

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.10660 of 2012

Brajendra Bhusan Das

.... ***Petitioner***
Mr. A.K. Dalai, Advocate

-Versus-

***Insurance Ombudsman,
Bhubaneswar and another***

.... ***Opposite Parties***
Mr. B.M. Pattanaik, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
11.07.2022

Order No.

R.K. Pattanaik, J

03. 1. Instant writ petition under Article(s) 226 and 227 of the Constitution of India, 1950 has been filed by the Petitioner for quashing of the rejection of the insurance claim by the insurer, namely, HDFC Standard Life Insurance Co. Ltd. (OP No.2) and intimation thereof by letter dated 17th May, 2010 (Annexure-2); the decision of the Grievance Committee informed by letter dated 2nd July, 2010 (Anenxure-3); and the order of the Insurance Ombudsman (OP No.1) dated 4th October, 2011 (Annexure-1) in Complaint No.21-005-1343 on the grounds *inter alia* that the same is not sustainable in law, inasmuch as, there has been no suppression of any material fact by the insured regarding her medical condition while applying for the insurance policy.

2. The Petitioner's wife was issued with a life insurance policy on payment of annual premium of Rs.20,000/- for a sum assured of Rs.1,00,000/- towards death benefit acceptance of which was intimated by OP No.2 to her by letter dated 2nd September, 2008 under Annexure-4, however, the insurer, after the death of the insured, declined to honour the insurance claim on the ground of suppression of fact that she was suffering from diabetes and was receiving regular treatment prior to the issuance of the policy. Aggrieved by the rejection and informed under Annexure-2, the Petitioner approached the Grievance Committee but the same was rejected, whereafter, a complaint under Rule 12(1)(b) of the Redressal of Public Grievances Rules, 1998 (in short 'the Rules') was filed before OP No.1 but the same yielded no result. Thereafter, the Petitioner approached this Court for quashing of Annexures- 1,2&3 with a direction to OP No.2 to pay the sum assured with interest and compensation.

3. Heard Mr. A.K.Dalai, learned counsel for the Petitioner and Mr. B.M.Pattanaik, learned counsel for O.P.No.2.

4. Mr. Dalai in support of the claim of the Petitioner contends that OP No.1 failed to consider the grievance fairly and equitably in accordance with the provisions of the Rules. It is contended that as per Rule 16(3) of the Rules, OP No.1 was required to pass an award within the stipulated period of three months but in the present case, it came into being thereafter and that apart, there should have been a nil award in view of Rule 18 thereof. It is further urged by Mr. Dalai that there was no deliberate concealment of material fact or any fraud was played upon the

insurer which rejected the claim belatedly in violation of Section 45 of the Insurance Act, 1938 (hereinafter referred to as 'the Act'). Principally on the above grounds, Mr. Dalai would contend that Annexures- 1,2&3 cannot be sustained in law and therefore, liable to be quashed with a consequential direction to OP No.2 to release the assured amount with interest besides compensation.

5. On the other hand, OP No.2 justified the impugned decision under Annexure-1 which upheld the rejection of insurance (Annexure-2) and also the decision of the Grievance Committee intimated vide Annexure-3 by contending that a material fact as to the medical condition of the deceased insured was suppressed before obtaining the policy dated 26th August, 2008.

6. The Petitioner's Counsel Mr. Dalai while espousing the cause of the deceased insured cited a decision of the Supreme Court in the case of ***Manmohan Nanda v. United India Assurance Co. Ltd. & another*** in Civil Appeal No. 8386 of 2015 decided on 6th December, 2021. Apart from the above, Mr. Dalai referred to an earlier decision of the Apex Court in ***Life Insurance Corporation of India v. Smt. G.M.Channabasamma (1991) 1 SCC 357*** besides the following judgments, such as, ***Life Insurance Corporation of India v. Narmada Agarwalla and others AIR 1993 Orissa 103*** and ***Life Insurance Corporation of India v. Ambika Prasad Pandey AIR 1999 MP 13***. That apart, the decisions in ***LIC and others v. Dr.P.S.Agarwal*** (decided on 25th October, 2004, ***LIC of India v. Jasbir Singh*** (decided on 31st January, 2003) and ***M/s. United India Insurance Company Ltd.***

v. Gurdeep Singh Oberoi 1999 (2) CPR 9 (NC) of the National Consumer Disputes Redressal Commission was placed reliance on by Mr. Dalai in support of the case of the Petitioner.

7. As per Rule 16 (3) of the Rules, the Ombudsman is to pass an award within three months from the date of receipt of the complaint, if the claim is not settled by agreement under Rule 15 thereof. In fact, as per Rule 15 of the Rules when the complaint is settled through mediation of the Ombudsman it is followed by a recommendation and if the same is accepted by the complainant, a settlement in terms of the recommendation shall be made in full and final settlement of the claim which would have to be then sent to the Insurance Company. If the complaint is not settled by agreement, the Ombudsman shall pass an award as per Rule 16 of the Rules. In instant case OP No.1 dismissed the complaint filed by the Petitioner vide Annexure-1 by a nil award accepting the contention of OP No.2 about suppression of information by the deceased insured regarding her health details in response to the questionnaire contained in the proposal form. Indeed, OP No.1 while dismissing the complaint passed a nil award under Annexure-1. The contention of Mr. Dalai that Annexure-1 is not an award is misconceived merely for the fact that the complaint was simply dismissed. According to the Court, though the complaint was shown to have been dismissed, in effect resulted in passing of a nil award against the Petitioner.

8. As regards the submission of Mr. Dalai that such a rejection of claim is in violation of Section 45 of the Act is far-fetched for the reason that the policy issued to the deceased insured was detected

for suppression of information only when she died on 28th August, 2009. It is not a case where OP No.2 challenged the policy on the ground of fraud. Rather, it is made to suggest from Annexure-2 that the deceased insured while filling up the Short Medical Questionnaire (SMQ), ticked the relevant box 'No' vis-à-vis items 2&4 of Section C in the proposal form with regard to the information as to if she ever suffered from any medical condition, such as, diabetes, high blood sugar/sugar in urine and had ever been hospitalized or undergone treatment in a hospital or received treatment from any doctor or specialist which was found to be false after her death. According to OP No.2, the insured despite having knowledge about her medical condition that she was suffering from diabetes, did not disclose it, while filling the proposal form for which the claim was rejected. Mr. Dalai submits that for having not shared such information, the policy could not have been repudiated by OP No.2 as no fraud was committed. Without denial, the proposal form clearly indicated the deceased insured not to have revealed the fact about her prior medical condition. The Court finds that the above information was material which was stated to be within the knowledge of the insured and none else but was not divulged while filling the proposal form. While considering the grievance of the Petitioner, OP No.1 noticed that the Petitioner's wife had been suffering from diabetes since 2001 and in the year 2007 & 2008, she had received treatment for the same. OP No.2 had material to show that the deceased wife was suffering from diabetes and prior to her death was under treatment and taking medicine on a daily basis. Even disclosure made by the Petitioner

is clearly contrary to the assertion made in the proposal form of the policy which persuaded OP No.1 to dismiss the complaint confirming the rejection of insurance claim by OP No.2. To claim that the deceased was not made aware of the terms of policy and therefore was ignorant by itself would not be sufficient to discharge the onus by the Petitioner. Mr. Dalai submits that death of the deceased is on account of Septicemia and therefore, even non-disclosure of her medical condition is not a serious lapse moreover when diabetes is a common and wide spread health issue. The above contention is again not convincing since because diabetes, if uncontrolled, often leads to serious health complications and might even prove fatal which, therefore, is certainly material information necessarily to be disclosed with all sincerity and a defence of mere negligence or ignorance would be a lame excuse. Thus, appreciating the contentions of the parties, the Court does not find any justification to differ with the decision of OP No.1.

9. In **Manmohan Nanda** (supra), the Supreme Court, in view of the fact that the Insurance Company was well aware of the health condition of the insured as a diabetic and that he was taking all necessary medication for preventing further complication and controlling the disease, held and observed that there was no suppression of any material fact. However, in the case in hand, OP No.2 did not have any such knowledge that the deceased insured was a diabetic. Rather, after the death of the insured, the fact of her suffering from diabetes could be realized which was not disclosed in the proposal form of the policy. So, the decision (supra) does not apply to the present case. In **G.M.**

Channabasamma *ibid*, in the peculiar facts and circumstances of the case, the Supreme Court held that the insurer when alleged fraud, misrepresentation or suppression of material fact, burden of proof lies on it and if the same is not discharged, claim of insurance cannot be rejected. In the instant case, OP No.2 rather discharged the burden after having received information regarding her medical condition which was supplemented by the disclosure made by the Petitioner himself. Therefore, the above decision relied upon by Mr. Dalai is distinguishable. Similarly, this Court in **Narmada Agarwalla** (*supra*) after arrived at a conclusion that the suppression was not fraudulent considering the evidence on record declined to accept the contention of the insurer. The other citations relied upon by Mr. Dalai are also of no help and do not render any assistance to substantiate the contention for having been decided peculiar to the facts and circumstances of the cases. Thus, the Court reaches at a logical decision that OP No.2 rightly rejected the insurance claim of the Petitioner which was subsequently confirmed by the Grievance Committee under Annexure-3 and finally upheld by OP No.1 vide Annexure-1 which, therefore, calls for no interference.

10. Accordingly, it is ordered.

11. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice