IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 29.1.2019

1. **RSA No. 2465 of 2011(O&M)**

Harpreet Kaur and others …..Appellants

VERSUS

Life Insurance Corporation of India and others .....Respondents

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate for the appellants.

Mr. Prateek Mahajan, Advocate for the respondents.

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2. **RSA No. 1955 of 2011(O&M)**

LIC of India and others …..Appellants

VERSUS

Harpreet Kaur and others .....Respondents

Present: Mr. Prateek Mahajan, Advocate for the appellants.

Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate for the respondents.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J.

This order will dispose of RSA Nos.1955 and 2465 of 2011 as these have emerged out of the same judgment and decree passed by the

Additional District Judge, Fast Track Court, Patiala whereby appeal preferred by Harpreet Kaur and others, appellants in RSA No.2465 of 2011 has been partly allowed. For facility of reference, facts are taken from RSA No.2465 of 2011.

The dispute between the parties is in respect of repudiation of four policies of life purchased by Sh. Jatinder Kumar Arora (since deceased). Sh. Jatinder Kumar Arora purchased the following policies from Life Insurance Corporation of India (in short 'LIC'):-

1. Policy No.161959415 for Rs.3,00,000/- under Table 121-25 dated 28.08.2000.
2. Policy No.162189580 for Rs.3,00,000/- under Table 150-26 dated 28.05.2002.
3. Policy No.162329188 for Rs.5,00,000/- dated 28.01.2003 under Table 151-15.
4. Policy No.173256469 for Rs.10,00,000/- under Table 153-10 dated 28.12.2002.

Sh. Jatinder Kumar Arora died on 09.09.2003 at Patran leaving behind the plaintiffs as his legal heirs. However, in all the policies Ms. Harpreet Kaur, wife of the deceased was the nominee. The appellants/plaintiffs challenged repudiation of policies aforesaid on the ground of giving wrong statement regarding medical condition of Sh. Jatinder Kumar Arora. It is averred that no wrong information was ever given by the deceased at the time of taking policies and all the facts were disclosed to agents of the defendants through whom policies were taken. Sh. Jatinder Kumar Arora had two more policies No.120887739 under

Table 75-20 for Rs.1,00,000/- and No.161723143 under Table 75-20 for Rs.1,00,000/- and claim of these policies has been paid to legal heirs of the deceased. Sh. Jatinder Kumar Arora was operated in the year 1993 and thereafter he remained alive for 9 years and was enjoying good health till his death. Plaintiffs No.2 to 4 were born after 1993 and the deceased had been running his business of Sweets Shop under the name and style of Jatindra Sweets, Narwana, Road Patran and was looking after the entire business along with family affairs. On the dates when the policies were taken by the deceased, other family members also took the policies from the defendants and payment of premium was made by consolidated cheque. It is further averred that policy No.161959415 for Rs.3,00,000/- was taken on 28.08.2000 and as per law, no inquiry can be held if the death is caused beyond two years from taking the policy. They have assailed repudiation of claim being illegal, null and void, arbitrary and against provisions in law. They prayed for payment of outstanding amount of the policies with interest at the rate of 18% per annum.

The defendants/respondents filed the written statement and seriously contested claim of the plaintiffs challenging repudiation of the aforesaid policies obtained in the year 2000, 2002 and 2003 with the averments that the deceased suffered from R.H.D. (Rheumatric Heart Disease), Post M.V.R. (Post Mitral Valve Replacement) and severe Redo A.V.R. (Severe Redo Aortic Valve Regurgitation), severe left ventricular dysfunction and C.C.F. (Congestive Cardiac Failure). He had taken treatment from Batra Hospital, New Delhi in September 1993. Sh. Jatinder Kumar Arora deliberately, knowingly and with an intention to defraud the LIC concealed these material facts and gave wrong and misleading answers to the various questions while filling up the proposal form-cum-personal statement dated 17.09.2000, 05.08.2002, 06.02.2003 and 28.01.2003 before taking the aforesaid four policies, thus, wrongly and fraudulently induced LIC in accepting the bad risk. Had the deceased disclosed these material facts about his diseases, the proposal for insurance could not have been accepted and further medical reports could have been called for consideration of the said proposals.

The controversy between the parties led to framing of issues reproduced in para 7 of the judgment of trial Court.

To prove their case, one of the plaintiffs Harpreet Kaur appeared in the witness box in affirmative evidence. To rebut evidence of the plaintiffs, respondents/defendants examined G.S. Kohli, Administrative Officer (Legal) Divisional Office DW-1, Ashok Jain, Development Officer of LIC DW-2, Prem Kumar Garg DW-3, Parveen Kumar Divisional Officer, LIC DW-4, H.K. Chaudhary, Manager Legal, Divisional Office, LIC of India DW-5, Chander Parkash DW-6, Balbir Singh DW-7, Dr. Sanjiv Tandon DW-8, Dr. Mohan Lal DW-9.

The trial Court, on appreciation of rival submissions made by counsel for the parties in the light of materials on record and detailed consideration of Section 45 of the Insurance Act, 1938 (in short 'the Act'), answered issues No.1 and 2, taken up jointly, against the plaintiff and as a consequence, suit filed by the plaintiffs was ordered to be dismissed vide judgment and decree dated 05.09.2007. The Appellate Court affirmed findings of the trial Court rejecting claim of the appellants/plaintiffs with regard to repudiation of policies that fall within two years from the date of issuance to the date of death of deceased but one policy dated 28.08.2000 for Rs.3,00,000/- was held to be payable to the appellants as the same was beyond the period of three years reckoned w.e.f. 09.09.2003, the date of death of Sh. Jatinder Kumar Arora.

Counsel for the appellants, in line, with the averments raised in the plaint would argue that Sh. Jatinder Kumar Arora was operated in the year 1993 and thereafter he remained alive for 10 years and had good health till his death, therefore, medical condition of Sh. Jatinder Kumar Arora in the year 1993 or his having undergone surgery for valve replacement cannot be construed as a good and valid reason for the respondents to repudiate the policies which were obtained in the year 2002 and 2003. It is further argued that LIC examined Dr. Sanjiv Tandon DW-8 and Dr. Mohan Lal Singla DW-9 and both the doctors in their cross examination have admitted that they replied the questions given in the format after examination of the proposer. Dr. Sanjiv Tandon had also admitted that as per his report no abnormality was found in the person of Jatinder Kumar. He has further admitted that answer to question No.14 in the format is given after examination of the proposer. It is vehemently argued that as Dr. Sanjiv Tandon and Dr. Mohan Lal Singla filled in form No.300-MR after thorough examination of the proposer, Sh. Jatinder Kumar Arora cannot be attributed concealment of a material fact or misrepresentation to constitute a ground for repudiation of the policies. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Life Insurance Corporation of India Vs. Smt. Asha Goel, 2001(2) SCC 160.** Further reference has been made to judgments of this Court **Vidya Vs. Life Insurance Corporation of India and another, 2004 (3) RCR (Civil) 793** and **Superintendent Post Office, Hoshiarpur**

Division and others Vs. Charan Kaur and another, 2015(17) RCR (Civil) 159.

Counsel representing the respondents, on the contrary, has supported consistent findings recorded by the Courts that Sh. Jatinder Kumar Arora deliberately, intentionally and fraudulently concealed his heart problem and having undergone surgery in September 1993 both at the time of filling the proposal forms by agent of LIC and forms by Dr. Sanjiv Tandon and Dr. Mohan Lal Singla. It is further argued that there is no material on record to prove that Dr. Sanjiv Tandon and Dr. Mohan Lal Singla could detect Sh. Jatinder Kumar Arora having suffered from heart ailment and undergone surgery on examination of the proposer, therefore, merely because the doctors have examined the proposer would not enure to benefit of the appellants to take advantage of concealment of material facts by the deceased. It is further argued that even to the doctors, the deceased gave answers in negative with regard to his having suffered any ailment in respect of his liver, heart, brain and nervous system etc. It is argued with vehemence that the matter would have been different had Sh. Jatinder Kumar Arora disclosed the factum of his heart problem and having undergone surgery in 1993 either in the proposal forms or at the time of filling in forms by the doctors because in that event the deceased could not be blamed for failure of the agent or doctors of the LIC to take necessary steps before submitting the documents for issuance of the policies. It is further argued that the judgment in **Smt. Asha Goel's case** (supra) does not lend support to plea of the appellants but on the contrary lays down law in favour of LIC wherein the judgment of Hon'ble the Supreme Court passed way back in the year 1962, **Mithoolal Nayak Vs. Life Insurance**

Corporation of India, AIR 1962 SC 814 has been relied upon. Further reference has been made to judgment of Hon'ble the Supreme Court **Life Insurance Corporation of India Vs. Smt. G.M. Channabasemma, AIR 1991 SC 392,** judgment of the Kerala High Court **P. Sarojam Vs. L.I.C. of India, AIR 1986 Kerala 201** and judgment of the Delhi High Court **Smt. Krishna Wanti Puri Vs. The Life Insurance Corporation of India, Divisional Officer, New Delhi and another, AIR 1975 Delhi 19.**

Counsel for the respondents has submitted that the judgment and decree passed by the Appellate Court allowing claim of the appellants in respect of policy obtained in August 2000 is the result of misconstruing Section 45 of the Act, therefore, the relief given to the appellants in respect of policy of August 2000 is not sustainable.

I have heard counsel for the parties, perused the paper-book and records.

Before adverting to the submissions made by counsel for the parties, it is appropriate to examine the provisions of Section 45 of the Act, reads as follows:-

> "**45.** 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 statement made in the proposal 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 shows 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 knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose."

Hon'ble the Supreme Court in **Mithoolal Nayak's case** (supra) followed in **Smt. Asha Goel's case** (supra) has held, reads thus:-

"The three conditions for the application of the second part of Section 45 are:

(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."

Reverting to the case at hand, counsel for the appellants has not disputed factual findings recorded by the trial Court in para 34 of the judgment. A relevant extract therefrom, reads as under:-

"After going through all these proposal forms-cum-personal statements, it has become clear that the reply of the deceased Jatinder Kumar Arora regarding the questions, where he was suffering from ailment pertaining to Liver, Stomach, heart, Lungs, Kidney, brain or Nervous system? Reply of this question give by the life assured Jatinder Kumar was in negative form and further he replied to the question whether, he admitted to any hospital or nursing home for general check up observation, treatment or operation? Reply was again given in negative form."

Dr. Sanjiv Tandon DW-8 tendered into evidence his duly sworn affidavit Ex.DW8/A by way of examination in chief. A relevant extract from paras 3 to 6 of the affidavit is reproduced hereunder for ready reference:-

"3. I state on oath that on 6.2.2003, Sh. Ashok Jain Development Officer of the L.I.C. of India, with D.O. Code No.792, attached with Unit-II Branch of L.I.C., Chhoti Baradari, Patiala, came to me alongwith Sh. Jatinder Kumar Arora S/o Sh. Kasturi Lal of M/s Friends Finance Company, Opp. Police Station, Narwana Road, Patran, for his Medical Examination for a L.I.C. Policy in the sum of Rs.5 lacs.

4. I state on oath that I ascertained from said Sh. Jatinder Kumar, whether he had ever been hospitalized or was ever involved in any accident or had he undergone any Radiological or Cardiological or Pathological or any other tests and whether he was currently under any treatment, and said Sh. Jatinder Kumar Arora, replied in the negative to all the above questions and accordingly I filled in the said

answers to questions No.4(i) to 4(iv) in the Medical Examiner's Confidential Report in Form No.300 MR.

5. I state on oath that thereafter I conducted the Medical Examination of said Sh. Jatinder Kumar Arora and measured his height and weight and dimensions of chest and pulse etc. and after examining him thoroughly on the basis of the answers given by him, I filled in the Form No.300 MR and completed it and after that I read over the questions and answers as contained in that Form to Sh. Jatinder Kumar Arora, who after accepting the same to be correct, signed it in my presence on 6.2.2003, after which I also put my stamp on it and signed the said Form, which is Ex.D24.

6. I state on oath that I also read out the answers given in the Proposal Form No.300 filled in by Sh. Ashok Jain Development Officer, which has been signed both by Sh. Jatinder Kumar Arora and by Sh. Ashok Jain and after admitting the answers recorded in said Form to be correct, Sh. Jatinder Kumar Arora, signed the said Form in my presence also and thereafter I had signed the said Form and put my Stamp under my signatures and handed over the papers to Sh. Ashok Jain."

In his cross examination, he has admitted that answer to question No.14 was given after examination of the proposer but volunteered that they depend on the history given by the proposer. He denied the suggestion that he had falsely stated in his affidavit that form

No.300-MR was filled in and the information was given to him by Sh. Jatinder Kumar Arora. A statement to the similar effect has been made by Dr. Mohan Lal Singla DW-9 with regard to examination of Jatinder Kumar Arora on 05.08.2002 in order to fill in the form No.300-MR Ex.D25.

Counsel for the appellants has failed to point out any tangible facts elicited in cross examination of Dr. Sanjiv Tandon and Dr. Mohan Lal Singla in order to convince this Court that the doctors have not relied upon information given by the proposer while filling in form No.300-MR, though the doctor also conducted medical examination of Sh. Jatinder Kumar Arora. No such fact has been brought on record either in the testimony of Harpreet Kaur PW-1 or cross examination of the doctors of LIC that any mark/scar in regard to operation of Jatinder Kumar Arora was present on his body in order to give an inkling much less information to the doctor that the proposer had undergone some surgery, thus, further investigation was required before completing form No.300-MR which was admittedly signed by the proposer as well as the doctor who had affixed his stamp on the same. In form No.300-MR Ex.D24 submitted by Dr. Sanjiv Tandon, the proposer in reply to questions in para 4 has given answers in the negative. A relevant extract therefrom reads as follows:-

4. Ascertain from the life to be assured whether at any time in the past he/she	
i) has been hospitalized?	i. No.
ii) was involved in an accident?	ii. No.
iii) has undergone any Radiological,	iii. No

Cardiological, Pathological or any other tests?	
iv) Is currently under any treatment?	iv. No

In para 14 of this form, the doctor has given the answers in the negative and the same is extracted hereunder for ready reference:-

14. Is there any evidence of operation? If so, state	
a) the year of operation	a) No.
b) Its nature and cause	b) No.
c) Its location, size and condition of scar	c) No.
d) degree of impairment, if any	d) No.

Above the declaration that the doctor is not related to the proposer or the Agent / Development Officer, the certificate reads as under:-

> "I hereby certify that I have, this day, examined the above life to be assured personally, in private and recorded in my own hand (i) the true and correct findings (ii) the answers to Question No.4, as ascertained from the person examined."

Similar is the status in respect of document Ex.D25 prepared by Dr. Mohan Lal Singla on 05.08.2002. The appellants have not disputed signatures of Sh. Jatinder Kumar Arora on the documents Ex.D24 and D25.

This apart, Harpreet Kaur, widow of the deceased had admitted that proposal forms of the policies in question were filled at their house. She had further stated that proposal form dated 28.03.1996 Ex.D1 was filled by the agent after telling what had been written in the same. Same is her reply in respect of proposal form dated 22.12.1999 Ex.D2. She has also answered in the same manner with regard to proposal forms pertaining to the policies in question issued in the year 2000, 2002 and 2003. She has further admitted that her husband had been admitted in Batra Hospital, New Delhi but expressed her ignorance if he had been suffering from any heart disease. She has not specifically denied, if her husband had not told about said diseases from which he suffered to the doctors of LIC at the time of medical examination before taking the policies.

Taking into consideration the materials on record, it becomes an established position of the case that the deceased had undergone valve replacement surgery in the year 1993 when he remained admitted in Batra Hospital, Delhi but he concealed this material fact at the time of filling in the proposal forms as well as examination by the doctors of LIC. The deceased had undergone by-pass surgery in August 2003 and died on 09.09.2003 at a young age of about 35 years. When the facts and circumstances of the present case are examined in the light of judgments of Hon'ble the Supreme Court in **Mithoolal Nayak's case** (supra) and **Smt. Asha Goel's case** (supra), prescribing the three conditions for applying second part of Section 45 of the Act, I find myself unable to subscribe to contentions made by counsel for the appellants that findings recorded by the Courts with regard to repudiation of claim in respect of policies obtained in the year 2002 and 2003 are illegal and liable to be set aside. Rather the deceased is guilty of making false statement on a material matter and suppressing fact which was material to disclose and suppression of facts can safely be held to be fraudulent which was known to the policy holder at the time of making the statement that it was false and that he suppressed the facts which were material to disclose. In this view of the matter, all the four policies in question were rightly repudiated by LIC and as such findings of the trial Court dismissing suit of the appellants/plaintiffs in totality are liable to be affirmed.

The Appellate Court allowed the appeal filed by the appellants in respect of policy issued on 28.08.2000. The Court has held that no investigation could be conducted regarding claim of insurance policy Ex.D8 which commenced on 28.08.2000 as per provisions of Section 45 of the Act, therefore, claim of the plaintiffs has wrongly been repudiated in respect of the said policy. This finding of the Appellate Court is patently erroneous and cannot be allowed to sustain. As a matter of fact, second part of Section 45 of the Act allows repudiation of claim even after expiry of two years from the date on which it was effected, if the three conditions set out by Hon'ble the Supreme Court in **Mithoolal Nayak's case** (supra), reproduced hereinbefore, are satisfied. As in the case at hand, the aforesaid three conditions are satisfied as discussed above, LIC was competent to repudiate claim in respect of all four policies after expiry of period of two years by invoking second part of Section 45. In this view of the matter, findings of the Appellate Court allowing claim of the appellants in respect of policy that commenced on 28.08.2000 are perverse and accordingly set aside.

In view of what has been discussed hereinbefore, finding no merit, RSA No.2465 of 2011 is ordered to be dismissed with costs. On the other hand, RSA No.1955 of 2011 is allowed with costs. As a natural corollary, suit filed by the appellants/plaintiffs is ordered to be dismissed with costs throughout.

JANUARY 29, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no