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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA
and
THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

A.S.No.107 of 2017

1.Life Insurance Corporation of India
represented by
Branch Manager
(Erode South),
Erode-638 154.

2.Life Insurance Corporation of India
represented by its
Divisional Manager (claims)
Trichy Road,
Coimbatore-641 018.

3.Life Insurance Corporation of India
represented by its
Zonal Manager (Marketing C.S/CRC) Department
South Zonal Office,
Chennai-600 002.

... Appellants/Defendants

..vs..

V.S.Senthilkumar

... Respondent/Plaintiff

This Appeal is filed under Section 96 of Code of Civil Procedure, 1908, against the judgment and decree dated 11.09.2015 made in O.S.No.9 of 2012 on the file of the Principal District Judge, Erode.

For Appellants : Mr.M.B.Raghavan

For Respondent : Mr.G.Vivekanand

JUDGMENT

(Judgment of the Court was delivered by G.CHANDRASEKHARAN, J.,)

This Appeal is filed against the judgment and decree dated 11.09.2015 made in O.S.No.9 of 2012 on the file of the Principal District Judge, Erode.



2. The respondent, as the plaintiff, filed a suit for recovery of a sum of Rs.29,54,000/- with subsequent interest and costs from the appellants/defendants.

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3. The case of the respondent/plaintiff, in brief, is as follows:-

The respondent's father V.M.Shanmugam took two life insurance policies for Rs.30,000/- in policy No.761799305 dated 15.11.1997 and for Rs.5,70,000/- in policy No.761976635 dated 28.01.1998. He was paying the premium till his death. The respondent is a nominee under both the policies. The said V.M.Shanmugam died in a road accident on 28.08.1998. A case was registered and taken cognizance in S.T.C.No. 693/1998 against the driver of the vehicle and the driver was punished by learned Judicial Magistrate, Kodumidi. As a nominee, the respondent is entitled to receive double the amount of policy amounts. The respondent raised claim for the said amounts and that was acknowledged by the appellants through their acknowledgment dated 08.09.1998. Subsequently, the appellants refused to settle the policy amounts on untenable grounds like, variation in handwriting of V.M.Shanmugam, over statement of income e.t.c. They sent a communication dated 18.10.2001 stating that the claim made by the respondent is rejected. Respondent's father V.M.Shanmugam had disclosed all the necessary material facts at the time of taking the LIC policies. The respondent sent a letter dated 08.01.2003 through his Advocate to the second appellant and that was replied by the second appellant on 13.01.2003 along with the annexure letter dated 05.02.2002. Letter dated 05.02.2002 reads that Review Committee has rejected the respondent's claim. However, it is stated in the letter dated 13.01.2003 that steps are being taken for placing the respondent's claim before the Review Committee. The appellants have taken contrary stand with regard to placing the matter before the Review Committee. Finally, the respondent sent a letter to the third appellant on 07.04.2003 with regard to his claim and that was not replied. The respondent filed a petition before the District Consumer Forum, Erode demanding damages for deficiency of service and that was allowed. The appellants took the matter before the State Consumer Forum in F.A.No.641 of 2006. The State Consumer Forum set aside the order of District Consumer Forum with a liberty to respondent to agitate the matter before the Civil Court. Thus, this case came to be filed.

4. The appellants resisted the claim of the respondent alleging that the deceased V.M.Shanmugam was an Agriculturist, physically cultivating a small piece of land. The appellants suspected genuineness of the claims made by the respondent, because of the reason that V.M.Shanmugam died within one year from the date of taking the policies. The investigation



conducted by the appellants unearthed certain facts which led to the repudiation of the complaint. During the course of investigation, it was found that the signatures of V.M.Shanmugam found in the proposals were forged. The appellants suspect the cause of death of V.M.Shanmugam. The income declared by V.M.Shanmugam in the policies and the income stated in the Motor Accident Claim Petition contradict with each other. Fraud vitiates all acts and the Corporation has been deceived by the fraudster. The Corporation denies that the deceased took policies for himself. Therefore, appellants repudiated the claim of the respondent on 18.10.2001.

5. On the basis of the pleadings, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for recovery of amount as prayed for ?
2. Whether the plaintiff is entitled to claim interest as prayed for ?
3. Whether the repudiation of the claim by the defendants is not proper ?
4. To what relief ?

6. During the course of trial, PW.1 to PW.3 were examined on the side of the respondent and Exs.A1 to A19 were marked and DW.1 was examined on the side of the appellants and Exs.B1 to B12 were marked. On considering the oral and documentary evidence, the learned trial Judge accepted the case of the respondent and decreed the suit. Against the said judgment, the appellants filed this Appeal.

7. Learned counsel for the appellants submitted that the first policy for Rs.30,000/- was taken on 15.11.1997 and the second policy for Rs.5,70,000/- was taken on 28.01.1998 by the deceased V.M.Shanmugam. He died within one year from the date of taking the first policy under suspicious circumstance on 28.08.1998. Though the cause of death is said to be a road accident, the appellants suspected the alleged case of road accident. During the course of investigation, it was further found that there is discrepancy in stating the annual income of the deceased V.M.Shanmugam. He declared his annual income as Rs.22,000/- when he took the first policy for Rs.30,000/- on 15.11.1997. When he took the second policy for Rs.5,70,000/- on 28.01.1998, he declared his annual income as Rs.1,25,000/-. When the respondent filed Motor Accident Claim Petition in MCOP No.1080 of 1998, the monthly income of the deceased V.M.Shanmugam was shown as Rs.3,000/- per month. Thus, it is clear that there is overstatement of annual income when the deceased V.M.Shanmugam took the second policy. Further, it is seen from the handwriting expert's report (Ex.B5) that the signatures of V.M.Shanmugam found in his proposal forms differ



from his admitted signatures. Therefore, the suspicion that V.M.Shanmugam has not submitted the proposal forms got strengthened. Overstatement of income amounts to suppression of material facts. It can be presumed that the difference between admitted and disputed signatures of V.M.Shanmugam is nothing but forgery. Therefore, a fraudster cannot be permitted to enrich himself. That apart, there is suspicion with regard to the cause of death of V.M.Shanmugam. However, without considering these important aspects, learned trial Judge has wrongly decreed the suit. So saying, learned counsel for the appellants prayed for setting aside the judgment of the trial Court and for the dismissal of the Appeal. In support of his argument that the appellants are entitled to repudiate claim if there is suppression of material facts, he relied on the following judgments:-

(i) (2009) 8 Supreme Court Cases 316 (Satwant Kaur Sandhu .v. New India Assurance Company Limited)

(ii) (2019) 18 Supreme Court Cases 209 (Oriental Insurance Company Limited .v. Mahendra Construction);

(iii) (2019) 6 Supreme Court Cases 175 (Reliance Life Insurance Company Limited and another ..vs.. Rekhaben Nareshbhai Rathod);

(iv) 1986 ACJ 656 (A.P.Venkatachalam .vs. Life Insurance Corporation of India by its Divisional Manager, Coimbatore); and

(v) (2008) 1 Supreme Court Cases 321 (P.C.Chacko and another .v. Chairman, Life Insurance Corporation of India and others)

8. In response to the submissions made by learned counsel for the appellants, learned counsel for the respondent submitted that the allegations made by the appellants with regard to the cause of death of deceased V.M.Shanmugam is made only from air without any single piece of evidence to subscribe or support this allegation. It is seen from the evidence of PW.2 that he had personally saw the deceased V.M.Shanmugam signing both proposal forms. When there is categorical evidence with regard to V.M.Shanmugam signing the proposal forms and on the basis of the proposal forms, policies had been issued, it cannot be decided on the basis of handwriting expert's report that there is difference between the admitted and disputed signatures of V.M.Shanmugam. Moreover, the handwriting expert was not examined on the side of appellants, denying an opportunity to the respondent to cross-examine the expert and unearth the truth. Further, it is seen from the evidence of PW.2 that necessary material particulars had been disclosed in the proposal forms, especially, subscription to the first policy was specifically mentioned in the proposal for second policy. Therefore, it cannot be said that there was suppression of material facts by deceased V.M.Shanmugam. The monthly income



mentioned in MCOP.No. 1080 of 1998 was the information provided by the respondent. He may not have known about the income of the deceased V.M.Shanmugam and the income details provided by him in the proposal forms. As per section 45 of Insurance Act, the Insurance Company can repudiate the claim only within two years from the date of issuance of policy. But, in the case before hand, Insurance Company has not repudiated the policies within the period of two years of giving effect to the policies. Considering all these aspects, learned trial Judge has rightly decreed the suit and therefore, learned counsel for respondent prayed for the dismissal of this appeal.

9. Points for consideration in this appeal are:-

1. Whether the finding of the trial Court that the appellants have failed to prove the allegations made against the respondent and therefore they cannot repudiate the claim, is correct ?
2. Whether the judgment and decree of the trial Court is liable to be interfered ?
3. To what relief, the appellants are entitled ?

10. Point Nos. 1 to 3:-

From the case set out by the parties, it is clear that the appellants repudiated the claim on the basis that (1) there is suspicion with regard to the cause of death of deceased V.M.Shanmugam (2) there is forgery of the signature in the proposal forms submitted by the deceased V.M.Shanmugam and (3) the deceased had overstated his income. With regard to the suspicion surrounding the death of deceased V.M.Shanmugam, it is the case of the respondent that he died in a road accident. The death certificate and postmortem certificate have been produced as Exs.A1 and A3 respectively. Admittedly, the respondent filed MCOP No.1080 of 1998 for claiming compensation and was awarded a sum of Rs.4,30,000/- as compensation. Though the appellants claimed that the deceased V.M.Shanmugam did not die in road accident and his death was under suspicious circumstance, there is no steps taken by the appellants to unearth the truth with regard to the cause of death of V.M.Shanmugam. The appellants have not filed any complaint before the police seeking investigation with regard to the cause of death of V.M.Shanmugam. Admittedly, there is no iota of any evidence to support the case of appellants that there is a suspicious circumstance surrounding the death of V.M.Shanmugam. It is clear that V.M.Shanmugam died in a road accident and a case was registered and taken cognizance in S.T.C No.693 of 1998. The driver was found guilty under Section 279 and 304 (A) and 132(1) (a) IPC r/w.187 of Motor Vehicles Act and convicted and sentenced to pay the fine as seen from Ex.A4-Judgment. Therefore, this Court has to necessarily reject the claim of the appellants that the deceased V.M.Shanmugam did not die in a road



accident, but he died under suspicious circumstance.

11. With regard to non-disclosure of material particulars, it is seen from the evidence of PW.2, who was an insurance agent and through whom, the deceased V.M.Shanmugam took two insurance policies for Rs.30,000/- and Rs.5,70,000/- respectively. He deposed clearly and candidly that he had personally seen the deceased V.M.Shanmugam signing in Ex.B1 and B2 proposal forms. Not only that he stated that he took the deceased V.M.Shanmugam to the doctor approved by Life Insurance Corporation-Dr.S.Chandra Chettiar for his medical examination. The medical examination certificate was produced as Ex.A16. When the second policy was taken, one Dr.Gurumurthy conducted medical examination on deceased V.M.Shanmugam and gave Ex.A17 certificate. It is his further evidence that both the policies had been issued to the deceased V.M.Shanmugam accepting the income stated in the proposal forms. The perusal of Ex.B2-proposal form shows that the subscription to the earlier policy for Rs.30,000/- was mentioned. Therefore, it is clear from the evidence of PW.2 and Exs.B1 and B2 that the deceased V.M.Shanmugam alone had personally signed in these proposal forms and mentioned his annual income. As rightly pointed out by the learned counsel for the respondent, the handwriting expert who gave Ex.B5 report was not examined by the appellants to prove the report. Only if the handwriting expert is examined and the other side is given an opportunity to cross examine the expert, the document can be said to have been proved to the satisfaction of the Court. Especially when PW.2 clearly gave evidence that he saw the deceased V.M.Shanmugam signing in the proposal forms, the examination of handwriting expert becomes all the more necessary. Unfortunately, the handwriting expert was not examined. It has been held in the case reported in AIR 1985 All 133 (Balakrishna Das .v. Radha Devi) that an expert has to state his opinion in the Court and his examination and cross examination is necessary like any other witness. Therefore, no reliance can be placed on Ex.B5 report. There is nothing to support the case of the appellants that Ex.B1 and B2-proposal forms had not been submitted by the deceased V.M.Shanmugam and they were forged documents and this case of the appellants is rejected.

12. True it is that annual income of the deceased V.M.Shanmugam was given as Rs.22,000/- in Ex.B1-proposal form and it was given as Rs.1,25,000/- in Ex.B2-proposal form, within a period of two months. However, what matters also is the sum assured. In the first proposal, the sum assured was Rs.30,000/- and in the second proposal, the sum assured was Rs.5,70,000/-. In the first proposal, V.M.Shanmugam's occupation was shown only as agriculture and in the second proposal, his occupation was shown as agriculture, landlord and money lender. The appellants



claim that the deceased V.M.Shanmugam owned only a plot of land. There is no material produced on either side with regard to his occupation and income. Admittedly, in the petition filed for claiming compensation under Motor Vehicles Act, ie., in Ex.B8, the monthly income of deceased V.M.Shanmugam was given as Rs.3,000/- per month. However, this information was not provided by V.M.Shanmugam, but was provided by the respondent. Therefore, the income given in Ex.B8 cannot be taken for consideration to decide the issue whether there is overstatement of income. In the absence of any concrete materials with regard to the income of the deceased V.M.Shanmugam, it cannot be decided with certainty whether there was any overstatement or understatement of income by the deceased V.M.Shanmugam.

13. Assuming that there is overstatement of income, the question now arises for consideration is whether it amounts to suppression of material fact, which entitles the Insurance Company to repudiate the contract. When dealing with the definition of the term "material fact" and the consequences of suppression of material facts, it has been held in:-

(1) (2009) 8 Supreme Court Cases 316 (Satwant Kaur Sandhu .v. New India Assurance Company Limited) that

"22. The term "material fact" is not defined in the Act and, therefore, it has been understood and explained by the courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be 'material'. "

(2) (2019) 18 Supreme Court Cases 209 (Oriental Insurance Company Limited .v. Mahendra Construction), wherein it has been held as follows:-

" 12. In Satwant Kaur Sandhu v New India Assurance Co. Ltd⁶, a two-judge Bench of this Court held that under a contract of insurance, the insured is under a "solemn obligation" to make a true and full disclosure of information asked for in the proposal form:

.....

"25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to



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emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance."

(3) (2019) 6 Supreme Court Cases 175 (Reliance Life Insurance Company Limited and another ..vs.. Rekhaben Nareshbhai Rathod), wherein it has been held as follows:-

"25 The expression -material? in the context of an insurance policy can be defined as any contingency or event that may have an impact upon the risk appetite or willingness of the insurer to provide insurance cover. In MacGillivray on Insurance Law¹⁸ it is observed thus:

The opinion of the particular assured as to the materiality of a fact will not as a rule be considered, because it follows from the accepted test of materiality that the question is whether a prudent insurer would have considered that any particular circumstance was a material fact and not whether the assured believed it so ..."

(4) 1986 ACJ 656 (A.P.Venkatachalam .vs. Life Insurance Corporation of India by its Divisional Manager, Coimbatore), wherein it has been held as follows:-

38. In the instant case before us, even prior to the proposal, the deceased Nachiammal was suffering from hypertension and renal failure. She had not only undergone investigation, but, also taken treatment as an in-patient in the hospital. As pointed out already, these diseases would certainly affect the longevity of the human life and would have a material bearing on the insurability or otherwise of the proposer and the suppression of the same must, in the circumstances, be taken as fraudulent suppression with full knowledge thereof. "

(5) (2008) 1 Supreme Court Cases 321 (P.C.Chacko and another .v. Chairman, Life Insurance Corporation of India and others), wherein it has been held as under:-

"The insured had undergone an operation for adenoma thyroid. But, while filling up the application form for obtaining the policy, he



appellants mainly deal with the suppression of material facts like failing to mention the previous policy, previous illness, previous medical treatment e.t.c. That is not the case here. Therefore, these judgments will not apply to the facts and circumstances of this case.

16. Considering the totality of the facts and circumstances in this case and the evidence adduced on both the sides, it is clear that the deceased V.M.Shanmugam took two policies and after his death, respondent's claim was unjustly denied by the appellants. Though the appellants have set out suspicion with regard to the cause of death of deceased V.M.Shanmugam, forgery of proposal forms, overstatement of income, none of these grounds have been satisfactorily proved before the Court. Therefore, this Court concurs with the well reasoned judgment of the learned trial Judge and hereby confirms the judgment and decree of the learned trial Court in O.S.No.9 of 2012 dated 11.09.2015 and this appeal is dismissed with costs of the respondent. The points are answered as above.

Sd/-

Assistant Registrar(Lok Adalat)

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Sub Assistant Registrar

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To

1. The Principal District Judge, Erode.

A.S.No.107 of 2017

RSI (CO)
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