IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.9760 of 2015

A.Akilan ... Petitioner

vs.

1. The Central Office Claims
   Review Committee
   LIC of India, CRM Department
   Central Office, Yogakshema
   5th Floor Link, J.B. Road
   Mumbai - 400 021.

2. The Zonal Manager
   LIC of India
   Southern Zonal Office
   LIC Building
   No.102, Anna Salai
   Chennai - 600 002.

3. The Divisional Manager
   Life Insurance Corporation of India
   Divisional Office, Jeevan Prakash
   Arcot Road, Vellore - 4. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 1st respondent vide Ref.DO/CLAIMS, dated 12.08.2013 confirming the order of the 2nd respondent vide Ref.DO/CLAIMS dated 16.10.212, confirming the order of the 3rd respondent Ref.DO/CLAIMS, dated 17.04.2012, and quash the same and direct the respondents to pay the accrued amount of the policy No.735585913 LIC'S JEEVAN SARAL for a sum of Rs.3,00,000/- with interest from the date of representation of the petitioner.

For Petitioner : Mr.R.D.Ashok Kumar
for Mr.S.N.Ravichandran

For Respondents: Mr.A.Muthuraman

ORDER

This writ petition has been filed challenging the order passed by the first respondent repudiating the petitioner's claim in respect of the Life Insurance Policy taken by the petitioner's mother.

2. According to the petitioner, his mother by name Mrs.T.Mary Manimozhi has taken insurance policy with the respondent corporation on 08.02.2010, for a assured sum of Rs.3 lakhs. The annual premium was fixed at Rs.14,412/- payable for 15 years. The petitioner was appointed as a nominee in the above said policy and the maturity date of the said policy is on 08.02.2026. At the time of taking the policy, the petitioner's mother was hale and healthy and she was working as a Headmistress in a Panchayat Union Middle School. All of a sudden, she fell ill and died due to cardiac arrest on 14.09.2011. After the death of his mother, the petitioner filed an application before the third respondent claiming the policy amount. Thereafter, the third respondent directed the petitioner to furnish the medical certificate of the petitioner's mother and the same was also furnished. After receipt of the same, the third respondent, by an order dated 17.04.2012, repudiated the claim of the petitioner on the ground that at the time of taking policy, the petitioner's mother has made a false statement about her health, even though she had suffered from Gynecological problem, Menorrhagia and Hyper tension and she had suppressed the same. Challenging the said order, the petitioner filed an appeal before the second respondent and the same has been disposed of with a direction to the petitioner to approach the Central Office Claims Review Committee, 1st respondent herein. Hence, the petitioner preferred an appeal dated 01.1.2012 before the first respondent. However, the first respondent, by an order dated 12.08.2013, has rejected the petitioner's appeal. Challenging the said order, the present writ petition has been filed.

3. The respondent has filed a counter affidavit stating that at the time of proposal, the proposer has given false answers to question Nos.11(a), 11(b), 11(c) and 11(i) of the proposal form, thereby, given a wrong information about her health condition. Further, she did not disclose the fact that she was suffering from Gynecological problem, Menorrhagia and Hyper tension and she was on medical leave for many spells. The respondent corporation came to know about the said fact at the time of investigation of the the death claim of the deceased. The petitioner himself has submitted a claim form, wherein it is stated that the deceased has obtained medical leave on three occasions. Thereafter, on 06.02.2012, the respondent

corporation sent a letter to the Superintendent, CMC Hospital, Vellore, requesting them to furnish a medical history of the deceased. From the medical records furnished by the hospital, it could be seen that the deceased suffered from hypertension and various gynecological problems and taking treatment continuously since 2006. Hypertension and diabetics are the base for heart attack and these facts are wantonly suppressed by the deceased at the time of taking policy. The deceased had made deliberate misstatements and withheld correct information regarding her health at the time of effecting the assurance and hence, in terms of the policy contract, the respondent corporation repudiated the claim.

4. Mr.R.D.Ashok Kumar, learned counsel appearing for the petitioner would contend that the impugned order of repudiating the claim has been made by the respondent without issuing notice and without conducting any enquiry whatsoever. That apart under Section 45 of 'The Insurance Act, 1938,' (hereinafter referred to as 'the Act') the respondent cannot question the policy after expiry of two years from the date on which the life insurance was effected. He further submitted that absolutely, there is no material to show that the proposer has deliberately suppressed the material facts and made a fraudulent statement before taking the policy. The respondents relying upon some medical reports, said to have been obtained from the hospital and without any proof the same, have repudiated the claim, which is not maintainable in the eye of law. In order to apply Section 45 of the Act, the Insurance Company should necessarily be satisfied that policy holders must have known at the time of making the statement that it was false or that it suppressed the fact, which was material to disclose. Unless the Insurance Company proved the same, they cannot repudiate the claim under Section 45 of the Act.

5. The learned counsel for the petitioner relied upon a judgment of a Division Bench of this Court in Life Insurance Corporation of India Vs. Parvathavardhini Ammal reported in AIR 1965 Mad 357 (DB), wherein it is held as follows:

> "The insurer under the Indian Law, as amended, has no right to avoid the contract by merely making out some inaccuracy or falsity in respect of some of the recitals or items in the proposal for insurance, or even in the report of the Medical Officer or any other document connected with the contract of insurance. Under the section, it is imperative that to avoid the contract the insurer must prove that material facts have been suppressed and that either the suppression of material facts or the fraudulent representation of material facts occurred with the full knowledge of the assured. Under the two years

rule proof of material and deliberate fraud is necessary and not mere constructive fraud."

6. Another Division Bench of this Court in Life Insurance Corporation of India Vs. V.Janaki Ammal reported in 1986 Mad 324 (DB), has held as follows:

'In the case reported in Kalyani Achi Vs. Life Insurance Corporation of India (1) which was decided by one of us, it was held that there must be satisfactory proof that the assured was suffering from ailments, which means there must be proof of proper diagnosis and there must also be further proof that the doctor had communicated to the assured that he was suffering from particular disease or the assured himself knew that he was suffering from those ailments and that it is only if such knowledge is made out that the question of a failure to disclose at all would arise. In this case as already mentioned there is no proof that the assured was suffering from any ailment or that there was proper diagnosis or that the doctor had communicated to the assured that he was suffering from any particular disease or that the assured himself knew that he was suffering from those ailments."

7. Per contra, learned counsel appearing for the respondents would submit that even though the petitioner's mother has suffered so many illness and also obtained medical leave for taking treatment, without disclosing the same has given wrong statement, while submitting the proposal form. The investigation conducted by the respondents corporation clearly reveals that the proposer was suffering from so many health issues, which have been deliberately suppressed. Therefore, as per the policy conditions, the claim was repudiated and there was no illegality in it.

8. I have considered the rival submissions and also perused the materials placed before this Court.

9. The policy was taken on 08.02.2010 and the policy holder died on 14.09.2011. Thereafter, the impugned order was passed on 12.08.2013, after more than three years of taking the policy. Under Section 45 of the Act, no policy of life insurance shall be called in question by an insurer, after expiry of two years from the date of the policy, on the ground that the statement made in the proposal for insurance was inaccurate or false. However, the insurer was able to show that such a statement was on material matter or suppressed facts, which it was material to disclose and that it was fraudulently made by the policy holder,

the Insurance Company is at liberty to question the same under Section 45 of the Act. The relevant portion of Section 45 of the Act is extracted hereunder:

> 'No policy of life insurance effected before the commencement of this act shall after the expiry of two years from the date of commencement of this act and no policy of life insurance effected after the coming into force of this act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer show that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder know at the time of making in that the statement was of that it suppressed facts which it was material to disclose.

10. In the instant case, the policy has been questioned by the insurer after expiry of two years. The respondents Corporation repudiated the claim of the petitioner on the ground that at the time of taking policy, the petitioner's mother has made a false statement and withheld some correct information about her health. According to the respondents, some of the answers given by the proposer in the proposal form were false and she had suffered from Gynecological problem, Menorrhagia and Hypertension before making the proposal. But, she has deliberately failed to do disclose the same. To arriving at the above conclusion, the respondents have relied upon certain medical records received by them from the CMC Hospital, Vellore, where the deceased said to have taken treatment. When the respondents repudiating the claim after expiry of two years, the insurer necessarily proved that the proposer has suppressed the material facts and made a fraudulent statement. The burden of proof is heavily on the Insurance Company to show that the proposer has suppressed the material fact and there must be satisfactory proof that the deceased was suffering from ailment. The mere fact that the deceased had taken treatment and taken medical leave, cannot lead to a presumption that she has suppressed the various diseases. As the burden of proof is very heavily on the Insurance Company, they should establish the same beyond any doubt that the deceased had suppressed the material fact.

11. But in the instant case, the Insurance Company has failed to discharge the burden on them to prove that the

deceased has suppressed the material fact. The respondents cannot repudiate the claim based on some medical reports, which they have obtained on their own from the hospital and the alleged medical leave taken by the deceased without even put it to the petitioner.

12. With the above circumstances, I am of the view that the reason stated by the respondents for repudiating the claim is not valid and hence, it is liable to be set aside.

13. Accordingly, the writ petition is allowed and the impugned order passed by the first respondent dated 12.08.2013 is set aside. The respondents are directed to pay the claim amount within a period of 12 weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vsm

To

1. The Central Office Claims
   Review Committee
   LIC of India, CRM Department
   Central Office, Yogakshema
   5th Floor Link, J.B. Road
   Mumbai - 400 021.

2. The Zonal Manager
   LIC of India, Southern Zonal Office
   LIC Building
   No.102, Anna Salai
   Chennai - 600 002.

3. The Divisional Manager
   Life Insurance Corporation of India
   Divisional Office, Jeevan Prakash
   Arcot Road, Vellore - 4.

+1 CC to Mr.S.N.Ravichandran, Advocate sr 99478
+1 CC to Mr.A.Muthuraman, Advocate sr 99476.

W.P.No.9760 of 2015

RSV(CO)
SP(13/02/2020)