

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10609 of 2008

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Renu Devi, wife of Late Rama Shankar Rai, resident of village Madhopur, P.S.
Rasulpur, District Siwan

.... Petitioner

Versus

1. Life Insurance Corporation of India through its Chairman at Yogakshama Jeevan Bima Marg, Mumbai
2. The Chairman, Life Insurance Corporation of India
3. The Divisional Manager, Life Insurance Corporation of India, Division Muzaffarpur
4. Branch Manager, Life Insurance Corporation of India of Branch at Maharajganj, District Siwan

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Adv.
 Mr. Kaushal Kumar Singh, Adv.
For the Respondent/s : Mr. Rajeev Ranjan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

CAV JUDGMENT

Date: 20-03-2015

Heard learned counsel for the parties.

2. The relevant portion of the prayer of the petitioner when this writ application was filed on 21.7.2008 had read as follows:

“Direction to the respondents to settle the death claim of petitioner on the insured life of her policy holder deceased husband and make payment of insured amount expeditiously to petitioner, who is sole nominee in the insurance policy of her deceased husband.”

3. Learned counsel for the petitioner in support of the aforementioned prayer has concentrated on the aspect that once there was a concluded contract by way of life insurance policy of the husband of the petitioner which was valid on the date of his death i.e.



28.1.2004 there could be no justifiable reason for not paying the insured amount of Rs.1 lac. Learned counsel has also referred to the series of representations including the notice given by her counsel dated 6.12.2007 to only explain that the authorities of the Life Insurance Corporation of India (hereinafter referred to as 'the L.I.C.') had not been fair in keeping the claim of the petitioner unsettled till the date of filing of the writ application.

4. Let it be noted that in this case a counter affidavit came to be filed only on 8.8.2014 and in that counter affidavit the order dated 12.1.2009 obviously after filing of the writ application has been enclosed wherein the claim has been repudiated on certain ground which this Court will take note of while dealing with the relevant facts at an appropriate place. All that is required to be noted at this place is that during the pendency of this writ application the authorities of the L.I.C. had rejected the claim of the petitioner and as such, this Court has been now called upon to examine as to whether such rejection of the claim of the petitioner by the order, contained in Annexure 'B' to the counter affidavit dated 12.1.2009, is factually correct and legally sustainable.

5. Mr. Rajeev Ranjan Prasad, learned counsel for the L.I.C. having filed the counter affidavit has made two fold submissions. Firstly, according to him, the writ application is not maintainable



because the claim of the insurance involving disputed question of fact has to be adjudicated in a properly constituted civil suit and to that extent he relies on an order of the Apex Court in the case of Life Insurance Corporation of India & ors. v. Smt. Kiran Sinha, reported in AIR 1985 SC 1265. Secondly, Mr. Prasad by taking this Court to the provisions of Section 45 of the Insurance Act (hereinafter referred as 'the Act') has sought to canvass that once it becomes clear from the investigation made by the authorities of the L.I.C. that the policy holder, namely, the husband of the petitioner had made material suppression of fact with regard to her physical condition, the decision of the authorities of the L.I.C. to repudiate the claim of the petitioner cannot be held to be bad. In this regard reliance has been placed by him on the judgment of the Apex Court in the case of Mithoolal Nayak v. Life Insurance Corporation of India, reported in AIR 1962 SC 814, Life Insurance Corporation of India v. Smt. G.M. Channabasamma, reported in (1991)1 SCC 357, and in the case of Life Insurance Corporation of India & ors. v. Asha Goel (Smt.) & anor., reported in (2001)2 SCC 160.

6. Learned counsel for the petitioner, in reply, has submitted that it cannot be said as a Rule of Thumb that a writ petition rejecting the claim of a policy holder of L.I.C. will not be maintainable and to that extent he has also submitted that whatever was decided in the

case of Smt. Kiran Sinha (supra) has to be understood in the context of the judgment of Patna High Court against which the appeal was filed by the L.I.C. before the Apex Court.

7. Learned counsel for the petitioner has also, in reply, submitted that a right which the nominee gets on account of concluded L.I.C. policy cannot be defeated without complying the principles of natural justice. According to him, the order which has been passed during the pendency of the writ application was in fact one's way traffic without even making the petitioner aware of either any enquiry undertaken or the reasons of alleged misrepresentation or fraud by her husband while seeking the L.I.C. policy known to her. Learned counsel for the petitioner, therefore, has also submitted that the order passed by the respondents during the pendency of the writ application is bad basically because it is violation of the principles of natural justice.

8. As on merits, learned counsel for the petitioner has in view of the stand taken by the respondents in the counter affidavit sought to explain that whatever has been stated in the counter affidavit as with regard to the treatment of the husband of the petitioner prior to renewal of his policy in the year 2003 is based on mere guesswork or in fact is a half hearted attempt of the authorities of the L.I.C. who are always inclined to reject the claim of the policy holders on one ground

or another. In this regard he has referred to the certain facts which will be taken note of in this judgment at appropriate place.

9. Firstly, it would be relevant to take note of the facts which this Court would have to take into account some of the relevant facts which would have a bearing on the result of this writ application. It is not in dispute that the husband of the petitioner had initially taken a life insurance policy in the year 1995 being policy No. 531661689 for an assured some of Rs.1 lac. This being the life term policy the husband of the petitioner had also paid the premiums till the year 1999 but when the payment of the premium was not paid after 14.11.2000 the policy had lapsed. The husband of the petitioner subsequently had sought revival of the policy and the policy was revived after medical examination of the petitioner. The husband of the petitioner, the policy holder, died on 28.1.2004 while the policy was subsisting.

10. The petitioner after the death of her husband had kept on pressing for payment of assured amount but it appears from the pleadings in the counter affidavit as also records produced by Mr. Rajeev Ranjan Prasad learned counsel for the L.I.C. that some sort of enquiry was carried at the stage of settlement of the claim and as per internal procedure of the L.I.C. the claim investigation report was submitted on 14.8.2005, according to which the husband of the



petitioner was suffering from High and malarial fever since long time for which he was treated at Sir Sundarlal Hospital, Varanashi on 17.3.2003 and since this fact was suppressed by the petitioner at the time of seeking renewal of his policy on 26.3.2003 it was held to be a clear case of concealment of material fact at the time of revival of the policy of the husband of the petitioner. The L.I.C. claims that after making all sort of investigation the order dated 12.1.2009 was passed repudiating the claim on the ground of suppression of material fact and the petitioner was informed that if she felt aggrieved by the order of repudiation she could represent before the Zonal Manager.

11. On these admitted facts firstly this Court will have to take into account the preliminary objection of the respondent L.I.C. with regard to maintainability of the writ petition. As noted above, the reliance has been placed in this regard primarily on the judgment of the Apex Court in the case of Kiran Sinha (supra) which being the short order of few lines needs to be extracted hereinbelow:

“ Special Leave is granted.

2. We have heard the learned Attorney General and Shri A.K.Sen, learned counsel for the respondent. The High Court could not have in the circumstances of this case directed the payment of the money claimed under the insurance policies in question in a petition filed under Article 226 of the Constitution. The only remedy available to the respondent in this case was a suit before a civil court. The judgment of the

High Court is, therefore, set aside.

3. The learned Attorney-General states that he would however recommend to the Board of the Life Insurance Corporation to pay a sum of Rs.40,000/- to the respondent in full settlement of her claim. Shri A.K.Sen submits that the respondent would accept the sum of Rs.40,000/-, if paid, in full settlement of the claim against the Life Insurance Corporation. We hope that the amount will be paid to the respondent within six weeks.

4. The appeal is accordingly allowed. No costs.”

(underlining for emphasis)

12. The underlined portion of the order will not only go to show that whatever was said by the Apex Court cannot constitute a binding precedent which in fact was passed under the specific facts and circumstances of the case. The use of expression ‘in the circumstances of this case’ in paragraph 2 and the word ‘the only remedy available to the respondents in this case’, therefore, will have a significant bearing. Let it be noted that the case had arisen from a judgment of this Court in the case of Smt. Kiran Sinha v. Life Insurance Corporation of India & ors., reported in A.I.R. 1983 Patna 142, and the core issue was with regard to payment of premium before the death of the policy holder as would be apparent from reading of paragraph 3 of the judgment of this Court:

“ 3. There is no dispute that late Arun Kumar Sinha died on 10-1-1980. He was holding three life insurance policies in his own name with respondent No. 1 the Corporation, at the time of his death.

The relevant details of the policies are as follows :-
(See relevant details of policies below)

The stand of the petitioner is that on 5-1-1980 a cheque for Rs. 954.10 paise on the United Industrial Bank, Ranchi, being cheque (No. 001532 was paid in the office of respondent No. 1 in presence of one Sri Vijay Gopal, Advocate, and Sri I.N. Jha, the agent of the Corporation who was responsible for the sale of the Policies to the deceased. On 7-1-1980 a money order was sent by the petitioner for Rs. 249.30 paise from Daltonganj as payment of premium of the third policy. The aforesaid cheque was for the payment of first two policies dated 9-8-1978. It is not disputed that no receipt was obtained by the deceased when the aforesaid payment by cheque was made by him. This application contains affidavits by Sri Vijay Gopal and Sri I.N. Jha which are Annexure-'1' and 1A to this application to the effect that they were present when deceased deposited the cheque. Sri I.N. Jha has also stated that he was responsible for the sale of the policies to the deceased-assured. Sri Jha in his affidavit has also stated a fact of considerable relevance to this dispute to which reference would be made later. He has stated that on 12-1-1980 he had informed the office of the Branch Manager, Life Insurance

Policy No.	Amount assured for	Premium due for
1. 30717199		
date of commencement		
9-8-1978	Rs. 10,000/-	Only November 1979.
2. 30732808		
date of commencement		
5-2-1979.	Rs. 20,000/-	Only August and November, 1979.
3. 30719937		
date of commencement		
9-8-1978.	Rs. 10,000/-	Only August and November, 1979.

Corporation of India, Branch 1 and 2, Ranchi, about the death of the deceased and on the same day he had also requested for claim forms from the office. He was advised to obtain the form from the



Jamshedpur Office. He had also informed one Sri E. Viswanathan the Development Officer of the Corporation on the same day, that is, 12-1-1980, about the death of the deceased. On 12-1-1980 the petitioner filed an application before respondent Nos.4 and 5 which is Annexure-'2' to this petition. This application dated 12-1-1980 was a request for claim form from the respondents and also an intimation to them once again about the death of the deceased-assured having occurred on 10-1-1980 and her being a nominee under the said policies. It is stated by her that respondents 4 and 5 directed her to obtain the claim form from respondent No.2. She has asserted that respondent No.1 and other respondents were at all material time in possession of the knowledge of the death of the deceased. Annexure-'3' is a letter of Sri E. Viswanathan dated the 12th January, 1980 conveying his condolence to the brother of the deceased who has also stated in that letter that he was informed about the death by Sri I.N. Jha, the Corporation agent. On 28th July, 1980, a communication was sent by the Divisional Manager of the Corporation from Jamshedpur to the petitioner which is Annexure-'4' to the petition stating that premium in regard to the first two policies was received on 14-1-1980 and in regard to the third policy on 23-1-1980 and since the assured-deceased expired on 10-1-1980, the policies stood lapsed and, therefore, nothing was payable to the petitioner. This communication by referring to the claim by the petitioner clearly indicates, though not so stated the receipt of Annexure-'2' by the relevant officer of respondent No.1. On the receipt of this communication, an application, under Articles 226 was filed in this Court which was numbered as C.W.J.C. No.117 of 1981(R). In that application, Annexure-'2' of that application was quashed and respondent No.1 of that application was directed to give an opportunity to the petitioner to place before him such materials as she was advised to place in support of her claim. It was also directed that the enquiry should be completed within four months. It may be stated that Annexure-'2' of that writ application is the same as Annexure-'4' of the present



writ application, which as stated above, stood quashed. Annexure-'10' has been passed as a result of the enquiry which, according to the petitioner, was never really held and no substantive opportunity was given to her to explain her case. This is borne out by Annexures-6, 7, 8 and 9 of the petition. According to the petitioner, these Annexures indicate that no enquiry was really held and the respondent concerned was always trying to create conditions and making demands which were impossible to fulfil. To this I shall refer later. This Annexure-'10' is sought to be quashed in this application.”

13. Thus, whatever was the dispute in that case related to acceptance of cheque by the officials of the L.I.C. was not capable of being conclusively decided without leading of evidence both oral and documentary and it was in this regard that the Apex Court had set aside the judgment of the High Court by using the expression ‘in the circumstances of this case’. By-now it is well settled that such order passed by the Apex Court would be one under Article 142 of the Constitution of India would never be a binding precedent. The Supreme Court has been under the Constitution under Article 142 vested powers to decide the issue in the particular facts and circumstances of the case to do complete justice between the parties but then such order of the Apex Court under Article 142 cannot be said to be a binding precedent.

14. The maintainability of a writ petition in the matter of statutory contract which in view of power and functions contained in the L.I.C. cannot be decided against the policy holder only because

there is a money claim because by-now it is well settled that even an admitted money claim can be gone into in exercise of power under Article 226 of the Constitution of India.

15. As a matter of fact if the submission of Mr. Prasad is accepted that in no event a writ petition will lie at the instance of the policy holder or beneficiary, it will lead to an absurd situation because then the L.I.C. will have the monopoly of deciding the claim and leaving beneficiary to claim the amount in a civil suit which may be decided after two generations on account of pendency of such civil suit. It is well known fact that the disposal of the civil suit takes a very long time and in fact can only be the remedy in case where there is no other option. On the other hand, where there is no dispute or dispute which is sought to be created by the L.I.C. is frivolous in nature and contrary to the principles of law, the respondents shall definitely be entitled to examine the same and decide the matter in appropriate cases.

16. That is how the Apex Court in the case of Life Insurance Corporation of India & ors. v. Asha Goel & anor., reported in (2001)2 SCC 160, had clarified the issue with regard to maintainability of the writ petition wherein it was held as follows:

"9. In course of his arguments Shri Harish Salve, learned Senior Counsel appearing for the Corporation fairly stated that the Corporation will pay the sum awarded by the learned Single Judge in favour of Respondent 1. He submitted that the position of law

regarding the jurisdiction of the High Court to entertain writ petition filed under Article 226 of the Constitution for realisation of a sum assured under a life insurance policy and the scope of inquiry by the High Court in case the insurer repudiates the claim on any ground may be considered by this Court.

10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. Therefore, it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends 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 issues, 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 cannot be denied altogether, courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution, is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to bypass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above



discussions we have only indicated some of the circumstances in which the High Court have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; *Mohd. Hanif v. State of Assam*¹; *Banchhanidhi Rath v. State of Orissa*²; *Rukmanibai Gupta v. Collector, Jabalpur*³; *Food Corpn. of India v. Jagannath Dutta*⁴ and *State of H.P. v. Raja Mahendra Pal*⁵.

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long-drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact-situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised, then a writ petition is not an appropriate

remedy.”

17. As would be noted, the Supreme Court in the case of Asha Goel (supra) has made it clear that not only the writ petition will be maintainable but also the scope of repudiation of claim by the L.I.C. would be under the scope of judicial review under Article 226 of the Constitution of India. Based on the aforementioned discussion this Court will have no difficulty in rejecting the preliminary objection of Mr. Prasad and this writ application is held to be maintainable.

18. The next question would be as to what is the dispute and whether such dispute was ever made known to the petitioner. Let it be noted that the petitioner had a right under the policy to receive assured amount of Rs.1 lac. It was for that amount she had been and still pressing and a period of eleven years have elapsed but the petitioner has not got the payment of amount. The petitioner is now being told that her husband had made certain suppression of material fact which would make L.I.C. entitled to repudiate the policy under section 45 of the Act.

19. This Court in order to ascertain the alleged material suppression of fact had called for the original records and on perusal of the original records whatever materials have been found therein will go to show that a lot of speculation and guesswork has been made



by the authorities of L.I.C. in coming to the conclusion that the husband of the petitioner had made material suppression of fact. In this regard it would be necessary to first take into account that the husband of the petitioner had taken the policy in the year 1995 after full satisfaction of the authorities that he was having a good health. To that extent this Court would rely on the first medical report dated 20.11.1995 wherein the husband of the petitioner was not found to have any disease which could have disqualified from being given the life insurance policy. The said report of the medical examiner kept at Page 81-82 of the records will leave nothing for speculation that at the time of initial grant of policy the husband of the petitioner was medically fit and that is how all the columns were filled up by the doctor of the L.I.C. showing the husband of the petitioner to be fully fit.

20. It was this policy which was continuing and had lapsed on account of non-payment of the premium in the year 2000. Thus, when the husband of the petitioner had sought to revive the policy he was once again subjected to medical check up by the doctor selected and appointed by the L.I.C. The second medical report of the husband of the petitioner is at page-67 of the record produced by Mr. Prasad. It is Column No.4 about which whole dispute has been emerged because rest of the columns are meant to be filled up by the doctor himself. In



column no.4 the doctor is supposed to ascertain from the person to be ensured as to whether at any time in the past he or she had been hospitalized or was involved in an accident or had undergone any Radiological, Cardiological, Pathological or any other tests and was currently under any treatment. The doctor has filled up the said column as 'No'. The authorities of the L.I.C. are using this entry made by the doctor to be material suppression of fact so as to disentitle the petitioner the assured amount.

21. For this purpose the authorities of the L.I.C. also place reliance on a prescription as enclosed with the counter affidavit as contained in Annexure 'A'. In the considered opinion of this Court that prescription by itself can never be the proof of hospitalization of the husband of the petitioner but somehow the whole consideration was made in the backdrop that the petitioner was not producing the bed-head ticket. The question is if the husband of the petitioner was never hospitalized, where would be the occasion for bed-head ticket. The bed-head ticket being itself not in existence, any conclusion arrived by the authorities on the basis of such speculative findings will obviously lead to an erroneous result.

22. In this regard this Court has carefully perused the notes and orders of the authorities of the Corporation at page-3 of the records wherein all that has been recorded reads as follows:

- “I) Claim form No. A B & C submitted and found in order.
- II) Death certificate submitted duly attached by AAO and death established from record.
- III) I.R. report received but I.O. did not recommended daily in favour of admission of claim.
- (IV) The policy was revived on 23.3.2003 and as per the deduction in DGH and Medical report D/A supposed the material facts regarding the death.
- (V) The DLA was admitted in Sir Sundar Lal Medal and Hospital under Varanashi Hindu University Varanashi on 17.3.2003 and last attended by the doctor of the hospital was 12.12.2003, as it appears from the prescription.

On the basis of suppression of material facts it's a fit case of repudiation though policy ran about 8 year sand we may consider for reduced paidup value. It's a core order W/B form 3788 for concerned agent request.

Put up before the M(CI) for further order.

Sd/-

12.8.2008

Put up before S/C for early decision due to cowf case.
Recommended for repudiation of claim. P.V. to be paid.

Sd/-

12.8.2008

Opinion of S/C

As per Investigation report given by Sri K.B.P.Singh Branch Manager Maharajganj, claim is not genuine. Before the date of revival the life assured was under the treatment of Sundar Lal Hospital in B.H.U. Xerox copy of the prescription enclosed as ready reference Life Assurance was not in a good

health at the time of revival. So, claim may be repudiated for suppression of material fact graul. Paid up value may be paid and action against agent may be intimated.

Sd/-

5.09.2008

Claim repudiated for material deliberate, suppression of material facts, both stern action against agent and M.E.

Sd/- 3.12.2008.”

(underlining for emphasis)

23. Thus, from the underlined portion of the notes it would become clear that what really had weighed in rejecting the case of the petitioner that her husband was allegedly admitted in Sir Sunderlal Medical and Hospital in Varanasi on 17.3.2003 and lastly attended by the doctor of the hospital on 12.12.2003. This fact, however, is not borne from the prescription as contained in Annexure ‘A’ which only is a prescription of the husband of the petitioner with regard to his check up in the O.P.D. (Out Patient Door).

24. It is this aspect which has been blown beyond the proportion by the authorities of the L.I.C. in the entire decision making-process and therefore, this Court will have no difficulty in coming to the conclusion that a non est and non-existing material was actually taken into consideration for denying the assured amount to the petitioner.

25. Let it be noted that apart from the declaration of the



persons sought to be ensured by recording the statement in column no.4 Medical fitness form there are stringent test to be performed by the doctor of the L.I.C. and in all six columns the doctor had found the husband of the petitioner not suffering from any life threatening disease which could have enabled the authorities of the L.I.C. to refuse to renew the lapsed policy of the husband of the petitioner. Thus when the said prescription of the husband of the petitioner prior to the date of renewal of his policy has been made the entire basis to reject the claim of the petitioner on a ground that the husband of the petitioner had made such a material suppression of fact which would give the authorities of the L.I.C. the protection of section 45 of the Insurance Act to repudiate the policy this Court will have to take into consideration the scope of section 45 of the Insurance Act.

26. Section 45 of the Insurance Act reads as follows:

“45. Policy not to be called in question on ground of mis-statement after two years- No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effect after the coming into force 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 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 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 of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.”

27. From a bare reading of the aforementioned clear provisions of section 45 of the Insurance Act it would be absolutely clear that no policy of life insurance shall be questioned after expiry of two years from the date on which it was effected by an insurer on the ground that the statement made in the proposal for insurance or in any report of the 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. As a matter of fact under section 45 of the Insurance Act such onus is on the insurer to show that such statement 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 such statement was false or that he had suppressed facts which it was

material to disclose. Thus, on a reading of section 45 it is clear that this is purely restrictive in nature. It lays down three conditions for applicability of the second part of section, namely,

- (a) the suppression must be made of a material matter to be disclosed,
- (b) the suppression must be fraudulently made by the policy holder and
- (c) the policy holder must have known at the time of making the statement that it was false.

28. This aspect of the matter in fact has been gone into at length by the Apex Court in the case of Asha Goel (*supra*) wherein it was held that mere inaccuracy or falsity in respect of some recitals or items in the proposal is not sufficient to constitute the ingredients of section 45 of the Insurance Act.

29. A question, therefore, would arise that if the husband of the petitioner was not hospitalized and had merely gone for a check up in the O.P.D. of the hospital and was given certain treatment, can it be said that on account of only first check up, as on the date of renewal of the policy, he had made any material suppression of fact ? Any person can get fever and can go to a doctor but what is really meant in terms of section 45 of the Act in order to constitute material suppression of fact would be that the person was so medically unfit



that he wanted to obtain life insurance policy in order to gain for himself the amount assured and to put the L.I.C. under loss. These elements are however completely missing in the present case. As a matter of fact this Court has carefully perused the entire records produced by Mr. Prasad and barring the aforementioned speculative finding, that since the bed-head ticket was not produced and therefore, the husband of the petitioner had made material suppression of his hospitalization prior to renewal of his policy it would be sufficient for repudiation of his policy, there is no material in the records of respondents for exercise of power of section 45 of the Act.

30. A question, therefore, would arise that even if the authorities of the L.I.C. had power and jurisdiction to examine the claims after the death of the husband petitioner, can they take such a unilateral decision even without complying the principles of natural justice? By-now it is well settled that before any person is subjected to any civil and evil consequence he or she must be given a show cause notice and opportunity of hearing. The applicability of principle of natural justice can only be excluded if there be any specific provision in the statute for not complying the same. This issue was settled way back in the case of S.L.Kapoor v. Jagmohan, reported in AIR 1981 SC 136, which is still locus classicus and wherein it was held that unless the law expressly or by necessary implication excludes the application



of rule of natural justice, court will read the said requirements in the enactments that are silent and insist on its application even in cases of administrative action having civil consequences. The same principle has been followed by the Apex Court in the later cases including in the case of Olga Tellis vs. Bombay Municipal Corporation, reported in AIR 1986 SC 30 and in the case of S.N.Kapoor v. Basant Lal Khatri, reported in AIR 2002 SC 171.

31. This Court therefore would not like to multiply the authority on the question of compliance of the principles of natural justice, inasmuch as the law is well settled that the observance of the principles of natural justice is concomitant to the principles of fairness for ensuring the action becoming not arbitrary as enshrined under Article 14 of the Constitution of India.

32. Here if the petitioner was sought to be denied the benefit of Rs.1 lac which she was to get under the L.I.C. policy of her husband and therefore, it was all the more imperative for the officials to even disclose their tentative finding that the husband of the petitioner was actually hospitalized in the year 2003 prior to renewal of his policy or had wanted to deny the same by inferring on the basis of prescription of her husband. The petitioner was therefore required to be given at least a show cause notice putting to her the circumstance on which the L.I.C. was considering to reject the claim

of the petitioner.



33. Admittedly that has never been done and when the petitioner was running from pillar to post for getting her due amount and had also given in writing that she had no other paper in her possession, the authorities were required to make an enquiry at least from the concerned doctors or the authorities of the hospital at Varanasi to find out as to whether as a matter of fact the husband of the petitioner was hospitalized or was suffering from serious disease. Nothing of the sort has been put on record that the authorities of the L.I.C. have ever even approached the authorities of the hospital at Varanasi much less could lay their hands on only material to show hospitalization of the husband of the petitioner. In fact from the recodes produced by the respondents it appears that everything was decided against the petitioner by the officials of the L.I.C. sitting in their table. This however cannot be the way to defeat the right of a person who has to get the assured amount on the death of the person insured.

34. The very fact that the order, contained in Annexure 'B' repudiating the claim of the petitioner was passed even without giving her any opportunity of notice much less an effective opportunity of hearing must be therefore held to be bad both on fact and in law and is accordingly quashed.



35. Normally under the circumstances when this Court had found the order passed by the L.I.C. to be in violation of the principles of natural justice it could have allowed the L.I.C. to give a show cause notice to the petitioner and take a fresh decision but now after a period of more than ten years when the widow petitioner has nothing more to offer and the authorities of the L.I.C. are also only having in their possession of a prescription of the husband and nothing more, and also now cannot get any proof either from Varanasi hospital or from any other source that the husband of the petitioner had actually been hospitalized and was an indoor patient, this Court will go to hold that the facts of the present case would by itself be sufficient to allow the petitioner to receive payment of Rs.1 lac which was payable to her on the death of her husband on 28.1.2004.

36. Thus, for all these reasons, this Court would find the petitioner entitled for getting assured amount of Rs. 1 lac which ought to have been paid to her way back in the year 2004 when her husband had died on 28.1.2004. Since the petitioner had stood deprived of this amount for a period of almost eleven years and the amount of Rs. 1 lac today cannot have the same value which it was having in the year 2004 and therefore, this Court would also award compound interest on the sum of Rs. 1 lac quantified at the rate of 9% per annum from the date of death of the husband of the petitioner to the date of its

payment by the L.I.C. which would be still less than usual lending rate of L.I.C. on which it is advancing money to the borrower institution.

37. In the result, this application is allowed and the respondents are hereby directed to pay a sum of Rs.1 lac alongwith compound interest @ 9% per annum from the date of death of the husband of the petitioner till its actual payment.

(Mihir Kumar Jha, J)

PATNA HIGH COURT
Dated 20th March, 2015
A.F.R./ Surendra

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