IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 31601 of 2008 (K)

PETITIONER :

NIRMALA, W/O.THANKAPPAN, AGED 47 YEARS,
KOOTAKANJIRAM VADAKKE MURI, PUTHEN VEEDU, NELLIKKUZHI
KANJIRAMKULAM P.O., NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADVS.SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP

RESPONDENTS :
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1. SENIOR DIVISIONAL MANAGER, LIFE
INSURANCE CORPORATION OF INDIA, DIVISIONAL OFFICE
BUILDING, PATTOM, THIRUVANANTHAPURAM.

2. THANKAPPAN, KOOTTAKKANJIRAM VADAKKE MURI,
PUTHEN VEEDU, NELLIKKUZHI, KANJIRAMKULAM P.O.
NEYYATTINKARA, THIRUVANANTHAPURAM.

* 3. BINDU P. OF DO. (DELETED)

R3 DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER
AS PER ORDER DTD 17/11/2011 IN IA NO. 4508/11.

4. BIJU OF DO.

5. BINITHA.N. OF DO.

R1 BY ADV. SRI.M.AJAY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

bp

WP(C).No. 31601 of 2008 (K)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF PROPOSAL DT 28/6/2003.

P2: COPY OF LETTER DT 14/3/2007.

P3: COPY F O.O. NO. 161/07 FILED BY PETITIONER BEFORE THE LOK ADALATH.

P4: COPY OF STATEMENT OF OBJECTION BY R1 DT 16/6/2007.

P5: COPY OF AWARD OF LOK ADALATH, DT 16/7/2008.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

A.V.RAMAKRISHNA PILLAI, J

WPC No.31601 of 2008

Dated this the 5th day of January, 2015

JUDGMENT

Ext.P5 order of the permanent Lok Adalath, Thiruvananthapuram for public utility services is under challenge in this writ petition.

2. The petitioner had taken a policy in the name of her son insuring his life for an assured sum of ₹1 lakh. The policy came into effect on 28.6.2003 when the deceased was 17 years old. After an elapse of two years and five months from the commencement of policy i.e. on 16.11.2005, the petitioner's son died due to renal failure.

3. After the death, the petitioner applied for insurance claim. The first respondent repudiated the claim on the premise that the correct information regarding the health of the deceased was withheld at the time of entering into the contract of insurance. The petitioner's son had undergone surgery for removal of kidney stone in the year 1990 and in 1999. The information regarding the previous two renal surgeries were not stated in the

proposal form.

4. Aggrieved by the repudiation, the petitioner approached the permanent Lok Adalath at Thiruvananthapuram for public utility services with a petition. The permanent Lok Adalath rejected the petition harping on the ground that the contract of insurance was vitiated by suppression of material facts. The petitioner alleges that the repudiation is bad in the light of Section 45 of the Insurance Act 1938 which provides that a policy cannot be repudiated after the expiry of two years on the ground of false statement unless the false statement is a 'material fact'. According to the petitioner, to constitute 'material fact', the information should relate to the risk to be covered by the policy. The petitioner alleges that surgery for the removal of kidney stone was not the cause of the death of the insured and therefore, the impugned order is bad in law.

5. The respondent in their counter affidavit admitted that the petitioner had proposed a money back policy in the name of her son Shyju who was a minor when Ext.P1

proposal was submitted on 30.6.2003. However, they would point out that in answer to question No.14(d) of Ext.P1 as to whether the assured had disease of the kidney, prostate or urinary system, the petitioner and the life assured replied in the negative. Again in answer to question No.18A as to whether the assured had any operation, accident or injury, the petitioner and the life assured has stated “no”. Further, in reply to query 18C as to whether the assured had been in any hospital for check up, observation, treatment or any surgery, the petitioner and the life assured had replied “no”. The respondent would point out that under clause-9 of Ext.P1, the queries thereunder has to be answered by the life to be assured. They would point out that based on this proposal suppressing the material information, the LIC processed the application and issued the insurance policy as proposed. They would point out that the insurance policy being based on the principle of *uberrimae fidei*, the petitioner and her son owed the duty to disclose the material facts which were wholly within their knowledge and quite unlikely to be discovered despite due diligence by the LIC. On these, the respondent Corporation justified their stand.

6. Arguments have been heard.

7. Ext.P1 is the proposal form submitted by the petitioner. The petitioner cannot contend that she was unaware of the terms and conditions laid down in Ext.P1. Admittedly, the petitioner's deceased son had undergone two renal surgeries. The petitioner is harping upon Section 45 of the Insurance Act, 1938 which reads as follows:

> "No policy of life insurance shall after the expiry of 2 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 referrer or friend of the insured or in any other document leading to the issue of policy was inaccurate or false, unless the insurer shows that such statements 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".

8. In the note appended to Section 45, the term 'material' is defined as under:-

> "'Material' shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the

Corporation."

9. Admittedly, the deceased died due to renal failure.

10. The argument advanced by the learned counsel for the petitioner is that the first respondent had no case that the insured suffered from renal failure at the time of filing the proposal and the surgery for removal of kidney stone done years back does not lead to the death of a person.

11. According to the learned counsel for the petitioner, to constitute suppression of material facts, the nature of disease should be one capable of causing the death of the insured. It was argued that the surgery of kidney stone underwent years back does not constitute a material fact so as to cause the death of the insured. It was further pointed out that the death occurred after the expiry of two years from the commencement of policy. The false statement being not related to a material fact, the insurer is precluded from repudiating the contract on the ground of false statement in terms of Section 45 of the Insurance Act; so submitted the learned counsel for the

petitioner.

12. In this case, the life assured had provided his personal details and further declared that the statements in answers under conditions 8 to 27 in the proposal form had been given by him fully understanding the questions and the same were true and complete in every particular and that he has not withheld any information. The petitioner, who was the proposer of the insurance policy, was the mother of the life assured. In the common course of event, she is expected to know the details of the medical history of the assured. An insurance policy is based on the principles of *uberrimae fidei*. Therefore, under this principle, the petitioner and her son owed the duty to disclose material facts which were wholly within their knowledge and quite unlikely to be discovered despite due diligence by the LIC.

13. It is stated in the counter affidavit submitted by the first respondent that when the petitioner and other legal heirs filed a claim under the policy before the respondents, enquiries were made by them and it was

revealed that the life assured was suffering from kidney stone problems since the age of five years and was taking treatment from the Medical College Hospital, Thiruvananthapuram. It is further stated that one Dr.Fazil Marikkar, working at SUT Hospital, Thiruvananthapuram confirmed to the LIC that he had undergone surgery for the removal of kidney stone twice under General Anaesthesia in the year 1990 and 1999 and it was based on these facts that after due consideration, the LIC had repudiated the liability under the policy as per Ext.P2 communication.

14. Under Section 45 of the Insurance Act, 1938, the insurer is free to repudiate an insurance policy even after the expiry of two years from the date on which it commenced, if a false statement was made on a material fact or facts which were material to be disclosed were suppressed and it was fraudulently made by the policy holder and the policy holder knew at the time of making it that the statement was false.

15. It was strenuously argued by the learned counsel

for the petitioner that the suppression of material facts should be attributable to a policy holder and not to the proposer. It was argued that the policy holder being a minor at the time of making the proposal, the false entries will not bind upon him as he being incompetent to contract under section 11 of the Indian Contract Act. The said argument cannot be accepted as it can be seen from Ext.P1 that both the life assured and the proposer had signed Ext.P1, the proposal form. If false claim has been made by the petitioner, she cannot be allowed to profit from her misdeeds. The contention that the policy cannot be repudiated for the suppression of material facts by the proposer who is also the beneficiary of the policy cannot be countenanced in law.

16. The permanent Lok Adalath had come to the conclusion upholding the finding of the LIC that the life assured was suffering from kidney complaint even before Ext.P1 proposal which information was suppressed from LIC. Such suppression of material facts by the petitioner would tantamount to the suppression of material facts by

the life assured.

On a consideration of the materials now placed on record, this Court is of the definite view that there is absolutely no reason to interfere with the finding of the permanent Lok Adalath and the petitioner is not entitled to succeed.

In the result, this writ petition is dismissed. No costs.

Sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

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P.S.TO JUDGE