

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18590 of 2011

Date of Decision.27.02.2015

Lal Chand son of Shri Banwari lal

.....Petitioner

Versus

Life Insurance Corporation of India and others

.....Respondents

Present: Mr. H.C. Arora,, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for respondent No.1.

Mr. Harpal Singh, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? No

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K. KANNAN J. (ORAL)

1. The writ petition challenges the order passed by the Permanent Lok Adalat denying to the petitioner a claim to the amount insured for life of the petitioner's wife. The claim was denied on the ground that there had been a wilful suppression of fact relating to her past treatment at the time when she took revival of two policies on 11.02.2008 and 08.07.2008. It was brought at the time of hearing before the Permanent Lok Adalat that when she had been taking treatment at PGI hospital having got herself treated as an outpatient initially and later admitted an inpatient on 13.05.2009 and discharged on 25.05.2009. The counsel would take me to some of the entries in the records where it was stated that the patient had a case history of oral

submucosa fibrosis and restricted mouth opening for about 15 to 20 years and taking treatment for 15 to 20 years. It was elicited in the history that there was no history of difficulty in swallowing and history of restricted mouth opening for which treatment had been given. The Permanent Lok Adalat held that the fact that she took treatment at PGI and her declaration that she was taking treatment for 15 to 20 years was sufficient to say that she has suppressed the fact of treatment and that she had some ailment that required treatment for more than a week and that revivals of the policies had been taken by suppression of fact.

2. Learned counsel appearing on behalf of the petitioner would state that a mere record of history that she had difficulty in opening the mouth or it was elicited in the history that she had some ulcer of the mouth ought not to be taken as an admission that she knew that she had cancer by the fact that it ultimately turned out that she had expired on 18.01.2010 subsequent to the revival of the policies. I had sought for the production of the records from the PGI and I have seen through the entire case records. The case record brings out that she was not an old patient herself and she has secured her registration as a patient for the first time when she came as an outpatient on 22.04.2009 and later got herself admitted on 13.05.2009 as an inpatient. The hospital records do not indicate that any treatment for cancer was ever administered to the petitioner's wife previously. It merely records the fact that she had difficulty in opening her mouth and she had ulcer in the mouth for 10 to 12 years. A reference to treatment for ulcer, I can hardly understand as a treatment for the disease of cancer. If an illiterate person would take an ulcer as minor problem for which some ointment is to be applied and

if she gives a history that she has been taking treatment unless there is a clear evidence that shows that it had escalated to such serious levels that it required constant monitoring and a persistent treatment with a due appraisal to the person that she was having a serious ailment which was life threatening, I cannot take merely a history recorded that she had difficulty in opening her mouth or that she had ulcer in her mouth for long time as constituting an admission that she was suffering from a serious ailment or would lead to any inference that she was suppressing an important fact regarding her physical health.

3. Learned counsel for the respondent refers me to a judgment of the Supreme Court in Satwant Kaur Sandhu Vs. New India Assurance Company Ltd. 2009(3) SCC (Civil) 366 that held that a person who was taking a medi-claim policy by suppressing a fact of ailment would not claim policy in case of death or injury. The counsel would make particular reference to the observations of the issue relating to the case history recorded in hospital records. The Supreme Court had observed thus:-

“.....We do not find any substance in the contention of learned counsel for the appellant that reliance could not be placed on the certificate obtained by the respondent from the hospital, where the insured was treated. Apart from the fact that at no stage the appellant had pleaded that the insured was not treated at Vijaya Health Centre at Chennai, where he ultimately died. It is more than clear from the said certificate that information about the medical history of the deceased must have been supplied by his family members at the time of admission in the hospital, a normal practice in any hospital.....”

The Supreme Court was making observation that the medical history supplied to the doctors at the time of admission to the hospital was wrong. If in this case, I should apply the decision of the Supreme Court,

it should be in a situation where the patient had sought for revival of the policy subsequent to 13.02.2009 or on 13.05.2009 where she presented herself at the hospital with the serious ailment which required her admission and the fact of such admission had not been disclosed and a revival of the policy had been taken, then it could amount to suppression of fact. Indeed, in the case which was Supreme Court was referring to, the patient was on a regular haemodialysis at his place and after admission in the hospital from 07.12.1990 with severe breathlessness developed cardiac arrest on 26.12.1990. It was a case where the policy had been taken on 07.05.1990 and the insured died on 11.09.1990. The hospital record showed that the deceased had chronic renal failure/diabetic nephropathy being a diabetic for the past 16 years. This history was found by the Court to be sufficient to infer that there had been a suppression of fact. I would find no such situation as obtaining in this case of the insured knowing that an ulcer in her mouth must have been a cancerous ulceration and that the non-disclosure must be taken as a deliberate one. Here was a case where the policies had been taken in the year 2003 and although they elapsed in 2006 and 2007 respectively, she had made declaration for good health in 2008 and the revival of the policies are taken place in February and July, 2008. The insurance company could never have taken such an exercise of revival without having seen the person unless there is something sure to state that the petitioner's wife knew that she was suffering from such an ailment which was necessary to be disclosed and she had secured a revival without such disclosure when the doctrine of uberrimae fidei to be applied against the petitioner. The denial of the sum assured under

the policy by the Permanent Lok Adalat was on wrong inference of inadequate data and there is a serious error of justice that would require to be corrected through intervention.

4. The order passed by the Permanent Lok Adalat is set aside and the writ petition is allowed directing the insurance company to make the amount assured under the policy payable with interest @12% from the date of death till the date of payment and with costs assessed against the insurance company at ₹10,000/-.

(K. KANNAN)
JUDGE

February 27, 2015
Pankaj*