IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3444 of 2013 (O&M)
Date of decision : 01.10.2018

Mohan Singh and others ...Appellants

Versus

Zonal Manager, LIC of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naveen Bawa, Advocate for the appellants.

Mr. S.K. Jain, Advocate for the respondents.

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ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing their suit for mandatory injunction against the Life Insurance Corporation of India to release the amount of the policy on account of death of Late Smt. Jaswinder Kaur.

It may be noted that Smt. Jaswinder Kaur purchased the life insurance policy on 19.07.2000. However, on account of non-payment of the installment, the policy lapsed. Smt. Jaswinder Kaur thereafter filled up a form requesting for revival of the policy. The policy was revived on the basis of the declaration made in aforesaid form as also on fresh medical examination on 23.03.2004. She died on 08.08.2004 and Doctor opined that she was suffering from diabetes and hypertension.

Both the Courts have found that in the revival form, she did not disclose that she is suffering from diabetes and hypertension, therefore, repudiation by the Life Insurance Company was upheld. Both the Courts have relied upon the judgment passed by Hon'ble the Supreme Court in ***P.C.***

Chacko and another Versus Chairman, Life Insurance Corporation of India and others, AIR 2008 Supreme Court 424.

Learned counsel for the appellants submitted that the repudiation of the claim on the basis of mis-statement or wrong statement, cannot be ordered as per Section 45 of the Insurance Act, 1938 after a period of two years from the date of original policy. He relied upon the judgment passed by Hon'ble the Supreme Court in the case of ***Mithoolal Nayak Vs. Life Insurance Corporation of India, AIR 1962 Supreme Court 814***. In the aforesaid case, Hon'ble the Supreme Court had held the fraudulent suppression of the material facts by the Policy Holder vitiates the policy but such repudiation has to be within a period of two years. However, on being pointed out, learned counsel for the appellants admitted that in the aforesaid judgment, Hon'ble Supreme Court was not examining suppression of material fact in the revival form. Since, in the present case, it has been found that in the revival form filled up by the deceased, she did not disclose all the facts and made fraudulent misrepresentation of the facts, therefore, the limitation as prescribed under Section 45 of the Insurance Act, 1938, would not apply from the date of original policy.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.10.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No