IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.53 of 2015(O&M)

Date of Decision:-08.01.2015

Superintendent Post Office, Hoshiarpur Divn. & Ors.

......Appellants.

Versus

Charan Kaur & Anr.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vikram Bajaj, Advocate for the Appellants.

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JASWANT SINGH, J.(ORAL)

Defendant nos.2 to 4 are in second appeal against the concurrent findings recorded by the courts below whereby the plaintiffs/respondents suit for declaration with consequential relief of mandatory injunction was decreed by the learned Civil Judge(Sr. Divn.), Garhshankar vide judgment and decree dated 31.5.2012 and the findings thereof were affirmed by the learned Additional District Judge, Adhoc (FTC), Hoshiarpur vide judgment and decree dated 22.09.2014.

Learned Counsel for the appellant has argued that the judgment and decrees passed by the Courts below are based upon misinterpreting the evidence led by the parties and are based upon conjectures and surmises and thus are liable to be set aside. It was argued that the controversy between the parties is with regard to concealment of diseases of late husband of plaintiff Dev Raj at the time of getting Postal Insurance Policy and since it is proved that he had concealed the diseases, therefore the payment cannot be made without investigation under Rule 41(5)(ii)(c) of Post Office Insurance Fund Rules, 2008. Thus, prayer was made for setting aside the impugned judgment and decree.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the considered view that the present second appeal is devoid of any merit and same deserves to be dismissed.

Learned lower appellate Court while dismissing the appeal had observed as follows:-

> *" I have heard the arguments and have gone thorugh the record of the case and found that the appeal filed by the appellants has not merits. It is proved on file that the insurance policy was issued in favour of Dev Raj-deceased husband of the respondent Charan Kaur. This fact is established form the testimony of the witness Dr. Gian Chand, SMO, Civil Hospital, Garhshankar. He has stated on oath that the policy was issued in favour of Dev Raj after full enquiry. Onus to prove the fact that Dev Raj was suffering from various diseases was on the appellants and the fact that Dev Raj was well within the knowledge of his diseases was also upon the appellants, but evidence on file led by the appellants have failed to prove these facts. The appellants have not produced on file any evidence to prove the prolonged illness of Dev Raj. This fact could only be proved by way of medical evidence, but the appellants have not made any efforts to summon the record from the said*

hospital where Dev Raj was pleaded to be admitted. On one hand appellants have failed to produce on record the evidence with regard to said prolonged illness of Dev Raj, at the same time no evidence has been led by the appellants that Dev Raj used to remain on leave or used to sit at home due to his diseases. The evidence of both these places was available, but the appellants have failed to adduce the same on the file. The cause of death of Dev Raj mentioned in Ex.D9 cannot be connected way back to the date of policy got issued by him. The policy was obtained by him in the year 2007, on the basis of medical examination of Dev Raj. He also paid premium regularly without any fail. The sum assured of Ex.P5 i.e. the policy was only Rs.1 lac. If Dev Raj had any malafide intention and obtained the policy by concealing the facts with regard to his said disease, he could get the policy of bigger amount. This fact also proved that there was no concealment on the part of Dev Raj and he had no malafide intention to get the Policy."

It is apparent from the findings returned by the learned lower Appellate Court that the appellants had failed to prove any kind of prolonged illness of Dev Raj and it is further apparent that Dr. Gian Chand, SMO, Civil Hospital, Garhshankar had categorically stated that the policy was issued in favour of Dev Raj(husband of plaintiff/respondent) after full enquiry. These facts clearly prove that the Insurance Policy was given by the appellant-Post Office after full enquiry with open eyes and now when the husband of the plaintiff has unfortunately died, she cannot be denied the claim of insurance on technical and flimsy grounds.

I have gone through the findings returned by the Courts below which are based upon correct appreciation of the facts and evidence on record and no perversity or illegality can be found in the same and the same are affirmed.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

January 08, 2015
Vinay