

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 216 of 2012****Reserved on : 01.04.2019****Delivered on : 26.04.2019**

Amitabh Vaishnav, S/o Late Kamlesh Vaishnav, aged about 10 Years, Minor,
Through Guardian/ Next Friend R.D. Vaishnav, S/o Horilal Vaishnav, R/o
Near Mama-Bhanja Talab, Tikra Para, Bilaspur, Tah. and District- Bilaspur
(C.G.)

---- Appellant**Versus**

1. Life Insurance Corporation of India, Through Regional Manager, Jeevan Shiksha, 60-B, Hoshangabad Road, Bhopal (M.P.)
2. Life Insurance Corporation of India, Through Divisional Manager, Jeevan-Prakash, Jeevan Bima Marg, Raipur (C.G.)
3. Life Insurance Corporation of India, Through Branch Manager, Branch Office No. 1, Magar Para Road, Bilaspur (C.G.)
4. Sumeet Moitra, S/o Not Known, Cashier, Life Insurance Corporation of India, Branch Office No.1, Magar Para Road, Bilaspur (C.G.)
5. Lipika Chakrawarty, S/o Not Known, Life Insurance Agent, Through Branch Manager, Life Insurance Corporation of India, Branch Office No.1, Magar Para Road, Bilaspur (C.G.)

---- Respondents

For Appellant	:	Mr. Abhijeet Mishra, Advocate.
For Respondents	:	Mr. Mukesh Sharma, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 30/04/2008 passed by Third Additional District Judge, Bilaspur (CG) in Civil Suit No. 01-B/2008, wherein the said court dismissed the suit filed by the appellant/plaintiff for recovery of the amount of Life Insurance Policy

with interest.

2. As per the appellant, his father namely Kamlesh Vaishnav and mother namely Smt. Anita Vaishnav have taken Life Insurance Policy (Jeevan Sathi Plan) from the respondents vide Policy No. 380648665 on 28/08/1994. The premium of the insurance policy was paid in time. Mother of the appellant namely Smt. Anita Vaishnav died on 09/12/1994. The claim of the appellant/plaintiff has been repudiated by the respondents that is why he filed a complaint before District Consumer Redressal Forum, Bilaspur vide Case No. 261/1999, but the same has been dismissed on 07/04/2000 and appeal was also dismissed by Chhattisgarh State Consumer Dispute Redressal Commission, Raipur. After dismissal of the appeal from State Commission, the appellant filed a civil suit for recovery of the insured sum of the policy and also for damages, but the trial Court dismissed the suit.
3. Learned counsel for the appellant submits as under:-
 - (i) The trial Court erred in holding that the suit of the plaintiff is barred by principle of *res judicata*.
 - (ii) In earlier proceeding of District Forum and State Commission, no issue has been framed and no cross-examination of the witnesses have been done, therefore, it is not a case where principle of *res judicata* is applicable, therefore, finding of the trial Court is liable to be set aside.
 - (iii) Finding of the Consumer Forum has no binding effect over the civil court, therefore, finding of the trial court is not sustainable.
 - (iv) The District Consumer Forum has given liberty to file a civil suit,

therefore, the trial court ought to have given the benefit of Section 14 of the Limitation Act, 1963 to the appellant.

(v) The trial court has not appreciated the evidence on record properly, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. Learned counsel for the respondents placed reliance in the matter of **Laxmi Engineering Works Vs. P.S.G. Industrial Institute**, reported in **1995 AIR (SC) 1428** & **M/s. Fair Air Engineers Pvt. Ltd. & another Vs. N.K. Modi**, reported in **1996 (6) Supreme 745**.
6. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
7. The claim of the appellant is based on Insurance Company proposal dated 15.09.1994 (Ex. P/3) by Late Smt. Anita Vaishnav. In the said proposal, it is mentioned that she did not go for abortion or delivery, but in fact she had delivered a child two months ago from the date of proposal i.e. on 01.07.1994 which is clear from document Ex. P/4 & P/5 issued by medical expert.
8. Learned counsel for the respondents submits that the policy of life insurance shall be called in question at any time within three years from the date of insurance of the policy and in the present case, material facts have been suppressed to the expectancy of the life from Insurance Company, therefore, the claim can be repudiated as per Section 45 of the Insurance Act, 1938. He further submits that if the

statement in the proposal form would have been correctly filled, the company would not have accepted the proposal. It is accepted for statement which was incorrectly made in the proposal, therefore, it is not fit to allow the claim of the appellant. He further submits that the Insurance Corporation is trustee of public funds and money should not be distributed against the claim which is based on suppression of material fact.

9. From Ex. P/6, it is clear that the Insurance Company has informed the appellant regarding repudiation of the claim on the basis of suppression of fact. It is mentioned in the said letter that the appellant had right to appeal before the regional claim committee, but it appears that the appellant did not avail the remedy of appeal.
10. Learned counsel for the appellant submits that the trial court has not decided the issue on merit, therefore, the case should be remanded to the trial court. In view of this Court, the appeal is continuation of the suit proceeding and appellant has all the right to submit factual matrix and legal aspect of the matter to this Court.
11. After going through the entire records, there is nothing to say that the Insurance Company is not right in repudiation of the claim due to suppression of material fact. It also appears that the insurer died within three months of the proposal during treatment after delivery of child, therefore, it is not proper for this Court to remand the case to the trial court.
12. Looking to the entire evidence, argument advanced on behalf of the appellant is not sustainable and the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of

respondents on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own cost.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun