

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4890 of 2010 (O&M)
Date of Decision:18.3.2016

Sunil Kumar and others

---Appellants

vs.

Life Insurance Corporation of India

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sandeep Kotla, Advocate for the appellants

Mr. S.K.Mahajan, Advocate for the respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal lays challenge to the judgment and decree dated 23.2.2010 passed by the District Judge, Karnal whereby the appeal preferred by Sunil Kumar, appellant against dismissal of his suit by the Civil Judge (Junior Division), Karnal (hereinafter referred to as “trial court”) has been dismissed and the findings recorded by the trial court have been affirmed.

Smt. Ganga Devi, mother of the appellant obtained two insurance policies bearing No. 172408466 for Rs. 50,000/- and No. 173371983 for Rs. 1,00,000/- with date of commencement from 24.2.2002.

In the present lis, the policy in dispute is the second policy bearing No. 173371983 that was repudiated by the respondent Life Insurance Corporation of India (in short “the insurer”) vide order dated 27.5.2005 on the plea that Smt. Ganga Devi (since deceased) furnished wrong information in the proposal form by concealing that she availed leave on medical grounds from 30.10.2000 to 10.12.2000, 13.12.2000 to 11.1.2001 and 1.2.2001 to 30.3.2001. Smt. Ganga Devi admittedly passed away on 20.1.2005.

The learned trial court, in view of its observations made in para 14 that the contract of insurance is ubremma fide that is based on utmost good faith held that it is the bounden duty of the policy holder to disclose all the true facts in the proposal form and not to conceal or suppress any material fact. The concealment of material facts by the policy holder vitiates the contract. By referring to judgment of the Hon'ble Supreme Court in **P.C.Chacko and another vs. Chairman, Life Insurance Corporation of India and others 2008(1) Apex Court Judgments 362**, it was held that as the insured did not disclose the true facts regarding her health in the proposal form and as such the contract of insurance was rightly repudiated by the defendant. The Court in appeal affirmed the findings of the trial court by taking into consideration the ratio laid down in **P.C.Chacko and another's case (supra)**.

Counsel for the appellants would contend that the policy in question became operative with effect from 24.4.2002 and it was repudiated on 27.5.2005 more than two years after the contract of insurance became effective. It is further argued that under Section 45 of the Insurance Act,

1978 (in short “the Insurance Act”), the insurer is not competent to call for the policy in question on the ground of mis-statement of facts. It is further argued that the mere fact that in the proposal form, Ganga Devi did not disclose that she remained on leave for the aforesaid period as she sustained an injury on her foot/leg which has no nexus with her death that occurred in January 2005, more than four years after she sustained an injury on her foot/leg, the second part of Section 45 of the Insurance Act cannot be attracted in the circumstances of the present case to entitle the insurer to repudiate the claim. In support of his contention, he has referred to judgment of this Court **Vidya Vs. Life Insurance Corporation of India and another 2004(3) R.C.R.(Civil) 793.**

Counsel for the respondent, on the contrary, has supported the consistent findings recorded by the courts below with the submission that controversy raised in the present case is squarely covered by the ratio laid down in **P.C.Chacko and another's case (supra)** relied upon by the courts below. It has further been argued that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk, is a material fact. If the proposer has knowledge of such fact, he/she is obligated to disclose it to the insurer particularly while answering questions in the proposal form. Any inaccurate answer to said questions will entitle the insurer to repudiate its liability under the policy. For this purpose, he has referred to judgment of the Hon'ble Supreme Court **Satwant Kaur Sandhu vs. New India Assurance Company Limited (2009) 8 Supreme Court Cases 316.** It is urged that as in the case in hand, Smt. Ganga Devi had the necessary

knowledge that she sustained an injury and remained on medical leave for different intervals in the years 2000 and 2001 and gave incorrect answer to a question in the proposal form by saying 'no' in response to 'Have you remained absent from place of work on grounds of health during the last 5 years?' mentioned against clause (c) of para 11 of the proposal form (Ex. D1), no fault can be found in the decision of the insurer by repudiating claim under the policy, duly affirmed by both the courts below.

I have heard counsel for the parties and perused the records.

There is no factual controversy between the parties so far as failure of Smt. Ganga Devi to disclose the factum of her leave on medical grounds from 30.10.2000 to 10.12.2000, 13.12.2000 to 11.1.2001 and 1.2.2001 to 30.3.2001. It is also an admitted fact that the policy in question has not been repudiated within two years from the date of commencement of the same that came into force with effect from 24.2.2002. It is also not in dispute that Ganga Devi passed away on 20.1.2005. There is no material on record to suggest that injury sustained by Ganga Devi in the year 2000 had in any manner attributed to her death approximately after more than four years.

The question that calls for determination is whether action of the insurer in repudiating claim under the policy can be allowed to sustain by taking resort to Section 45 of the Insurance Act when the case is examined in view of land mark judgment in **P.C.Chacko and another's case (supra)** and the judgment in **Satwant Kaur Sandhu's case (supra)**.

In **P.C.Chacko and another's case (supra)**, the Court has held in para 13 that there are three conditions for application of second part of

Section 45 of the Insurance Act. A relevant extract therefrom, reads as follows:-

- “(a)the statement must be on a material matter or must suppress facts which it was material to disclose;
- (b) the suppression must be fraudulently made by the policy-holder; and
- (c)the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.”

In para 14, it has been held that misstatement may itself, however, was not material for repudiation of the policy unless the same is material in nature. In para 16, in the concluding lines, it has been held that a deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law. In para 21, there is reference to an earlier judgment of the Court in **Life Insurance Corporation of India and others vs. Asha God and another** 2001(2) SCC 160 and the para quoted therein, in the concluding lines, reads as follows:-

“For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.”

In **P.C.Chacko and another's case (supra)**, the insurer had

undergone an operation for Adenoma Thyroid, a major operation. Although the said operation was undergone by him four years prior to the date of proposal made by him, he did not disclose about the treatment to obtain the insurance policy. He died within six months from the date of taking of the policy i.e. on 6.7.1987, the policy having been taken on 21.2.1987, the claim under the policy was repudiated by the insurance company. The trial court decreed the suit, the judgment and decree passed by the trial court was affirmed by the learned Single Judge but the appeal preferred by the Insurance company was allowed by a Division Bench of the Kerala High Court which was challenged before the Hon'ble Supreme Court by the claimants.

In **Santwant Kaur Sandhu's case (supra)**, it was a case of medicaid policy which was repudiated by the Insurance company on the ground of non-disclosure of material facts by the insured in proposal form though he was suffering from chronic diabetes and renal failure at the relevant time. In this case, Pritpal Sandhu, an Advocate by profession insured himself under a medicaid policy for a period from 7.5.1990 to 6.5.1991. On 11.9.1990, Pritpal Singh suddenly fell ill and was admitted in Dayanand Medical College and Hospital, Ludhiana. On 7.12.1990, he was shifted to Madras Institute of Nephrology, Chennai where his condition deteriorated and ultimately led to his death on 26.12.1990. The Insurance company made enquiries from Madras Institute of Nephrology and obtained a certificate dated 6.5.1992 (Annexure P-6) stating that the deceased was a known case of 'chronic renal failure/diabetic nephropathy; was on regular haemodialysis at his place and after admission on

7.12.1990 with severe breathlessness developed sudden cardiac arrest on 26.12.1990 leading to his death. The Apex Court has held, quoted hereunder:-

“The term “material fact” is not defined in the Insurance Act, 1938 and, therefore, it has been understood and explained by the courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be “material”. The Insurance Regulatory and Development Authority (Protection of Policyholders' interests) Regulations, 2002 defines the word “material” to mean and include all “important”, “essential” and “relevant” information in the context of guiding the insurer to decide whether to undertake the risk or not.

(Paras 22 and 24)

Thus, in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a “material fact”. If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for

in the proposal form is material for the purpose of entering into a contract of insurance.

(para 25)

It would be beyond anybody's comprehension that the insured was not aware of the state of his health and the fact that he was suffering from diabetes as also chronic renal failure, more so when he was stated to be on regular haemodialysis. There can hardly be any scope for doubt that the information required in the relevant questions in the proposal form was on material facts and answers given to those questions were definitely factors which would have influenced and guided the respondent Insurance Company to enter into the contract of mediclaim insurance with the insured. (para 27)

The statement made by the insured in the proposal form as to the state of his health, that he was in sound health and had not undergone any treatment or operation in the last 12 months, was palpably untrue to his knowledge. There was clear suppression of material facts in regard to the health of the insured and, therefore, the insurer was fully justified in repudiating the insurance contract. (para 29)''

Reverting to the facts of the case in hand, Smt. Ganga Devi suffered an injury on her foot/leg and for that reason she remained on leave from her work place for a total period of four months and 12 days, detailed

hereinbefore. There is no evidence on record that she did not recover from the said injury. As has been mentioned earlier, there is no material on record that the said injury had any remote much less a close nexus with the death of the insured in January 2005. The Hon'ble Supreme Court in **P.C.Chacko and another's case (supra)** after referring to three conditions necessary for application of second part of Section 45 of the Insurance Act has laid down in paras 14 and 16 that misstatement for repudiation of the policy must be material in nature and a deliberate wrong answer must have a great bearing on the contract of insurance policy to become vitiated in law. Keeping in view the facts and circumstances of the present case, I find myself unable to agree with the submissions of counsel for the respondent that the alleged misstatement by Shmt. Ganga Devi was either material in nature or the same has any bearing much less a great bearing on the contract of insurance. I would hasten to add that in **Asha God and another's case (supra)** referred to in **P.C.Chacko and another's case (supra)** it has been held that for determination of the question whether there has been suppression of any material facts, it may be necessary to also examine if the suppression relates to a fact which is in the exclusive knowledge of the person and it could not be ascertained by reasonable enquiry by a prudent person. In the case at hand, as Ganga Devi submitted applications for leave on medical grounds and appended medical certificates issued by a doctor of a Government hospital, the said fact could be ascertained by the insurer by making a reasonable enquiry from her employer. Taken from any angle, I am of the considered opinion that the judgment in **P.C.Chacko and another's case (supra)** cannot be applied to the facts of the case in hand,

to deny the claim, therefore, the courts below have committed a serious error rather perversity on account of their failure to examine the facts of the case in hand in right perspective before holding that the case is covered by the judgment against the claimant.

In **Satwant Kaur Sandhu's case (supra)**, the Apex Court by taking into consideration as to what the 'material fact' means or can be understood has held that the material fact means any fact which goes to the root of a contract of insurance and has a bearing on the risk involved would be material. In that case, the policy holder was suffering from a serious medical problem which he concealed and died after about seven months of obtaining the policy commencing with effect from 7.5.1990. The facts and circumstances of the present case can neither be equated with the facts involved in the referred authority nor can it be held that Ganga Devi concealed material facts or the disclosure thereof would have influenced the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. In this view of the matter, I find myself unable to agree with the findings of the courts below or to accept the submission of the respondent that the present case is squarely covered by the judgments relied upon by counsel for the respondent.

On the contrary, this Court in **Vidya's case (supra)** has held that mere inaccurate answers of questions in proposal form for medical, got ECG conducted for medical check up or mental depression or anxiety does not mean the insured was suffering from heart disease and is no ground to repudiate the policy after death of the insured. Non-disclosure of getting ECG conducted prior to insurance does not amount to concealment of

material facts especially when the medical report of the doctor got by the LIC shows that the deceased was healthy and did not suffer from any disease.

As an upshot of the discussion made hereinbefore, I find merit in contentions of the appellant that the insured was not guilty of concealing any material fact which has a great bearing on the contract of insurance much less going to its root to entitle the insurer to repudiate the claim. As a result, the judgments passed by the courts below cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is allowed, the judgments and decrees passed by the courts below are set aside. As a natural corollary, suit filed by the appellants/plaintiffs for mandatory injunction is decreed and the respondent/defendant is directed to release the claim qua policy No. 173371983 of Shmt. Ganga Devi to plaintiff No. 1. As the claim became due and payable in the year 2005, the insurer shall be liable to pay interest @ 9% per annum from the date, the amount became due till its actual payment.

(Rekha Mittal)
Judge

18.3.2016
paramjit