IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

SA.No. 799 of 2000 (C)

AGAINST THE JUDGMENT IN AS 31/1999 of II ADDL. DISTRICT COURT, KOZHIKODE DATED 17-11-1999

AGAINST THE JUDGMENT IN OS 3/1998 of III ADDL.SUB COURT, KOZHIKODE DATED 27-10-1998

APPELLANTS/RESPONDENTS/PLAINTIFFS:

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1. VAKAT VIJAYALAKSHMI, AGED 51 YEARS, W/O. LATE V. HARIDAS, "VIHAYAS", NEAR TELEPHONE COLONY, MALAPARAMBA, CALICUT - 9.

2. SAJITH, AGED 29 YEARS, S/O. LATE V. HARIDAS, "VIHAYAS", NEAR TELEPHONE COLONY, MALAPARAMBA, CALICUT - 9.

3. SAJISH, AGED 27 YEARS, S/O. LATE V. HARIDAS, "VIHAYAS", NEAR TELEPHONE COLONY, MALAPARAMBA, CALICUT - 9.

4. SAIJU, AGED 25 YEARS, D/O. LATE V. HARIDAS, "VIHAYAS", NEAR TELEPHONE COLONY, MALAPARAMBA, CALICUT - 9.

BY ADV.SRI.SUNNY MATHEW

RESPONDENT/APPELLANT/DEFENDANT:

LIFE INSURANCE CORPORATION OF INDIA, REPRESENTED BY SENIOR DIVISIONAL MANAGER, DIVISIONAL OFFICE, "JEEVAN PRAKASH", P.B.No.177, KOZHIKODE - 673 001.

BY ADV.SRI.S.EASWARAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Second Appeal No.799 OF 2000

Dated this the 31st day of July, 2015.

J U D G M E N T

Haridas who had taken a LIC policy died within a short period of taking the policy. His legal heirs claimed the policy amount from LIC. Their request was turned down.

2. One Haridas who was working as Sub Registrar, at the instance of PW3, was compelled to take an insurance policy for a sum of Rs.1,00,000/-. Proposal was forwarded and it was made on 27.04.1995. Policy was issued on 15.06.1995 as evidenced by Ext.B1. Ext.B3 is the proposal form. Haridas passed away on 01.08.1995 and when his legal heirs put forward the claim for disbursement of amount, that was rejected on the ground that Haridas concealed many facts. According to the plaintiffs, the reason given for repudiating the claim stating that the Insurance Company is not bound to pay the amount as per the policy is not valid in law.

3. The defendant Company resisted the suit. They characterised the proposal of Haridas as a fraudulent misrepresentation and suppression of facts and according to them, policy issued on that basis is invalid in law. The defendant relied on the report of a doctor who formed the opinion that the deceased was suffering from severe jaundice and his illness of jaundice started from 07.05.1995. They make mention of various medical tests undergone by Haridas and say that the deceased succumbed due to jaundice and other problems on 01.08.1995. They also allege that the deceased was a chronic alcoholic and a habitual smoker. According to the defendant, the above facts were suppressed while making the proposal for policy. They contended that they are not liable to disburse any amount towards the policy.

4. Issues were raised by the trial court and parties went to trial. The plaintiffs examined PWs 1 to 3 and had Exts.A1 to A3 marked. The defendant examined DWs 1 to 3 and had Exts.B1 to B9 series marked. Exts.X1 to X5 were marked as third party exhibits.

5. The trial court, on evaluation of the evidence especially that of PW2, the panel doctor engaged by the Life Insurance Corporation whose report and recommendation carries considerable weight and also the fact that there was nothing to show that the deceased was aware of his illness and ailments came to the conclusion that the policy had to be honoured. Accordingly, the suit was decreed.

6. The lower appellate court though did not disagree totally with the trial court but came to a strange conclusion that in all probability, the deceased must have been aware of his illness and if that be so, he ought to have disclosed all the facts in the proposal form. More than on evidence based on a speculation the appeal was allowed and the judgment and decree of the trial court were reversed.

7. The following questions of law were formulated for consideration in this appeal:

1. Whether the lower appellate court was correct in law in reversing the well considered judgment of the trial court?

2. Whether the lower appellate court has correctly appreciated the oral and documentary evidence, especially the medical evidence adduced in the matter properly?

3. Whether the lower appellate court has considered the settled points of law while applying its mind to the 2nd part of section 45 of the Insurance Act?

4. Whether the lower appellate court was correct in law in stating that there was suppression of material facts on the part of the deceased proposer, in the circumstances of the case?

5. Whether the lower appellate court's finding that the deceased had played fraud on the defendant Corporation is correct in law?

6. Whether the court below was correct in law in holding that there was fraudulent misrepresentation by the deceased proposer and hence that the defendant Corporation is entitled to repudiate the contract?

7. Whether the court below is correct in relying on DW2 and series in preference to the evidence of PW2 and Ext.B9".

8. Learned counsel appearing for the appellants contended that the lower appellate court was not justified in reversing the decree of the trial court which had considered all the aspects and

formed the opinion that there was nothing to show that the assured was guilty of misrepresentation or concealment of facts so as to infringe the principle of uberrima fides. Learned counsel pointed out that the trial court placed considerable reliance on the evidence of PW2 and the document drawn up by him and it was after considering all the documents in extenso that the trial court formed the opinion that there was no misrepresentation or suppression of facts by the assured. Learned counsel also invited the attention of this Court to the evidence of PW3 in this regard who is an agent who filled up the proposal form on behalf of the assured. According to the learned counsel, even going by the evidence of DW2, the doctor who had treated the deceased after the proposal was made, would reveal that there was nothing to show that the deceased was fully aware of his state of health and that he had deliberately suppressed or concealed those facts from the LIC. It is unkind, according to the learned counsel, to characterise the deceased as a chronic alcoholic. May be he might have taken drinks occasionally. But that is far from saying that he is an alcoholic. It is significant to notice, according to the

learned counsel, that PW2 had no case that by physical examination the disease which Haridas is alleged to have been suffering could not have been detected. So also there is no case for PW2 that the deceased was an alcoholic.

9. One cannot omit to note, according to the learned counsel for the appellants, Ext.B6 enquiry report which recommends that the claim may be considered. According to the learned counsel, Ext.B6 does not show that on enquiry it was revealed that any material facts have been suppressed or concealed from the Corporation. It is contended that the above aspects have been omitted to be noticed by the lower appellate court and that has resulted in a wrong decree being passed.

10. Learned counsel appearing for the respondent, on the other hand, vehemently tried to support the finding of the lower appellate court and contended for the position that in the light of the fact that the insured had not disclosed the true facts, his claim is only to be declined. Drawing attention of this Court to column 11 of Ext.B3, it was pointed out that the insured was fully aware of the fact that he used to consume alcohol and that he

was a diabetic. He chose to conceal those facts from the Company and therefore, his claim is not sustainable.

11. Learned counsel appearing for the respondent went on to point out that a contract of insurance is based on good faith and it is expected that all the relevant particulars as are required to be furnished by the insured will be supplied by him.

12. Relying on the decision in ***L.I.C of India*** *vs.* ***Annamma*** (1999 (3) KLT 142), it was contended by the learned counsel appearing for the respondent that the policy becomes effective only when it is accepted and communicated to the insured. Reliance was placed on the decision in ***Sarojam*** *vs.* ***LIC of India*** (1985 KLT 865) and it was contended that the mere fact that the medical officer gives good certificate does not absolve the insured from disclosing the true facts which are within his exclusive knowledge. If he concealed certain facts, the mere fact that the medical officer's report is in his favour will not help him.

13. Relying on the decision in ***LIC of India*** *vs.* ***Smt.Sosamma Punnan*** (1991 (1) KLJ 753) and placing reliance on Section 45 of Insurance Act, it was contended by the learned

counsel appearing for the respondent that the insurer has got two years period to repudiate the policy and during that period if the facts which have a fundamental bearing on the policy come to light the policy can be repudiated. If it is found that the facts supplied in the form are inaccurate, the insurer can repudiate the policy.

14. Relying on the decision in ***Chacko*** *vs.* ***L.I.C*** (2008 (1) KLT 698 (SC)), it was contended by the learned counsel appearing for the respondent that if the insured consciously withholds an information which he was bound to disclose, he is estopped from subsequently contending that even if that fact had been disclosed, it would have been made no material changes or would have severe consequences. Learned counsel went on to point out that the lower appellate court has found that the insured had concealed certain material facts in the application form and also that he had failed to inform the Insurance Company within the period specified in the Act the ailments which he has subsequently developed and which he was bound to disclose. On the basis of these contentions, learned counsel went

on to point out that the policy need not be honoured.

15. After having heard the learned counsel on both sides and perused the decisions, even though the argument advanced by the learned counsel for the respondent may look formidable, on a close scrutiny, it can be found that they are of much help to the respondent in the case on hand.

16. The proposal was made on 27.04.1995. PW2 is the doctor engaged by the LIC to verify the physical and other conditions of the person who makes the proposal. The evidence of PW2 is of considerable relevance in the matter. He, in his deposition, says that he had examined the deceased Haridas and had furnished a confidential report as a result of his medical examination which is marked as Ext.B9. He asserted that the various columns in Ext.B9 have been filled up by him after examining Haridas and also after satisfying himself. He in no less terms says that he could not detect any symptoms of any disease in Haridas. He also says that at the time of physical examination, there was no symptom of liver cirrhosis or any major disease. The doctor says that he had examined the assured on

27.04.1995. What is significant is the following statement in cross examination of this witness which reads as,

> "It is not true to say that it is not possible to detect liver enlargement in all cases by physical examination".

17. A reading of the evidence of PW2 leaves one in no doubt that the assured was thoroughly examined by the doctor and he was convinced that Haridas suffered from no major diseases.

18. Of course, subsequent to the proposal was made, Haridas had gone to hospital on various occasions and after the policy was issued, he had been hospitalised also. The Life Insurance Corporation examined DW2 from their side. DW2 is the doctor who has admittedly treated the deceased. He was not willing to characterise Haridas as an alcoholic. He would say as follows:

> "An occasional consumer of alcohol is not nomenclatured as alcoholic. Alcoholic is a person who as a result prolonged consumption has developed impairment of normal, social and intellectual capacity".

There is absolutely no evidence to show that the deceased exhibited any symptom related to alcoholism and in fact Ext.B6 enquiry report characterises him as a healthy person. DW2 also says that he is not in a position to assert that late Haridas was suffering from liver cirrhosis from earlier times.

19. One cannot omit to note that the first premium was received on 31.05.1995 as would be evident from Ext.B5. The trial court has referred to the law on point and had come to the conclusion that there was no material suppression of facts or any misrepresentation of facts. There is no need to deal with that aspect as the trial court has appreciated the law correctly. The trial court has also dealt with in extenso the possibility of the assured having knowledge about the disease which he suffered from.

20. It must be noticed that there is nothing to show that prior to the proposal being made, the deceased was hospitalised as an inpatient. He, of course, had gone to the hospital for treatment on various occasions but not for the period as required to be disclosed in the proposal form. There is nothing to indicate

from the records that except for an attack of jaundice 10 years ago, late Haridas was suffering from liver cirrhosis. One may again recall here the evidence of DW2 who is unable to state when cirrhosis developed and also PW2, the doctor who examined the deceased on 27.04.1995, who was definite that if there was any enlargement of liver, that would have been detected on physical examination.

21. From the recitals it is seen that Haridas was hospitalised after proposal form had been submitted and the Company received the first premium amount. With the receipt of the first premium, the policy came into effect. The mere fact that Haridas died on 01.08.1995 and he was hospitalised from 05.06.1995 for a brief period does not mean that he was guilty of suppression of material facts. Neither of the doctors were able to positively state as to when probably the enlargement of liver occurred especially when PW2 is certain that he had not noticed any symptom of jaundice when he examined him on 27.04.1995.

22. One could probably say that in column 11(h) in the proposal form regarding use of alcohol, the answer given is 'no'

by the deceased, which may not be quite true. It does not go to the root of the matter and from the examination by DW2 it is clear that Haridas could not be characterised as an alcoholic. The trial court had considered all these factors and had also considered the evidence in considerable detail and had come to the conclusion that the reasons given for repudiating the policy cannot be sustained in law.

23. It is significant to notice that the lower appellate court does not disagree with any of the findings of the trial court. But the court embarks on a speculative venture and considering the history of disease as a result of which Haridas might have passed away, he could be attributed with the knowledge that he had that disease. It is quite contrary to the evidence furnished by PW2, panel doctor engaged by the LIC who says that the deceased was in good health and also DW2 doctor who says that he cannot conclusively say that Haridas has been suffering from the disease for a long time. The lower appellate court accuses the deceased of guilty of suppression of facts and also fraud. May be Haridas was a diabetic and was also suffering from hyper tension. But

these are not diseases which have to be compulsorily mentioned in the proposal form and the assured is only called upon to mention what is required in the proposal form. Non mentioning of those diseases is of no consequence.

24. It is true that in the decision in ***L.I.C of India*** *vs.* ***Annamma*** (1999 (3) KLT 142), on facts, it was found that there was no concluded contract between Corporation and the deceased. The court went on to hold that as per law, contract of insurance will be concluded only when the Corporation to whom offer has been made accepts the proposal unconditionally and communicate the acceptance of proposal. There will be no right to the Corporation unless acceptance is communicated. The court went on to hold that the mere receipt of premium by the Insurance Company does not mean that the proposal has been accepted.

25. In the case on hand, there is no pleading in the written statement of the Insurance Company that there is no concluded contract. They have only a case that the deceased concealed certain vital facts from their knowledge and that invalidated the

policy. Therefore, the principles laid down in the above decision can have no application to the facts of the case.

26. It is true that in the decision in ***Sarojam*** *vs.* ***LIC of India*** (1985 KLT 865), it has been held that the mere fact that the medical officer of the Life Insurance Corporation certifies the life of assured as good has not much consequence. It is later found that the insured is guilty of suppression of material facts.

27. Of course, there is an allegation and there is some material to show that the deceased used to consume alcohol and he was a diabetic. But those two ailments are not so severe as is sought to be made out by the Insurance Company. It is here that the evidence of DW2 assumes importance. The evidence of two doctors examined in the case shows that there was nothing indicative of the fact that the deceased was an alcoholic. Medical evidence is to the effect that if the person concerned was an alcoholic it would be revealed in physical examination.

28. In the decision in ***Sarojam*** *vs.* ***LIC of India*** (1985 KLT 865) it was found that when the proposals were made by the assured, he was suffering from serious heart ailments. It was in

that context the decision came to be rendered and the court then went on to hold that merely because the medical certificate has been issued does not mean that it is conclusive.

29. In the case on hand, the doctor who is engaged by the LIC and who had examined the assured has categorically stated that the deceased has no symptoms of an alcoholic and that if he had any liver problem that would have revealed in the physical examinations. In the light of the above evidence of the doctor concerned, it could not be said that the deceased was an alcoholic. Merely because he might have on a very few occasion taken alcohol even assuming that he has not mentioned it in the proposal form by itself may not be taken as a ground to repudiate the policy.

30. In the decision in ***LIC of India*** *vs.* ***Smt.Sosamma Punnan*** (1991 (1) KLJ 753), the applicability of Section 45 of the Insurance Act was considered. On going through the said decision, it can be seen that there was concealment of material facts in the proposal form and the assured had failed to disclose certain vital facts which had a bearing on the acceptance of

proposal made by the assured. It was in that context it was held that the Insurance Company has two year period to call the policy in question and inform the assured that the policy is being rescinded. In such cases this Court went on to hold that the insurer has to adduce evidence in support of suppression of facts. It is not known where Section 45 of Insurance Act was brought to the notice of the assured in this case. It is too much to expect an ordinary person to be conversant with the statutory provisions of Insurance Act. The evidence would indicate that he was reluctant to take a policy. But due to compulsion, he did so. It was through an agent that he had taken the policy. The agent was examined as PW3. There is nothing to indicate that she had appraised the assured about the true state of affairs and the need to be alert always. Being an agent of the LIC, it is obligatory on her part to inform the assured that he should disclose the relevant facts. If she failed to do so, the policy may be repudiated. An ordinary man of the nature of the deceased in this case cannot be expected to be in the know of law and taken such steps as are necessary. Therefore the above decision is also

of no help to the respondent.

31. In ***Chacko*** *vs.* ***L.I.C*** (2008 (1) KLT 698 (SC)), no doubt it was stated that the assured will be estopped from contending that even if he had disclosed the true facts that would have made no difference when he concealed the same from being disclosed to the insured.

32. In the case on hand, there was no serious illness or sickness as far as the deceased was concerned. If he believed that use of alcohol occasionally in the case of mild diabetic person is of no consequence, he cannot be found fault with. It is in these circumstances relevancy of an agent comes into existence. It is for the agent who has canvassed for the policy to appraise the person about the various steps that had to be taken to get the policy and also the right of the insured to repudiate the policy on certain grounds.

33. It is by now well settled that in such cases there is no straight jacket formula and each case has to be determined on the facts of that case. From the records it is clear that the ailment of the deceased came to his knowledge much after the

proposal was made and the premium has been paid. As already noticed, it is not clear as to whether the assured was cautioned about the consequence of non disclosure of facts and also as to whether the Insurance Company can repudiate the policy within a period of two years of issuance of the same.

34. One may here also recollect the medical certificate issued by the doctor who examined the deceased and who says that he found nothing wrong with the person concerned. The investigation report by the officer engaged by the Insurance Company though talks about the deceased having taken alcohol does not say that the policy need not be honoured or considered. On the other hand, his recommendation is that the policy may be considered on merits.

35. The above facts show that the two so called non disclosures may not be very fatal. Of course, this is not to say that the assured has the right to withhold material aspects from the knowledge of the Corporation. It must be remembered that he needs to disclose only such of those ailments which are within his knowledge.

36. The trial court, in the case on hand, found that there is nothing to show that the deceased was aware of the seriousness of his sickness or the gravity of the situation. Under such circumstances, if he omitted to mention the two factors to be made in the proposal form, it will extremely harmful to deny the benefit of the policy.

For the above reasons, this Court is unable to concur with the finding of the lower appellate court. This appeal is allowed. The judgment and decree of the lower appellate court are set aside and that of the trial court are restored.

Sd/-

P.BHAVADASAN
JUDGE

smp

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P.A to Judge.