominees of the deceased i.e respondent No.4 herein filed two complaints. The petitioner-insurer filed its objections stating that the claims were repudiated on account of suppression of material information by the deceased about his health and regarding previous insurance policy.

5 The Divisional Forum, after considering the oral and documentary evidence adduced by both parties, accepted both the complaints and directed the petitioner-insurer to disburse the assured amount in favour of the complainants respectively. The petitioner being aggrieved by the judgment of the Divisional Forum preferred appeals No. 2567/2003 and 2568/2003 respectively before the Commission. The Commission after considering the evidence available on record, the relevant provisions of the Act and the legal position on the subject, concurred with the findings given by the Divisional Forum and, accordingly, dismissed the appeals.

6 The petitioner being aggrieved by the judgments of the Divisional Forum and the Commission has preferred these petitions challenging their validity and legality.

7 Heard learned counsel for the parties and perused the material on record.

8 It is well settled that a contract of insurance is contract *uberrimae fides* and there must be complete good faith on the part of the insured. The insured is, thus, under an 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. The burden of proving that the insured had made false representations and suppressed material facts is undoubtedly on the Corporation. There is no dispute about the power of the Corporation to repudiate the claim in the event of sufficient proof that the deceased policyholder had made a misstatement of facts regarding his health condition.

9 In the present case, the petitioner-insurer has failed to prove the charge of suppression of material facts regarding the disease of the deceased. The Doctors on the panel of the Life Insurance Corporation had medically examined the insured prior to the contract of insurance and reported that the deceased was fit and healthy at the time of making the proposal. Simply because the insured did not mention the particulars of his previous policy would not by itself be sufficient to repudiate the genuine cases of respondent No.4 in both the petitions as the proposal forms are usually filled in by the concerned agents and whatever they advise, the policy holders follow their instructions. It is otherwise the duty of the agents of the insurance company to advise the insured properly prior to entering into the contract of insurance. In the present case, the concerned agents have not filed any document to establish that they had asked the insured with respect to previous policy and he replied in the negative. The genuine claims of respondent No.4 in both the petitions ought not to be repudiated on insignificant grounds.

10 The object of the Life Insurance Corporation is to help the victims or their dependants in general through its various schemes on account of sudden demise of the policyholders and it is not purely a commercial organization meant for getting profits unmindful of the human problems and it is not an organization without any human touch. The Corporation has got a very wide network throughout the country through its agents and field officers as its messengers to spread the information regarding the object of establishing the Corporation and the schemes it is floating to bring as many people as possible under the insurance cover. Many policyholders coming from villages are illiterates with rural background and they are not so worldly wise to know the consequences of the breach, if any, committed by them in keeping the policies in force. The agents of the Corporation are the best persons who generally hail from the places of the policyholders and they are the best persons to gather the necessary information and pass on the same to the Corporation to prevent issuing of policies or revival of such policies on the basis of useful information instead of raising hue and cry sometime after completing all the formalities that a particular policyholder mislead them or resorted to give a mis-statement to have the benefit under the policy. Since all the schemes are intended to help the policyholders or their dependents to the extent possible, if there is any little doubt whether a statement made by a particular policyholder is a misstatement or not the benefit shall go to the policyholder or his dependants.

11 In the instant case, indisputably, the insured was got medically examined by a Doctor on panel of Insurance Company. The Doctor declared the insured fit and healthy. It is upon this satisfaction arrived at by the insurer, the policy covers were issued. In such situation, it would be highly inequitable

to permit the insurer to get out of its liability on the ground that the insured suppressed material information as to his health condition and, thus, breached the trust foundational in the contract of insurance. The view we have taken herein is fortified by the judgment of Supreme Court in **Manmohan Nanda vs United India Assurance Co. Ltd and another, (2022) 4 SCC 582**. Para 52 whereof is set out below:

“(i) There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the insurance policy to be taken, the risk to be covered, as well as the queries that are raised in the proposal form.

(ii) What may be a material fact in a case would also depend upon the health and medical condition of the proposer.

(iii) If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.

(iv) If any query or column in a proposal form is left blank then the insurance company must ask the insured to fill it up. If in spite of any column being left blank, the insurance company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or nondisclosure of a material fact, and seek to repudiate the claim.

(v) The insurance company has the right to seek details regarding medical condition, if any, of the proposer by getting the proposer examined by one of its empanelled doctors. If, on the consideration of the medical report, the insurance company is satisfied about the medical condition of the proposer and that there is no risk of preexisting illness, and on such satisfaction it has issued the policy, it cannot thereafter, contend that there was a possible preexisting illness or sickness which has led to the claim being made by the insured and for that reason repudiate the claim.

(vi) The insurer must be able to assess the likely risks that may arise from the status of health and existing disease, if any, disclosed by the insured in the proposal form before issuing the

insurance policy. Once the policy has been issued after assessing the medical condition of the insured, the insurer cannot repudiate the claim by citing an existing medical condition which was disclosed by the insured in the proposal form, which condition has led to a particular risk in respect of which the claim has been made by the insured.

(vii) In other words, a prudent insurer has to gauge the possible risk that the policy would have to cover and accordingly decide to either accept the proposal form and issue a policy or decline to do so. Such an exercise is dependant on the queries made in the proposal form and the answer to the said queries given by the proposer”.

12 In view of the above, we hold that the Commission was right in concurring with the findings given by the Divisional Forum. In the case on hand, the petitioner-insurer has miserably failed to establish that the deceased policyholder intentionally misled the Corporation by giving a misstatement of facts regarding his health at the time of obtaining policies. Accordingly, finding no perversity in the orders passed by the Commission as well as by the Divisional Forum, both the petitions are dismissed and the order and judgment of the Divisional Forum and the Commission are upheld.

(MOHAN LAL)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu

17 .10.2023

Sanjeev

Whether order is reportable: Yes