

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 32758 of 2009 (L)

PETITIONER :

**LIFE INSURANCE CORPORATION OF INDIA,
REP. BY THE MINOR DIVISIONAL, MANAGER
DIVISIONAL OFFICE, ERNAKULAM -11
THROUGH THE HANDS OF ITS MANAGER,
(LIFE & HOUSING PROPERTY FINANCE) SRI. R.SURENDRAN
AGED 59 YEARS, S/O.LAGE RAMAN PILLAI, LIC OF INDIA,
DIVISIONAL OFFICE, ERNAKULAM - 682011.**

**BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.ADEEP ANWAR**

RESPONDENTS :

- 1. THE INSURNACE OMBUDSMAN,
OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI.**
- 2. SMT. GEETHA UDAYAKUMARN,
KOTTLYOTU PARAMBIL HOUSE, PARUDUR P.O.
PALLIPPURAM VIA, PALAKAKD-679 312.**

**R2 BY ADV. SMT.LAIJA GEORGE. K
BY SRI.T.P.M.IBRAHIM KHAN,**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-07-2015, THE COURT ON 06-08-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE COMPLAINT BEFORE THE R1 DT 13/3/2009.**
- P2: COPY OF THE APPLICATION FOR REVIVAL WHICH IS IN THE FORM OF A STATEMENT DT 26-11-2004.**
- P3: COPY F THE ORIGINAL POLICY DT 22/2/2001.**
- P4: COPY OF THE REPORT DATED 7/2/20104 FROM LT COL R B BATRA.**
- P5: COPY OF THE MEDICAL CASE SHEET DT 13/7/2007 ISSUED BY THE ARMY HOSPITAL.**
- P6: COPY OF THE LETTER DT 12/1/2007 ISSUED BY THE SENIOR DIVISIONAL MANAGER OF THE PETITIONER.**
- P7: COPY OF THE STATEMENT OF DEFENCE DT 20/4/2009.**
- P8: COPY OF THE AWARD MP/IO/KCH/LI/038/2009-10 DT 14/7/2009 PASSED BY THE R1.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J.

W.P(C). No.32758 of 2009

Dated this the 6th of August, 2015.

JUDGMENT

The above writ petition is filed by the Insurer against Ext.P8 Award of the Insurance Ombudsman. The 2nd respondent, who has not been served, was the complainant before the Ombudsman, who challenged the repudiation of a claim made, on the death of the husband of the 2nd respondent. The complainant's husband had taken a policy for an assured sum of Rs.50,000/- with effect from 15.02.2001. Premiums were not paid from May, 2004. But the policy was revived by payment of defaulted premiums with interest on 26.11.2004. The Insured, whose life was assured, died on 26.11.2004, from 'Carcinoma of Stomach'.

2. The claim made under the policy of insurance was

partially repudiated on the ground that the illness was suppressed, when the policy was revived. The specific repudiation letter; referred to the insured having died within two years from the date of revival, ie. one year 9 months and 8 days.

3. The repudiation obviously was on the strength of Section 45 of the Insurance Act, 1938, as it existed then, which is extracted hereunder:

"Section 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 effected 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].

It stood amended so by Act 5 of 2015:

45. Policy not be called in question on ground of misstatement after three years-

(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, ie., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

(2) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud;

Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation I-For the purposes of this sub-section, the expression "fraud" means any of the following acts committed by the insured or by his agent, with intent to deceive the insurer or to induce the insurer to issue a life insurance policy:-

- (a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;*
- (b) the active concealment of a fact by*

the insured having knowledge or belief of the fact;

(c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent.

Explanation II- Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent keeping silence, to speak, or unless his silence is, in itself, equivalent to speak."

4. The learned Ombudsman found that the two year period as provided under Section 45 has to be calculated from the date of issuance of policy and not the revival, relying on the decision of this Court in **Life Insurance Corporation of India v. Smt. Sosamma Punnan [AIR 1991 Kerala 230]**, which in turn relied on the decision of the Hon'ble Supreme Court in **Mithoolal Nayak v. Life Insurance Corporation of India [AIR 1962 SC 814]**. Though, at the time of revival, the insured was found to have been suffering from Carcinoma of stomach, it was found that there was no suppression of material facts at the time of issuance of policy and hence, the repudiation was not proper.

5. The amendment brought in, in the year 2015, has taken

care of any such defect even within a specified period from the date of revival. However, that amendment came only in the year 2015. The repudiation in the above case was when the pre-amended Section 45 was in operation. Hence the aforesaid decisions are apposite, and the repudiation was bad.

This Court does not find any reason to interfere with the findings of the Ombudsman.

The writ petition stands dismissed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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