IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.94 of 1991

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1. Divisional Manager, Life Insurance Corporation of India, Divisional Office, Patna.
2. A.D.M. (Claim), Life Insurance Corporation of India, Divisional Office, Patna.
3. Branch Manager, Life Insurance Corporation of India, Gaya Branch, Gaya.

.... Defendants-Appellants.

Versus

Bimal Kishore Prasad, S/O Late Gopal Prasad, Resident of Mohalla- New Godown, G.B. Road, P.S. Kotwali, Town- Gaya, District- Gaya.

.... Plaintiff/Respondent.

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Appearance :

For the Appellant/s : Mr. Rajeev Ranjan Pd., Advocate.
Mr. Akash Chaturvedi, Advocate.
Mr. Sudhanshu Trivedi, Advocate.

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 13-08-2015

Heard learned counsel for the appellants.

2. The defendants have filed this first appeal against the judgment and decree dated 24.09.1990 passed in Money Suit No. 14 of 1990/ 56 of 1986, whereby the learned Sub-Judge-IV, Gaya, decreed the suit of the plaintiff/respondent

3. The plaintiff-respondent filed the aforesaid suit for decree of Rs.81,500/- as principal insured amount with pendente lite interest and interest till realization against the defendants-appellants. The case of the plaintiff-respondents is that Nand Kishore Prasad, son of Mahabir Prasad, resident of Mohalla New Godown, P.S. Kotwali, Town Gaya, the cousin of the plaintiff/respondent was insured on 10.01.1979 for Rs.50,000/- by the Life Insurance Corporation of India, Gaya Branch, Gaya, vide Policy No.

30408197. Nand Kishore Prasad died on 07.04.1979 at Gaya due to failure of heart in short interval of time. The plaintiff was the nominee of Nand Kishore Prasad in the Insurance Policy, under Section 39 of the Insurance Act, and, he was entitled to receive the insured amount in case of the death of Nand Kishore Prasad. The plaintiff made the claim before the defendants in proper form vide Claim Statement dated 18.02.1980 after completing all necessary formalities. The defendants acknowledged the Claim Petition through letter no. PDO/Claim D-11925 dated 05.04.1980 and advised the plaintiff to bear a little more since the investigation in the matter was going on. The plaintiff reminded the defendants several times and requested them to settle the claim but no positive step was taken. Thereafter, the plaintiff sent the notice to the defendants through Advocate to settle the claim on 30.11.1981 and 03.09.1983. The Divisional Manager, Life Insurance Corporation of India, defendant no. 1, vide letter no. PDO/Claim/D-11925/SDS, dated 21.05.1985 addressed to the plaintiff repudiated the claim on the ground that Nand Kishore Prasad had furnished incorrect statement and had withheld correct information at the time of affecting the insurance. Nand Kishore Prasad had given all correct information and the allegation regarding giving incorrect statement in the proposal form is totally false, incorrect and after thought. Further case of the defendants/appellants is that after lapse of two years of the policy of assured, the defendants/appellants are not entitled to question the validity of the policy, under Section 45 of the Insurance Act.

4. The Divisional Manager, Life Insurance Corporation of India/ defendant no. 1, appeared in the suit and filed written statement raising

several usual defence with contention that deliberate and international fraud has been perpetrated upon the insurer, the Life Insurance corporation of India by Sri Nand Kishore Prasad (Police Holder), Sri Bimal Kishre Prasad (nominee), Sri Kamal Kishore (agent), Sri M.I. Mullik (the Medical Examiner) and Sri A. Kumar (the then Development Officer in the corporation). The agent, Sri Kamal Kishore, is the elder brother of the plaintiff, Sri Bimal Kishore, who is the nominee of the policy. Sri Nand Kishore Prasad, policy holder was cousin brother of Sri Bimal Kishore Prasad and Sri Kamal Kishore Prasad. On investigation by the employee of the Life Insurance Corporation it transpired that Sri Nand Kishore Prasad, the policy holder was suffering from breathlessness and was admitted in the Pilgrim Hospital, Gaya on 07.08.1978 to 19.03.1979, as indoor patient and discharged on 19.03.1979. Sri Kamla Kishore Prasad, the agent of the Life Insurance Corporation of India, cousin of Sri Nand Kishore Prasad, policy holder, filled up the proposal form on 10.01.1979 in his own pen and got his signature and he had given required certificate. Sri Nand Kishore Prasad again suffered from breathlessness and was admitted in the Pilgrim Hospital, Gaya, on 27.03.1979 and he died there on 07.04.1979. Sri Kamal Kishore Prasad, the agent, intentionally and deliberately made his younger brother, the plaintiff, Sri Bimal Kishore Prasad, the nominee under the Insurance Policy ignoring the fact that Sri Nand Kishore Prasad have two daughters. The proposal was filled up and completed in his own pen by the agent himself and the address of Sri Nand Kishore Prasad was given under care of the nominee. Sri Nand Kishore Prasad was also known as Sri Nand Kishore, he was son of Mahabir

Prasad @ Mahabir Ram, residing at Murarpur in the lane of Narayani Tubewell Company, Gaya. Sri Nand Kishore has two daughters, namely, Shakuntala Devi and Manju Devi, who were aged about 35 and 37 years respectively in year 1985. Both are married with Budhan Prasad @ Budhan Mistry, son of Late Nalooyee Mistry, resident of M. Rangahadur Raod, Telbigha, P.S.- Kotwali, Gaya. It has come in the investigation that policy holder, Sri Nand Kishore Prasad, was aged about 57 years and since before 1978 he was suffering from asthma and used to reside with his daughters and son-in-law and he himself had no means and source of income. As such, at the time of filling of proposal form of insurance policy, assured Sri Nand Kishore Prasad gave the false statements knowingly, intentionally, deliberately and fraudulently suppressing the material matters. As such, the plaintiff is not entitled for claim and the suit is liable to be dismissed.

5. On the basis of the pleadings of the parties, the trial court framed altogether eight following issues.

I. Is the suit as framed maintainable.

II. Has the plaintiff got any cause of action for the suit?

III. It the suit barred by limitation?

IV. Is the suit barred by estoppel, waiver and admission and acquiescence?

V. Whether Sri Nand Kishore Prasad, deceased, was duly insured by the defendant and the plaintiff name was entered as nominee in the policy?

VI. Whether the defendant can question about the genuiness of the statement made by Sri Nand Kishore Prasad, deceased two years from the date on which the policy was affected?

VII. Whether the plaintiff is entitled to receive the principal ensured amount with interest?

VIII. Whether the defendant is entitled to repudiate the policy on the basis of alleged false statement given by the plaintiff?

6. In course of trial, plaintiff-respondent has examined altogether eleven witnesses including himself as P.W.10 and also got exhibited several documents. On the other hand, defendants/appellants have examined altogether seven witnesses and also got exhibited several documents.

7. After hearing the parties and perusing the evidence available on record, the learned trial court decided all the issues in favour of the plaintiff-respondent and decreed the suit holding that plaintiff-appellant is entitled to realize Rs.81,500/- the principal amount and interest up to 31.12.1986 together with interest pendente lite and future @ 6% per annum till realization of the decreetal amount.

8. Learned counsel for the appellants submits that there is specific case of the defendants/appellants that Nand Kishore Prasad, policy holder, was admitted in Pilgrim Hosiptal, Gaya, on 27.03.1979 as indoor patient and died there on 07.04.1979 and not at the house of the plaintiff, who is the nominee in the insurance policy. Nand Kishore Prasad was earlier admitted due to breathlessness on 07.08.1978 to 19.03.1979 in Pilgrim Hospital, Gaya but on 10.07.1979 in proposal of insurance policy filled up by agent Kamal Kishore Prasad of L.I.C, brother of nominee-plaintiff, false statements were given intentionally knowingly suppressing the material matters regarding health, age and occupation of the policy holder, Nand

Kishore Prasad. D.W. 5, Shakuntla Devi, D.W.6, Manju Devi, daughters and D.W.4, Budhan Mistry, son-in-law, of policy holder, Nand Kishore Prasad, have stated in their evidence that Nand Kishore Prasad was admitted in Pilgrim Hospital, Gaya due to suffering from Asthma and died there and he was earlier admitted there due to Asthma. Ext. F and F/1, entry in the indoor patient register of Pilgrim Hospital Gaya at Serial No. 929 and Bedhead Ticket also disclosed that Nand Kishore Prasd was admitted on 27.03.1979 in Pilgrim Hospital, Gaya and died there on 07.04.1979. Entry in the register of indoor patient at Serial No. 2313, marked as "X" for identification in course of cross-examination of D.W.7, also shows that Nand Kishore Prasad, son of Mahabir was admitted on 07.08.1978 and discharged on 19.03.1979. From the aforesaid evidence, it is apparent that at the time of proposal for insurance of Nand Kishore Prasad, he was in hospital and material matters regarding health and age were concealed and incorrect information was given but the learned trial court illegally disbelieve the same and decreed the plaintiff's suit.

9. In view of the submission of the learned counsel for the appellants, the following points arise for consideration in this appeal:-

(I) Whether the plaintiff is entitled to receive the principal insured amount with interest in respect to policy of Nand Kishore Prasad against the defendants?

(II) Whether the defendants can repudiate the policy of Nand Kishore Prasad on the basis of giving false information in the proposal of the insurance policy concealing the material matters?

Since both points are inter connected, hence both points are taken up together.

10. P.W.2 Narayan Saran, P.W.3 Radha Mohan Prasad, P.W.4 Satya Narayan Prasad, P.W. 5 Kishori Prasad, P.W. 7 Deo Saran Prasad are the witnesses on the point of health and occupation of policy holder, Nand Kishore Prasad, they have stated in their evidence that Nand Kishore Prasad had good health and was doing the work of Commission Agent in Transport but they have not disclosed the name of the Transport. P.W.8 (Murli Prasad) has stated in his evidence that Nand Kishore Prasad was agent at his bus and he had good health during the discharging of work of Agent. P.W.11 Arjun Prasad is employee of Gaya Nagar Nivam and he has proved the entry at serial no. 504 in the birth and death registered as Ext.4 regarding the death of Nand Kishore Prasad, son of Mahabir Prasad, on 07.04.1979 on behalf of information of Lallan Prasad of Nai Godam due to heart failure.

11. P.W. 6, Ravindra Kumar, has stated in his evidence that he know to Bimal Kishore Prasad (plaintiff) and his brother, Nand Kishore Prasad. He had worked with Dr. Manohar Rao as compounder. He had gone to the resident of Nand Kishore Prasad with Dr. Manohar Rao. Doctor Saheb administered the medicine through injection but suddenly, Nand Kishore Prasad died. In cross-examination, this witness has stated that intravenous medicine was administered by the Doctor Saheb and intramuscular medicine was administrated by him to Nand Kishore Prasad. This witness has shown his ignorance to the suggestion of the defence to the effect that Nand Kishore

Prasad was admitted in Pilgrim Hospital regarding his treatment since 07.08.1978 to 19.03.1979 and again on 27.03.1979 where he died on 07.04.1979. This witness has also stated in his cross-examination that Dr. Manohar Rao had not given any death certified at that time. He has also stated that he has not received the summon for his evidence and he has come to give evidence on the instruction of Dr. Yougal Babu (brother of the plaintiff).

12. P.W. 9, Manohr Prasad, has stated in his evidence that he knows to Bimal Kishore Prasad (plaintiff) and Nand Kishore Prasad (assured). Nand Kishore Prasad has died, he met with him before two days of his death and at that time his health was good. This witness has proved the certificate of identification of the deceased, Nand Kishore Prasad as Ext.2.

13. P.W. 10, Sri Bimal Kishore Prasad, who is the plaintiff, has stated in evidence that Nand Kishore Prasad was his cousin and he used to reside with him at New Godam Road. He was assured by the Life Insurance Corporation in the year 1978 and died on 07.04.1979 due to heart attack. At the time of death he was residing with him and he died before him. At the time of proposal of the insurance, Nand Kishore Prasad had given his name as nominee. He has further stated that Nand Kishore Babu was never admitted in the Hospital. After the death of Nand Kishore Babu he submitted the claim form before the Life Insurance Corporation and he proved the claim form as Ext.3. He has further stated that he has approached several times to the officials of the Life Insurance Corporation but they used to avoid paying the claim and the claim has not been paid as yet. This witness has further stated that Dr. Manohar Rao is out of India, he has also stated that at the time

of heart attack of Nand Kishore Prasad, Dr. Manohar Rao and his compounder had come and in their presence he died while compounder (P.W.6) has given the medicine. He has further stated that it is not true that Nand Kishore Prasad had given the false information and before the death he was seriously ill and was admitted in the hospital. He has further stated that Dr. Yugal Kishore and Kamal Babu are his own brothers. Kamal Babu was doing the work of agent in L.I.C. Nand Kishore Babu was assured through agent Kamal Babu, who is at present at Patna for his treatment, therefore, his evidence is not possible. He also stated that he does not know the name of doctor, who is treating to Kamal Babu. This witness has further stated that Nand Kishore Babu was living since beginning with my father at New Godown Raod, he was not doing the job earlier. He started the work since 15 years before his death in the age of 23 to 24. Nand Kishore Babu has one daughter, whose marriage is performed before one year of his death with the help of family. This witness has stated that proposal form for insurance was filled up by his brother, Kamal Babu and he proved the proposal form as Ext.A. She has personal knowledge of the facts detailed in proposal form Ext.A. In the proposal form, the age of assured was detailed on the basis of school certificate but he is not in memory from which school the certificate was issued. This witness has also stated that agent confidential report is in the pen of Kamal Kishore Prasad and proved the same as Ext.A-1. His brother Kamal Babu is also residing in same house. This witness has also stated in cross-examination that officer of L.I.C. had come at his house in course of investigation of the claim.

14. D.W. 1, Jagdish Prasad Singh, who is the Higher Grade Assistant in the office of L.I.C., Gaya, has proved the investigation report, dated 30.04.1985 of S.D. Singh, A.A.O.(claim), Divisional Office, Patna in respect to policy no. 30408197 (D-11925) on the life of Nand Kishore Prasad as Ext. B. D.W.2, Sheo Dhani Lal, is a formal witness and has stated in his evidence that he knew to Budhan Prasad (D.W.4), his wife, Shakuntala Devi (D.W.5) and sister-in-law, Manju Devi (D.W.6) and proved the letter dated 24.07.1980 of Budhan Prasad address to the Branch Manager, L.I.C., Gaya as Ext. C.

15. D.W. 7, Shayam Nandan Prasad, who is an Advocate's Clerk, has stated in his evidence that he know to Dr. Sital Prasad, Pilgrim Hopital, Gaya and he claimed to identify the signature and writing of Dr. Sital Prasad. This witness has proved the entry no. 929 dated 27.03.1979 in Indoor Patient Register of Pilgrim Hospital, Gaya and bed head ticket of serial no. 929 as Ext. F and F/I saying that entry at Serial No. 929 and Bed head Ticket are in the writing of Sheetal Prasad and bear his signature. After seeing the entry no. 2313 dated 07.08.1978 of Indoor Patient Register of Pilgrim Hospital, Gaya, this witness has stated that in entry no. 2313 the name of patient is detailed as Nand Kishore Prasad whose address is also given as Ramdhanpur and that has been marked as 'X' for identification.

16. D.W.4, Budhan Prasad @ Budhan Mistry, has stated in his evidence that Nand Kishore Prasad, son of Mahabir Prasad @ Mahabir Ram, was his father-in-law who has two daughters, one is Shakuntala Devi aged about 42 years and other is Manju Devi aged about 37 years. He has

further stated that his father-in-law was suffering from Asthama. He was earlier admitted on 07.08.1978 in the Pilgrim Hospital, Gaya and discharged from there on 19.07.1979 and again admitted on 23.03.1979 and died there on 07.04.1979. He has further stated that his father-in-law was not doing the job since 5 to 6 years before his death and he was dependent upon him. He has also stated that he admitted to Nand Kishore Prasad in the Hospital, in which Bimal Kishore Prasad (plaintiff) and Kamal Kishore Prasad (agent of L.I.C.) helped him. D.W.5 has further stated in his cross-examination in paragraph 3 that he has no concern with this suit but he had given his statement during course of investigation that Nand Kishore Babu was his father-in-law. This witness has further stated that before marriage he had no concern with Nand Kishore Prasad and his marriage was performed in the month of April 1969. His first wife is Shakuntala Devi and second wife is Manju Devi, to whom he performed the marriage in 1970-75. He has one daughter from his first wife who is aged about 16-17 years. He had performed the second marriage with Manju Devi after 11 years of his first marriage.

17. D.W.5, Shakuntala Devi, and D.W. 6, Manju Devi, both wife of Budhan Prasad @ Budhan Mistry, have stated in their evidence that they are daughters of late Nand Kishore Prasad. D.W. 5, Shakuntala Devi, has stated in her evidence that her father Nand Kishore Prasad died in Pilgrim Hospital, Gaya, where he was admitted. He was earlier admitted in Hospital due to suffering from Asthma. Her father, Nand Kishore Prasad was suffering from Asthma since 5 to 6 years before his death. This witness has further stated that her father Nand Kishore Prasad used to reside in Mohalla

Murarpur, Narayan Tubewel Lane. Before 2 to 3 years of his death, he used to reside with her.

D.W.6, Manju Devi, has also stated in her evidence that her father died in Pilgrim Hospital, Gaya. He was suffering from Asthma. He was also admitted in Pilgrim Hospital, Gaya before 6 to 7 months due to suffering from Asthma. She has also stated that her father was not doing work and he was dependent on her family. She has further stated in her cross-examination that after death of her father she came to know about the L.I.C. policy. This witness has also stated that her father used to reside at Mohalla Murarpur, Narayan Tubewel Lane. Before 7 to 8 years of death, her father used to reside with her.

18. D.W.3, Shankar Shandhan Singh, who is A.A.O in L.I.C. has stated in his evidence that after the death of assured Nand Kishore Prasad, the plaintiff submitted the claim for the L.I.C. policy of Nand Kishore Prasad. He investigated the claim of plaintiff and it was detected that assured, Nand Kishore Prasad, L.I.C., agent Kamal Kishore Prasad, Medical Officer, M.I. Mallik and Development Officer of L.I.C. committed fraud with L.I.C. Nawal Kishore Prasad L.I.C. agent is own brother of plaintiff and cousin of assured, Nand Kishore Prasad. Assured, Nand Kishore Prasad, was patient of Asthma and he was admitted for treatment in the Pilgrim Hospital, Gaya on 07.08.1978 as Indoor Patient and discharged from there on 19.03.1979 and the proposal form regarding the L.I.C. policy of Nand Kishore Prasad was filled up by Agent, Kamal Kishore Prasad. Insured, Nand Kishore Prasad was again admitted on 27.03.1979 as Indoor Patient in Pilgrim Hospital, Gaya,

where he died on 07.04.1979. It was also detected in course of investigation that Nand Kishore Prasad has two daughters and he used to reside at Murarpur Mohalla, Narayani Tubwel Lane, Gaya and due to Asthma Nand Kishore Prasad was serious since 1978 and he had no source of income rather he was dependent on his daughters and son-in-law. In course of investigation, it also came to the knowledge that plaintiff has two own brothers, namely, Kamal Kishore Prasad (Agent) and Dr. Yugal Prasad. It also came in investigation that in the year 1978, Nand Kishore Prasad was aged bout 57 years. In proposal form, concealing the material facts, wrong information were incorporated. The date of birth was also wrongly mentioned in proposal form and forged certificate was furnished in support thereof. After seeing the inquiry report (Ext.B), this witness stated that this inquiry report was typed on his dictation and bears his signature which has already been marked as Ext. B. This witness has proved the Hospital Treatment Certificate regarding Nand Kishore Prasad as Ext.D saying that this was written before him by Dr. S. Chandra, who also put his signature. This witness has proved the affidavit of Budhan Prasad @ Budhan Mistry (D.W.4) as Ext. E saying that affidavit was typed by typist Surendra Prasad on which Budhan Prasad put his signature. This witness has also proved the affidavits of Manju Devi (D.W.6) and Shakuntala Devi (D.W.5) as Ext. E/1 and E/2 saying that both affidavits were typed by Surendra Prasad and both were put there signatures in his presence. He has stated in his cross-examination that written order was passed for investigation in the claim of the plaintiff and he can file the order. This witness has further stated in his cross-examination that he met to Kamal Babu and made demand of the age certificate of Nand Kishore Prasad, which was taken back to the office of L.I.C. but he did not give the age certificate.

19. From the evidence of plaintiff, Bimal Kishore Prasad (P.W.10), it appears that his cousin brother, Nand Kishore Prasad, policy holder died on 07.04.1979 at his residence due to heart attack in short interval and he was never ill and hospitalized for treatment. At the time of heart attack of Nand Kishore, Dr. Manohar Rao and his compouner (P.w.6) were present and Nand Kishore died in their presence. In the claim form (Ext.3) the name of Dr. Manohar Rao is detailed in Column 6 as medical attendant during the last illness of Nand Kishore Prasad but Dr. Manohar Prasad has not been examined, the reason of non-examinal is shown by this witness that he is out of India. He has stated in his evidence that Nand Kishore Prasad has one daughter and his marriage was performed before his death but he did not disclose the name of the daughter of Nand Kishore Prasad.

20. D.W.4, Budhan Prasad @ Budhan Mistry, who is the son in law of Nand Kishore Prasad, has stated in his evidence that his father-in-law, Nand Kishore Prasad was suffering from Asthama. He was admitted on 07.08.1978 in Pilgrim Hospital and discharged on 19.07.1979 and he again admitted on 23.03.1979 in Pilgrim Hospital and died there on 07.04.1979. D.W. 5 Shakuntala Devi and D.W.6 Manju Devi, both daughter of Nand Kishore also stated in their evidence that Nand Kishore Prasad died in Pilgrim Hospital and he was earlier admitted there due to suffering from Asthama.

21. Ext. F is entry no. 929 of indoor patient register of Pilgrim Hospital, Gaya which shows that Nand Kishore, S/O Mahabir Prasad

was admitted on 23.03.1979 and died there on 07.04.1979. Ext.F-1 is the bedhead ticket in respect to entry no. 929 of register of indoor patient in which date of death of patient is detailed as 07.04.1979. Ext.X marked for identification in course of cross-examination. P.W.7, Shyam Nandan Prasad is the entry no. 2313 of indoor patient register of Pilgrim Hospital, Gaya in which the name of patient is detailed as Nand Kishore S/O Mahabir who was admitted due Asthama on 07.08.1978 and discharged on 19.03.1979. Ext. F and F-1, the entry no. 929 of indoor patient register of Pilgrim Hospital, Gaya and bedhead ticket disclosed that Nand Kishore Prasad, son of Mahabir, died on 07.04.1979 in Pilgrim Hospital, Gaya which also finds support from the evidence of D.W.4 Budhan Prasad. D.W.5 Shakuntala Devi and P.W.6 Manju Devi, son in law and daughters of Nand Kishore Prasd, policy holder, not at the house of plaintiff, Bimal Kishore Prasad as stated by him in the plaint and his evidence. Entry N0. 2313 of indoor patient register of Pilgrim Hospital, Gaya, which has been marked for identification 'X', clearly indicates that Nand Kishore Prasad, policy holder, was admitted on 07.08.1978 due to suffering from Asthama in Pilgrim Hospital, Gaya and discharged from there on 19.03.1979 this entry is also supported by D.W.4 Budhan Prasad. D.W.5 Shakuntala Devi and D.W.6 Manju Devi, son in law and daughters of Nand Kishore Prasad. On 10.01.1979, Nand Kishore Prasad, policy holder, was in Pilgrim Hospital, Gaya due to suffering from Asthama as indoor patient but in the proposal form of insurance (Ext.A.) which was filled up on 17.01.1979 by agent Kamal Kishore Prasad, cousin of Nand Kishore Prasad showing the name of own brother, plaintiff, Bimal Kishore Prasad (P.W.10) as nominee.

As such, in the proposal form of insurance of insured Nand Kishore Prasad, material matter regarding the disease and consultation of medical practitioner were conceded by giving false statement in negative.

22. The Indoor patient register from 21.07.1978 to 08.09.1978 containing the entry no. 2313 (market as 'X' for identification) and indoor patient register from 20.02.1979 to 20.04.1979 containing entry no. 929 (Ext. F) and beadhead ticked regarding entry no. 929 dated 23.03.1979 (Ext.F-1) of Pilgrim Hospital Gaya, were called for on 16.06.1990 on the prayer of he defendants from Pilgrim Hospital, Gaya. The entries in the indoor patient register and bed head ticket are made by the public servant in discharge of his official duty in routine course as such the same are admissible without examination of the author unless otherwise proved.

The learned trial court has illegally disbelieved the Ext. F, F-1 and 'X' marked for identification due to non-examination of the author of the entry while P.W.4, P.W.5 and P.W.6, son-in-law and daughters of insured Nand Kishore Prasad have stated that Nand Kishore Prasad was suiffering from Asthama and he was admitted in Pilgrim Hospital Gaya on 07.08.1978 and discharged on 19.03.1979 and he again admitted on 27.03.1979 in Pilgrim Hospital, Gaya where he died on 07.04.1979 whereas Dr. Mahendra Rao, whose name is mentioned as medical attendant during last illness in claim statement (Ext.3) submitted by the plaintiff, has not been examined on behalf of the plaintiff and nor any certificate is brought on record in this regard.

The learned trial court has also disbelieved the evidence of D.W. 4 Budhan Mistry, D.W.5 Shakuntala Devi and D.W.6 Manju Devi, son-in-law and daughters of policy holder Nand Kishore Prasad saying that they are highly interested and have inimical terms with plaintiff but from the evidence of D.W.4, D.W.5 and D.W.6, I find nothing to indicate the inimical term with plaintiff. Plaintiff Bimal Kishore Prasad, who is nominee in the insurance policy has not stated in the plaint that insured Nand Kishore Prasad has daughter. In his evidence, he simply stated that Nand Kishore Prasad, policy holder, has a daughter whose marriage was performed before his death but did not disclose the name of daughter. D.W. 5 Shakuntala Devi and D.W.6 Manju Devi have claimed themselves as daughters of Nand Kishore Prasad. There is nothing on record to show that they are not the daughters of Nand Kishore Prasad, policy holder.

23. D.W.5 and D.W.6 being daughters of policy holder are class-I heirs and are entitled to claim amount of insurance. Mere nomination made under Section 39 of the Insurance Act of the plaintiff in the insurance policy of insured Nand Kishore Prasad does not confers the beneficial interest in the amount payable under the Policy. The plaintiff as nominee is only authorized to receive the amount on the payment of which the insurer gets a valid discharge of its liability under the policy. .

24. On bare reading of Section 45 of the Insurance Act, it is apparent that no policy of Life Insurance effected after coming in force of the Act shall, after expiry of two years from the date on which it was effected, be called in question by the insurer on the ground that a statement made in the proposal for insurance or in any report of a Medical Officer or reference or friend of the insured or in any document leading to issue of policy was

inaccurate or false but the second part is in the nature proviso which creates an exception. It says that if the insurer shows that such statement was on material matter or suppressed facts which was material to disclose and that it was fraudulently made by the policy holder and the policy holder knew at the time of making it that the statement was false or that it suppressed of facts which was material to disclose then the insurer can call in question the policy effected as a result of such incurable or false statement.

25. In the present case, the policy was issued on 10.01.1979 in favour of Nand Kishore Prasad in which the plaintiff was nominee. Nand Kishore Prasad died on 07.04.1979, plaintiff Bimal Kishore Prasad submitted the claim (Ext.3) on 18.02.1980 which was repudiated vide letter dated 21.05.1985 addressed to the plaintiff after two years of effecting the policy on the ground of furnishing incorrect statement withholding the correct information in proposal form (Ext.A).

26. From the evidence of D.W. 4, D.W.5 and D.W.6 as discussed above and entry made at serial 2313 (marked as 'X' for identification) of indoor patient register of Pilgrim Hospital, Gaya, it is apparent that police holder Nand Kishore Prasad was admitted in Pilgrim Hospital, Gaya on 07.08.1978 due to suffering from Asthma and discharged on 19.03.1979. Ext. A proposal form was filled up on 10.01.1979 by Kamal Kishore Prasad, agent of L.I.C. brother of plaintiff, Bimal Kishore Prasad and cousin of insured, Nand Kishore Prasad as admitted by plaintiff Bimal Kishore Prasad (P.W.10) in his evidence. As such on 10.01.1979 insured Nand Kishore Prasad was in Pilgrim Hospital, Gaya as indoor patient due to

suffering from Asthma but in proposal form (Ext.A.) filled up on 10.01.1979 all the information regarding health/ailment required in Column Nos. 18 and 19 were answered in negative and also the information in column no. 20 regarding consultation to medical practitioner for any ailment requiring treatment for more than a weak within five years is also answered in negative by the insured, policy holder, Nand Kishore Prasad in collusion of his nephew, Kamal Kishore Prasad, agent of L.I.C. and plaintiff, Bimal Kishore Prasad, nominee knowingly concealing material matter regarding health/ailment and consultation with medical practitioner while he was in Pilgrim Hospital, Gaya as Asthma patient since 07.08.1978. As such due to furnishing the false information as required in column nos. 18, 19 and 20 and suppressing the correct information regarding health/ailment is material matter which is sufficient for insurer to repudiate the claim of plaintiff for insurance policy of Nand Kishore Prasad being the nominee after two years of commencement of policy. As such, the learned trial court is not right in decreeing the plaintiff's suit and the impugned judgment and decree suffers from infirmity.

27. In the result, this first appeal is allowed and impugned judgment/decree is set aside. But no order as to cost.

(Rajendra Kumar Mishra, J)

Bhardwaj/-N.A.F.R.

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