

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.98 of 2017

B.M. Shriram Life Insurance Petitioners
Co. Ltd. & Anr.

-versus-

Suni Pahal & Anr. Opposite Parties

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
20.12.2022

Order No

- 09.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. G.P. Dutta, learned counsel for the Petitioners and Mr. Sangram Rath, learned counsel appearing for O.P. No. 1.
3. The present writ petition has been filed challenging the award dtd.27.10.2016 passed in PLA Case No. 364 of 2015 by the Permanent Lok Adalat (PUS), Ganjam at Berhampur. Vide the said award learned Lok Adalat directed the Petitioners herein to pay the sum assured i.e. Rs.3,00,000/- and other benefits under Policy No. NN141400194595 with interest @ 6% per annum from the date of death till the date of actual payment.
4. Learned counsel for the Petitioners contended that since the Opp. Party while taking the policy has suppressed material facts, learned Lok Adalat should not have entertained the claim and pass the order in question.
5. Mr. S. Rath, learned counsel appearing for O.P. No. 1 on the other hand submitted that even though the death occurred within 2

years of the taking of the policy, but in view of the decision of the Hon'ble Apex Court reported in the case of ***Life Insurance Corporation of India & Ors. Vs. Smt. Asha Goel & Anr. (2001 AIR SCW 161)***, the claim of the Petitioners should not have been refused by the Opp. Party and learned Lok Adalat has passed the order in accordance with law. Hon'ble Apex Court in Para 12 to 16 of the aforesaid decision has held as follows:-

“12. Coming to the question of scope of repudiation of claim of the insured or nominee by the Corporation, the provisions of Section 45 of the Insurance Act is of relevance in the matter. The section provides, inter alia, that 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 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. The proviso which deals with proof of age of the insured is not relevant for the purpose of the present proceeding. On a fair reading of the section it is clear that it is restrictive in nature. It lays down three conditions for applicability of the second part of the section namely: -(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. Mere inaccuracy or falsity in respect of some recitals or items in the proposal is not sufficient. The burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so there is no question of the policy being avoided on ground of misstatement of facts. The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any

material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.

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13. In this connection we may notice the decision of this Court in Mithoolal Nayak v. LIC of India, AIR 1962 SC 814 in which the position of law was stated 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.

Where the policy-holder, who had been treated, a few months before he submitted a proposal for the insurance of his life with the insurance company by a physician of repute for certain serious ailments as anaemia, shortness of breath and asthma, not only failed to disclose in his answers to the questions put to him by the insurance company that he suffered from those ailments but he made a false statement to the effect that he had not been treated by any doctor for any such serious ailment:

Held :

(i) that, judged by the standard laid down in Section 17, Contract Act, the policy-holder was clearly guilty of a fraudulent suppression of material facts when he made his statements, which he must have known were deliberately false and hence, the policy issued to him relying on those statements was vitiated.

(ii) The principle underlying the Explanation to Section 19 of the Contract Act is that a false representation, whether fraudulent or innocent, is irrelevant if it has not induced the party to whom it is made to act upon it by entering into a contract. That principle did not apply in the instant case. The terms of the policy made it clear that the averments made as to the state of health of the insured in the proposal form and the

personal statement were the basis of the contract between the parties and the circumstance that the policy-holder had taken pains to falsify or conceal that he had been treated for a serious ailment by a physician only a few months before the policy was taken showed that the falsification or concealment had an important bearing in obtaining the other party's consent. A man who has so acted cannot afterwards turn round and say, 'it could have made no difference if you had known the truth'. In the circumstances no advantage could be taken of the Explanation to Section 19 of the Contract Act."

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14. This decision was relied upon in LIC of India v. G.M. Channabasamma, (1991) 1 SCC 357 in which the following observations were made: (Para 7 of AIR):

"... It is well settled that a contract of insurance is contract uberrima fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted. Section 45 of the Act has made special provisions for a life insurance policy if it is called in question by the insurer after the expiry of two years from the date on which it was effected. Having regard to the facts of the present case, learned counsel for the parties have rightly stated that this distinction is not material in the present appeal. If the allegations of fact made on behalf of the appellant Company are found to be correct, all the three conditions mentioned in the section and discussed in Mithoolal Nayak v. LIC of India [AIR 1962 SC 814] must be held to have been satisfied. We must, therefore, proceed to examine the evidence led by the parties in the case."

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15. Life Insurance Corporation was created by the Life Insurance Corporation Act, 1956 with a view to provide for nationalisation of life insurance business in India by transferring all such business to a corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. The said Act contains various provisions regarding establishment of Life Insurance Corporation of India; the functions of the Corporation, the transfer of existing life insurance business to the Corporation, the management of the

establishment of the Corporation, the finance, accounts and audit of the Corporation and certain other related matters. Section 30 of the Act provides that except to the extent otherwise expressly provided in this Act, on and from the appointed day the Corporation shall have the exclusive privilege of carrying on life insurance business in India; and on and from the said day any certificate of registration under the Insurance Act held by any insurer immediately before the said day shall cease to have effect insofar as it authorises him to carry on life insurance business in India.

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16. In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policy-holders in particular, look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner."

6. Taking into account the view expressed by the Hon'ble Apex Court, this Court while setting aside the impugned award, directs the Petitioners to take a fresh decision on the claim raised by the O.P. No. 1. While taking such a decision the view expressed by the Hon'ble Apex Court in Para 16 of the aforesaid Judgment shall be taken note of. The Petitioners are directed to take a fresh decision within a period of two (2) months from the date of receipt of this order and communicate the result thereof to the Opp. Party No. 1.

7. The writ petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha