IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>WP(C) No.3252 of 2016</u>

(Through Hybrid mode)

Jollyrani Mohapatra .... ***Petitioner***

-versus-

LIC of India, Mumbai and others .... ***Opposite Parties***

Advocates appeared in this case :

For Petitioner : Mr. S. K. Singh, Advocate

For Opposite Parties : Mr. S. P. Panda, Advocate

CORAM: JUSTICE ARINDAM SINHA

<u>JUDGMENT</u>

11.10.2022

1. Mr. Singh, learned advocate appears on behalf of petitioner and submits, his client is nominee under four life insurance policies taken by her nephew, since deceased. All four policies were taken from opposite party no.1 (LIC of India). Particulars of the policies are given below:-

(i) Policy nos.570631410 and 570632038, both dated 28th July, 2001;

(ii) Policy no.570856771 dated 11th February, 2002; and

(iii) Policy no.571151649 dated 28th June, 2002.

2. He submits, long thereafter on 27th July, 2005, the Deceased Life Assured (DLA) met with motor accident. On 30th July, 2005 the DLA succumbed to the injuries. Opposite party no.1 rejected claims on the policies on 9th October, 2007. Impugned is the rejection. He points out therefrom, basis of the repudiation was calling into question, the policies. It could not have been done as barred by section 45 in Insurance Act, 1938. There was complaint made at instance of opposite party no.1, which resulted in investigation by Central Bureau of Investigation (CBI) and a criminal case. Petitioner was accused no.4. By judgment dated 27th September, 2014, the Special Judge, CBI Court acquitted all the accused. On query from Court he submits, charges against his client were under sections 120-B/420/511 IPC.

3. Mr. Panda, learned advocate appears on behalf of the insurance company. He submits, there was fraud practiced. There was misrepresentation. The DLA was mentally retarded. The school certificate and the income certificate submitted were false. Answers to questions in the proposal forms were also false. In the circumstances the repudiation was duly made as covering claims under all four policies.

4. On query from Court he submits, the criminal case before the Special Judge, CBI Court was the only adjudication on the charges brought against his client's officials as well as petitioner. No civil proceeding was initiated on allegation of fraud. On further query from Court he submits, prior to the repudiation, his client had not called into question the policies.

5. Fraud stands defined in section 17 of Contract Act, 1872. The definition finds place in explanation I under section 45 in the Act of 1938. Sub-section (2) under section 45 is reproduced below.

> *"(2) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:*
>
> *Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based."*

Court has ascertained that the policies were not called into question on the ground of fraud under above provision.

6. Section 120-B in Indian Penal Code is criminal conspiracy to commit an offence, section 420 is regarding, inter alia, cheating and thereby dishonestly inducing to deliver property and section 511 is attempting to commit offences punishable as provided thereunder. These charges were subject matter of the criminal case dealt with by said judgment dated 27th September, 2014. Paragraph-22 from the judgment is extracted and reproduced below.

> *"In ultimate appraisal of the totality of the evidence on record I am driven to hold that the prosecution has failed to prove its case against the accused beyond all reasonable doubt.* ***I, therefore, find all the accused persons not guilty of the offences under Sections 120(B)/420/511 of the IPC*** *and accused Raj Kishore Samal and Pitabas Sahoo not guilty of the offence under Section 13(2) read with Sec. 13(1)(d) of the P.C. Act, 1988 and acquit them under Sections 248(1) Cr.P.C. The bail bonds stand cancelled.*
>
> *The seized documents be returned from whom seized and the zimanama, if any, be cancelled four months after the appeal period is over, if no appeal is preferred and in the event of an appeal subject to order of the Hon'ble Appellate Court."*
>
> (emphasis supplied)

On query from Court Mr. Panda submits, there was no appeal against the judgment.

7. Court is convinced that opposite party no.1 could not have called into question any of the policies by impugned repudiation. Sub-section (1) in section 45 in the Act of 1938 is clear in mandating that after three years no question whatsoever can be raised. Sub-section (2) allows a policy to be questioned on the ground of fraud, which may be after three years from date of issuance of the policy, in event said period stands extended by date of commencement of risk or revival or rider to the policy. There was no extension of the three year period on the policies by commencement of risk or revival or rider to them.

8. Impugned repudiation is set aside and quashed. Opposite party no.1 will forthwith pay on the policies. In event payment is not made by 31st October, 2022, the aggregate amount will carry interest at the rate of 5% per annum simple calculated from 22nd February, 2016 (date of presentation of the writ petition) till date of payment.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

RKS