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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2019

PRONOUNCED ON : 25.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.2089 of 2004

P. Radhakrishnan ...Appellant/Plaintiff

Vs.

1. Life Insurance Corporation of India
Kancheepuram.
2. Madras Divisional Officer-I
Life Insurance Corporation of India
324, Anna salai, Madras 600 002
3. Zonal Manager (Southern zone)
Life Insurance Corporation of India
L.I.C. Buildings, Anna Salai, Chennai 2
4. Managing Director (Central Office)
Life Insurance Corporation of India
Yogakshema Jeevan, Bimamarg,
Bombay 400 021 ...Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Sub ordinate Judge, Kancheepuram dated 19.12.2003 made in A.S.No.28 of 2002 confirming the judgment and decree of Principal District Munsif, Kancheepuram dated 30.10.2001 made in O.S.No.809 of 1998.

For Appellants : Mr.A.S.Thambuswamy

For Respondent : Mr.R.Venkatesulu
for Mrs.Usha Raman

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 19.12.2003 passed in A.S.No.28 of 2002 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 30.10.2001 passed in O.S.No.809 of 1998 on the file of the Principal District Munsif Court, Kancheepuram.

2. The second appeal has been admitted on the following substantial question of law.

"Whether the courts below are correct
in dismissing the suit only on the



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basis of Exs.A3 and A9 which do not discharge the burden of the defendant to establish that the plaintiff had taken policy Ex.A1 after purposely suppressing the existing decease?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. It is not in dispute that the plaintiff has taken a Medi-claim Policy with the defendants' corporation and the copy of the policy issued to the plaintiff dated 05.10.1993 has been marked as Ex.A1. It is found that the abovesaid policy was entered into to cover the risk of four major ailments namely, 1) cancer, 2) paralytic stroke leading to permanent disability, 3) renal failure of both kidneys and 4) Coronary Artery disease where bypass surgery has been done. It is the case of the plaintiff that he had undergone open heart bypass surgery on 16.03.1996 to restore adequate blood supply to his heart and the same was proved to be necessary by means of coronary angiography and accordingly, since the abovesaid contingency, which had occurred to the plaintiff, resulted in undergoing the abovesaid operation, had occurred during the force of the policy marked as Ex.A1, accordingly, submitting the necessary medical reports with reference to the same, the plaintiff has made the claim of reimbursement of medical expenses incurred by him as per the terms contained in Ex.A1 policy with the defendants' corporation. After certain exchange of notices between the parties, it is found that the defendants' corporation, based on the enquiry conducted by them with reference to the operation said to have been performed to the plaintiff and noting that the plaintiff had withheld some material information or concealed certain material information as regards the ailments suffered by him at the time of taking the policy marked as Ex.A1, accordingly, determining that the same had come to the knowledge of the defendants' corporation from the entries found in the discharge summary projected by the plaintiff himself and accordingly, it is found that the defendants' corporation had, by way of the communication dated 13.04.1998, intimated the plaintiff that they had decided to decline the benefits claimed by the plaintiff under the policy taken by him on the ground of suppression of material facts by the plaintiff while taking the policy coverage with reference to his earlier



ailments and challenging the same, the suit has come to be laid by the plaintiff for appropriate reliefs.

6. In the written pleas, the defendants' corporation had reiterated their stand that the plaintiff had suppressed the material information of the ailments suffered by him while taking the policy Ex.A1 and in such view of the matter, as there had been misrepresentation on the part of the plaintiff by withholding the correct information as regards his health status / ailments suffered by him at the time of the coverage of the policy, he is not entitled to claim the benefits under the policy and the defendants' corporation is entitled to repudiated the claim and accordingly put forth the defence that the plaintiff is not entitled to seek the reliefs claimed in the plaint.

7. As above noted, the policy coverage of the plaintiff with the defendants' corporation under Ex.A1 is not in dispute. It is also not in dispute that the plaintiff had underwent bypass surgery as put forth in the plaint. On a perusal of the materials placed on record, it is found that the plaintiff while taking the policy, as to the queries raised by the defendants' corporation in the proposal, had replied that he has not been suffering from any diseases as such and accordingly, it is found that the policy has come to be issued in favour of the plaintiff by the defendants' corporation. Now, the main reasons projected by the defendants' corporation for repudiating the plaintiff's policy are that the discharge summary projected by the plaintiff, while claiming the benefits under the policy, discloses that the plaintiff / patient is a known diabetic since 1985 on Tab. Glynase 1/2 twice daily and Tab. Glyciphage 1/2 twice daily. Known hypertensive since 1985 Tab. Lopressor, known COPD patient and allergic rhinitis. Patient had pulmonary TB in 1984 and was treated with ATT also a known case of acid peptic disease. On the basis of the abovesaid information contained in the discharge summary as regards the previous ailments suffered by the plaintiff, before taking the policy coverage under Ex.A1, according to the defendants' corporation, the plaintiff had suppressed the abovesaid material facts of his diseases mentioned therein while taking the policy coverage and on the other hand, gave incorrect answers about his health condition and in such view of the matter, it is put forth on the part of the defendants' corporation that they are entitled to repudiate the policy claim made by the plaintiff and the same is done in accordance with law.



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9. For discharging the abovesaid burden, the only document relied upon by the defendants' corporation is the discharge summary projected by the plaintiff's marked as Ex.A3 and as above noted, the defendants' corporation mainly relied upon the abovesaid history of the plaintiff noted in the discharge summary by the doctor who had admitted him in the hospital for the purpose of heart ailments suffered by the plaintiff at the relevant point of time. On a reading of the abovesaid report contained in the discharge summary, it is obviously noted that the doctor, who had entered the abovesaid entry, had recorded the same only based upon the information furnished to him by the person who had accompanied the plaintiff. When the materials placed on record go to show that the plaintiff was not in a fit state to furnish the abovesaid



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coverage of policy. When it is seen that P.W.3 is still in the Life Insurance Company panel as the medical officer, accordingly, it is found that to safeguard the abovesaid position, P.W.3 has tendered evidence against the plaintiff's case one way or the other quite inconsistent to the version offered by him during the chief examination. His evidence during the cross examination that unless the plaintiff discloses his ailments, he could not detect the same, would only go to show that he is speaking falsehood and when he claims to be a medical officer having expertise of more than 25 years, his version that he could not detect the ailments suffered by the plaintiff based on his examination of the plaintiff cannot be accepted, particularly, considering the fact that the detection of blood pressure, diabetes, etc., could be easily ascertained and determined by the medical officer by conducting various tests very easily. However, P.W.3, for the purpose of supporting the Insurance defence, has turned against the plaintiff during the course of cross examination. For the reasons aforesaid, his evidence adduced during the course of cross examination cannot be relied upon for accepting the defence version.

12. To Contradict the abovesaid evidence adduced on the part of the plaintiff, the administrative officer of the Insurance Corporation has been examined as D.W.1. D.W.1 has admitted that he has no personal knowledge about the policy coverage taken by the plaintiff and he has come forward to depose in the matter only based on the records. Therefore, his evidence would be of no use to dispute the plaintiff's case as such, particularly, whether the plaintiff had deliberately suppressed the material aspect as regards the policy condition before taking the policy coverage. D.W.1 has admitted that for establishing their defence version that the plaintiff had suppressed the material information about his health condition while taking the policy coverage, there must be positive evidence and according to D.W.1, the positive evidence projected by them is only the discharge summary submitted by the plaintiff. When the medical information of the plaintiff found in the discharge summary had been recorded by Dr.Vijaya Kumar, based on the information given to him by others, the same constituting only hearsay evidence and not on his personal examination of the plaintiff as such and the same has also been affirmed by Dr.Vijayakumar in his certificate marked As Ex.A9 and when the defendants' corporation had not endeavoured to examine Dr.Vijaya Kumar in support of their defence as to whether the information furnished by him in the discharge summary are true and acceptable and no reason has been offered by them as to why they had not endeavoured to examine Dr.Vijaya kumar and when it is also further seen



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that the discharge summary does not contain any particulars as to who had furnished the health information of the plaintiff to Dr.Vijaya kumar, in such view of the matter, particularly, when the evidence of P.W.2, the family doctor of the plaintiff go to disclose that the plaintiff was normal in all aspects before 1993 without any serious ailments as such and the same has also been fortified and buttressed by the evidence of P.W.3, the Insurance doctor, he having only contradicted the plaintiff's version during the course of cross examination with a view of safeguard his position and for the retention of his name in the panel one way or the other and when as per Section 45 of the Insurance Act, the burden is only upon the Insurance Corporation to establish that the plaintiff had suppressed the material factors deliberately despite having knowledge about the same while taking the policy coverage and when with reference to the same, the alleged positive evidence projected by the defendants' corporation is found to be based upon only hearsay evidence, without any direct knowledge on the part of the doctor who had recorded the same, in such view of the matter, the contention of the defendants' counsel that the Insurance Corporation had discharged their burden placed upon them under Section 45 of the Insurance Act by projecting the information of the medical condition of the plaintiff as recorded by Dr.Vijaya Kumar as such, cannot be accepted in any manner and it is seen that the courts below had without appreciating the abovesaid materials placed on record in the right perspective, had blindly accepted the defence version without noting that the Insurance Corporation cannot be relieved of their liability in the discharge of the burden placed upon them under Section 45 of the Insurance Act, by merely placing reliance upon the facts recorded in the discharge summary vis-a-vis the health condition of the plaintiff, which are founded on hearsay evidence.

13. In this connection, the plaintiff's counsel placed reliance upon the decision reported in 1999 (I) CTC 379 (J.Punithavalli vs. The Life Insurance Corporation of India, Madras) whereunder, the burden of proof placed upon the Life Insurance Corporation under Section 45 of the Insurance Act has been discussed in detail and therein, it has been held that the burden is only upon the insurer to let in positive evidence to prove that the insured was suffering from diseases alleged by it even prior to getting the coverage of insurance and that the insured suppressed the said facts intentionally and gave false declaration that he was not suffering from such diseases and while determining the abovesaid position of law, the court, in the abovesaid



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decision, has held that only the defence witness who should come to the rescue of the stand taken by the Insurance Corporation and considering the facts concerned in the said case, the position of law has been outlined in the abovesaid decision as follows:

"Evidence Act, 1872, Sections 101 to 104 - Burden of Proof - Contract of Life Insurance - Insured dying two years after life is insured and nominee making claim - Burden is on Insurer to let in positive evidence to prove that insured was suffering from diseases even prior to getting life assured - Insured suppressed facts intentionally and offered false declaration tat he was not suffering from such diseases - Insurer has not adduced such evidence - Appeal allowed and suit decreed as prayed for by nominee of insured.

Life Insurance Corporation Act, 1956 - Contract of Insurance - Suppression of fact - Insurer to prove that insured suppressed fact about his disease and gave false declaration about health condition.

24. It is only the defence witnesses who should come to the rescue of the stand taken by the L.I.C. D.W.1 would come forward to depose to the effect of diagnosing and treating the deceased Jaganathan from April 1976 and since it is an admitted fact on his part that prior to attending to him, he did not know about Jaganathan at all he is not a fit witness to speak to the condition of Jaganathan that was prevailing before 13.05.1975 i.e. prior to insuring the life of the deceased. But at the same time, this witness would come forward to state that he had put entries what the assured stated to him as per the entries effected in Exs.C1 to C4, history sheets, wherein the deceased Jaganathan was said to have told him that he was suffering from diabetes for two years and asthma for four years and was suffering from hyper tension for one year and that he had albuminemia urine for four years. Prior to entering into discuss the evidenciary value of such entries said to have been effected by D.W.1 in the case sheet as though they were told by the patient to him which is hearsay evidence and not directly known by him, it is relevant to note that in the cross



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examination, this witness would glaringly state that the patient's wife and his other relatives accompanied him and that he had not noted in the relevant records as to who gave the information for marking the entries therein and that he cannot say the exact date of beginning of the disease of diabetes and that he did not have personal knowledge of the health of Jaganathan before his examination. Therefore, it is quite evident from what this witness deposed in his cross examination is that the entries regarding the health of Jaganathan prior to his examination had not been effected in Exs.C1 to C4 based on the contentions of the deceased, but somebody else which he did not note in the record at all and he could not also assure the beginning of the disease diabetes for Jaganathan.

25. This witness would also in the re examination depose that he had not recorded in the hospital records to the effect that Mr. Jaganathan gave the information of the details entered in Ex.B7 nor any one else particularly to have supplied such information. This witness is the key witness for the defence and he could not give any valid evidence to the effect of the said Jaganathan suffering from the disease of diabetes, hyper tension, etc., even prior to his life coming to be insured on 13.05.1975 whereas this witness could only assess what he noted after April 1976. The other opinion offered by this witness cannot be taken as the reliable evidence, since based on mere opinions, nothing could be decided unless corroborative evidence is available.

26. The evidence of D.W.2 and the Ex.B.17, the medical certificate issued by one Dr. Sundaresan said to be residing adjacent to the deceased Jaganathan at Tiruvarur could neither be marked through D.W.2, nor was the author of Ex.B 17 alive at the time of trial so as to appear before the court and affirm the contents of the said document. Ex.B17 hence does not carry any weight, nor could it be appreciated in evidence, since it is not a valid document, nor marked in the manner prescribed by law. Moreover, this document admittedly by D.W.2



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has come into existence after the death of Jaganathan and hence, based on Ex.B17 nothing could be decided regarding the facts of the case, nor is there any importance otherwise attached to the evidence of D.W.2 regarding the point that is to be determined . Ex.B18, the manual containing the instructions as guidance for agents is marked through D.W.3 and the said instructions have absolutely nothing to do with the proof of the case in hand and it is up to the L.I.C authorities to have taken all the precautions such as found in Ex.B.18 and having acted in a slipshod manner and having failed to find out the truth if at all there was one, regarding the ailment of the deceased Jaganathan at the time of assuring his life, it is quite unreasonable on the part of the respondent / corporation to have denied the sum assured.

29. Since the case of the appellant / plaintiff is an admitted case on the part of the defence regarding insuring the life of the plaintiff's husband, Jaganathan, and based on that having assured the life of the deceased for a sum of Rs.50,000/-, as per Policy No.42818571 dated 13.05.1975 and on 8.12.1976 since the policy holder died, as per the claim made on the part of the plaintiff being the nominee of the assured vide her letter dated 09.12.1976, the respondent / corporation should have paid the said amount in realisation of their liability and the repudiating on the liability shown on the part of the respondent / corporation is without any basis and after such repudiation, the L.I.C seems to have gone in search of evidence and have accumulated some of the undependable evidence which all would go to reveal the subsequent condition of health of the assured and not to serve as proof to the suppression of the disease alleged on their part at the time of assuring the life of the deceased Jaganathan. Hence, both the above points are decided against the respondent/Corporation and in favour of the appellant / plaintiff".

Through the abovesaid discussions, it is seen that in the abovesaid case, it has been held that though the doctor who had recorded the medical history of the insured covered had been examined, but held that his evidence is



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only based on hearsay evidence and not on personal examination of the insured, on that determination, the court, in the abovesaid case, held that the Insurance Corporation had not discharged the burden resting upon them and thereby directed that the Insurance Corporation is liable to honour the insurance on the strength of the policy taken by the insured. In the abovesaid case, the insurance coverage is pertaining to life coverage. In our case, the insurance involved is the medical claim coverage. In the abovesaid case, as rightly put forth, though the doctor who had recorded the medical history of the insured has been examined, still his evidence has not been taken into consideration on the footing that he had furnished the same based on the inputs received from third parties and not on the basis of the personal examination of the insured. Insofar as the present case is concerned, as above noted, the Insurance Corporation had not even endeavoured to examine the doctor who had recorded the medical history of the plaintiff in the discharge summary. He had subsequently issued certificate that he had recorded the said information only based on the inputs given to him by the friends/relatives, who had accompanied the plaintiff at the relevant point of time. Such being the position, the contention of the defendants' corporation that they have discharged the burden resting upon them based on the production of the discharge summary and on that basis, the court should proceed to hold that the plaintiff has suppressed material information with reference to his health condition deliberately, despite having knowledge about the same as recorded in the discharge summary and therefore, the Insurance Corporation is entitled to repudiate the policy, as such, cannot be countenanced. When the abovesaid proof placed on the part of the defendants' corporation, claiming the discharge of burden, is found to be wholly based upon hearsay evidence and undependable in any angle, any reliance upon the same would amount to totally diametrically contradicting the rule of law as well as rule of evidence and in such view of the matter, the inevitable conclusion is that the insurance corporation had failed to discharge the burden resting upon them and in such view of the matter, they are bound to honour the policy taken by the plaintiff marked as Ex.A1 and not entitled to repudiate the same. Furthermore, from the exchange of communications and the evidence tendered by D.W1, it is seen that the defendants' corporation had conducted their own investigation with reference to the claim of the benefits put forth by the plaintiff under Ex.A1 policy and on that basis they had chosen to repudiate the policy, but, when the so called materials collected by the Insurance Corporation, during the course of the said investigation,



Counsel for the defendants in support of his contentions placed reliance upon the following decisions:

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1. MANU/SC/0255/1962 (Mithoolal Nayak vs. Life Insurance Corporation of India)
2. MANU/SC/8115/2007 (P.C.Chacko and Ors vs. Chairman, Life Insurance Corporation of India and ors)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16. For the reasons aforesaid, the judgment and decree dated 19.12.2003 passed in A.S.No.28 of 2002 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 30.10.2001 made in O.S.No.809 of 1998 on the file of the Principal District Munsif Court, Kancheepuram are set aside and accordingly, the suit laid by the plaintiff in O.S.No.809 of 1998 is decreed in favour of the plaintiff as prayed for with costs. Consequently, the second appeal is allowed with costs. Connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Subordinate Judge, Kancheepuram.
2. District Munsif Court, Kancheepuram.
3. Life Insurance Corporation of India
Kancheepuram.
4. Madras Divisional Officer-I
Life Insurance Corporation of India
324, Anna salai, Madras 600 002
5. Zonal Manager (Southern zone)
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L.I.C. Buildings, Anna Salai, Chennai 2
6. Managing Director (Central Office)
Life Insurance Corporation of India
Yogakshema Jeevan, Bimamarg, Bombay 400 021



Copy to

The Section Officer,
V.R.Section, High Court, Madras

+1cc to Mr.A.S.Thambuswamy, Advocate SR.No. 27795

+1cc to Mrs.Usha Raman , Advocate SR.No. 28683

S.A.No.2089 of 2004

A.SK(05/08/2019)