

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

203

**CWP-14892-2015 (O&M).
Reserved on: 13.09.2022.
Date of Decision: 17.10.2022.**

Aviva Life Insurance Company India Limited

...Petitioner

Versus

Sarita Tripathi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Manish Jain, Advocate, for the petitioner.

Mr. Rajesh Lamba, for the respondent.

VINOD S. BHARDWAJ. J.

The point which arises for consideration in the present petition is as to whether an Insurance Company would be entitled to repudiate an insurance claim on the grounds of suppression of material information regarding health condition when death in question is wholly unrelated to health conditions and is an outcome of motor vehicular accident.

2. The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 raising a challenge to the Award passed by the Permanent Lok Adalat (Public Utility Services),

Gurgaon, in case titled as “Sarita Tripathi Vs. Aviva Life Insurance Company Limited” dated 17.03.2015, in application No.51 of 2014.

3. Briefly summarized, the facts involved in the present writ petition are that respondent No.1- applicant had preferred an application under Section 22 - C of the Legal Services Authority Act, 1987, claiming that her deceased husband Rajesh Kumar Mani had insured himself with the Petitioner – Life Insurance Company in the month of November 2011 for a sum of Rs.20 lacs vide Policy No.ALA3087829. At the stage of availing the said life insurance policy, the deceased husband of the respondent No.1- applicant was assured by the agents of the petitioner - Life Insurance Company about the expeditious disbursement of the claims on occurrence of an unforeseen eventuality. The proposal form was submitted on 15.11.2011 wherein the following declaration is claimed by the petitioner Life Insurance Company to have also been signed by the declarant/deceased husband of respondent No.1-applicant:-

“I/we also understand that in case of any misstatement or suppression of material information, subject to provision of Section 45 of the Insurance Act, 1938, the Company has right to repudiate any claim against the Policy.”

4. The premium amount was Rs.10,114/- to be paid annually and the total premium paid before the husband of the respondent No.1/applicant unfortunately passed away, was Rs.20,228/- i.e. two premiums. Unfortunately, the said Rajesh Kumar Mani met with a motor vehicular accident on 12.05.2013 in which he sustained serious injuries and succumbed on the date of accident itself. The FIR No.698 of 2013

was also registered under Sections 279 and 304-A IPC at Police Station, Rampur Kar Khana, Sadar Devriya (U.P.). The post mortem examination of Rajesh Kumar Mani was also conducted on the same day. The respondent No.1-applicant thereafter filed a claim with the petitioner - Insurance Company, however, the said claim was declined vide communication dated 30.08.2013 (wrongly mentioned as 30.08.2011) for the reason that the material information had been concealed at the time of submission of the proposal form regarding his health. It was pointed out by the respondent No.1/applicant that the alleged concealment regarding health is immaterial since occurrence of the eventuality is neither directly nor remotely connected to the information. The prayer of the respondent No.1/applicant having not been accepted by the petitioner - Insurance Company, an application was filed invoking the jurisdiction under Section 22 - C of the Legal Services Authority Act, 1987.

5. Upon notice, a response was filed and it was pleaded that the respondent No.1/applicant was not entitled to the claim due to concealment of material information in the Health and Activity Section of the proposal form. The specific question giving rise to the present dispute is as under:-

“B. Have you ever had any medical or surgical treatment, including investigations, tests, scans or X-rays for any of the following illness or medical conditions:

(i) High Blood Pressure, angina, heart attack, stroke or any disorder of heart or circulation: 'NO'.”

6. It was urged that the deceased had undergone a coronary angiography for accelerated hypertension on 23.07.2011 when he was admitted in Paras Hospital, Gurugram. While placing reliance on the discharge summary of the Paras Hospital, Gurugram, it was submitted that insured was admitted in the Hospital about four months prior to obtaining policy with diagnosis of accelerated hypertension and did not disclose the fact of his coronary angiography and the same being the material concealment of fact, the claim was rightly repudiated.

7. Upon consideration of the respective contentions advanced by the parties, the Permanent Lok Adalat (Public Utility Services), Gurgaon, came to a conclusion that the alleged mis-declaration was inconsequential in the given facts as the same was not the cause of death which was rather on account of a vehicular accident, hence, the said mis-declaration cannot be the basis for repudiating the claim under the Life Insurance Policy to the respondent No.1/applicant. Hence, the present petition.

8. Learned counsel appearing on behalf of the petitioner has argued that the award passed by Permanent Lok Adalat (Public Utility Services), Gurgaon, was unsustainable and liable to be set aside since there was concealment of material information about medical history by the insured despite being fully aware of the same. He submitted that an insurance being a contract based on *uberrima fides*, the Insurance Company cannot be fastened with any liability arising out of a policy when there is a concealment of material information rendering the

contract of insurance void *ab initio*. Hence, there was no error in the petitioner - Life Insurance Company rejecting the claim. The award passed by the Permanent Lok Adalat (Public Utility Services) was thus in conflict with the law laid down in precedent judgments. He has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **Branch Manager, Bajaj Allianz Life Insurance Company Limited and others Vs. Dalbir Kaur, bearing Civil Appeal No.3397 of 2020, decided on 09.10.2020, reported as 2021 (1) PLR 547.** The relevant extract of the said judgment reads thus:-

*“5. The respondent instituted a consumer complaint before the District Consumer Disputes Redressal Forum. The District Forum allowed the complaint and directed the appellants to pay the full death claim together with interest. The first appeal was rejected by the State Consumer Disputes Redressal Commission (hereinafter referred to as “SCDRC”) and the revision before the National Consumer Disputes Redressal Commission (hereinafter referred to as “NCDRC”) has also been dismissed. The NCDRC has relied on the decision of this Court in **Sulbha Prakash Motegaonkar & Ors vs Life Insurance Corporation of India, Civil Appeal No.8245 of 2015 decided on 05.10.2015.** According to the NCDRC, a disease has to be distinguished from a mere illness. It held that the death had occurred due to natural causes and there was no reasonable nexus between the cause of death and non-disclosure of disease. Consequently, while affirming the judgment of the SCDRC, the NCDRC imposed costs of Rs. 2 lakhs on the appellants, of which, an amount of Rs. 1 lakh was to be paid to the complainant and Rs. 1 lakh was to be deposited with the Consumer Legal Aid Account of the District Forum.*

xxx

xxx

xxx

9. A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk. In the present case, as we have indicated, the proposer failed to disclose the vomiting of blood which had taken place barely a month prior to the issuance of the policy of insurance and of the hospitalization which had been occasioned as a consequence. The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had not been disclosed. This brings the ground for repudiation squarely within the principles which have been formulated by this Court in the decisions to which a reference has been made earlier. In **Life Insurance Corporation of India Vs. Asha Goel** this Court held:

“12...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 risk which may take place between the proposal and its acceptance. If there is 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.”

10 This has been reiterated in the judgments in **P.C. Chacko Vs. Chairman, Life Insurance Corporation of India and Satwant Kaur Sandhu Vs. New India Assurance Company Limited. In Satwant Kaur Sandhu Vs. New India Assurance Company Limited**, at the time of obtaining the Mediclaim policy, the insured suffered from chronic diabetes and renal failure, but failed to disclose the details of these illnesses in the policy proposal form. Upholding the repudiation of liability by the insurance company, this Court held:

“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 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.”

11. Recently, this Court in **Reliance Life Insurance Co. Ltd. vs Rekhaben Nareshbhai Rathod (2019) 6 SCC 175**, has set aside the judgement of the NCDRC, whereby the NCDRC had held that the failure of the insured to disclose a previous insurance policy as required under the policy proposal form would not influence the decision of a prudent insurer to issue the policy in question and therefore the insurer was disentitled from repudiating its liability. This Court, while allowing the repudiation of the insurance claim, held:

“30. It is standard practice for the insurer to set out in the application a series of specific questions regarding the

applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement.

*31. The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in *Satwant Kaur (supra)* "there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance". Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms."*

*12 The decision of this Court in **Sulbha Prakash Motegaonkar vs Life Insurance Corporation of India**, which has*

been relied upon by the NCDRC, is clearly distinguishable. In that case, the assured suffered a myocardial infarction and succumbed to it. The claim was repudiated by the insurance company on the ground that there was a suppression of a pre-existing lumbar spondilitis. It was in this background that this Court held that the alleged concealment was of such a nature that would not disentitle the deceased from getting his life insured. In other words, the pre-existing ailment was clearly unrelated to the cause of death. This Court had also observed in its decision that the ailment concealed by the deceased was not a life-threatening disease. This decision must, therefore, be distinguished from the factual position as it has emerged before this Court.

13. The medical records which have been obtained during the course of the investigation clearly indicate that the deceased was suffering from a serious pre-existing medical condition which was not disclosed to the insurer. In fact, the deceased was hospitalized to undergo treatment for such condition in proximity to the date of his death, which was also not disclosed in spite of the specific queries relating to any ailment, hospitalization or treatment undergone by the proposer in Column 22 of the policy proposal form. We are, therefore, of the view that the judgment of the NCDRC in the present case does not lay down the correct principle of law and would have to be set aside. We order accordingly.”

9. A reference was also made to the judgment of the Hon’ble Supreme Court in the matter of **Life Insurance Corporation of India and others Vs. Asha Goel (Smt.) and another, reported as (2001) 2 S.C.C. 160**. The relevant extract of the aforesaid judgment referred by the petitioner reads thus:-

“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 is 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 of 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 facts) 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 in 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.

13. *In this connection we may notice the decision of this Court in **Mithoolal Nayak Vs. Life Insurance Corporation of India (AIR 1962 SC 814)**, in which the position of law was stated thus:*

(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.

He also made a reference to the judgment of this Court passed in **RSA Nos.2465 and 1955 of 2011, titled as Harpreet Kaur and others Vs. Life Insurance Corporation of India and others, decided on 29.01.2019.** The relevant extract of the above judgment reads thus:-

“21. 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.”*

10. While relying on the said judgments, learned counsel for the petitioner has contended that the deceased being duty bound to disclose all material facts having bearing upon insurer assuming the risk which is proposed, the Insurance Company would be justified in repudiating the claim for failure to disclose such material facts.

11. No other argument was raised by learned counsel appearing on behalf of the petitioner – Life Insurance Company.

12. A pointed query was raised to the counsel appearing on behalf of the petitioner as to whether the petitioner – Life Insurance

Company would have disentitled an insurance policy to a person who suffers from hypertension or has undergone coronary angiography.

13. Learned counsel appearing on behalf of the petitioner has submitted that the insured may not have been disentitled to the issuance of policy nor has the petitioner taken any decision to not issue any policy to a proposer who has undergone angiography or suffers from hypertension, however, he contends that such a decision has to be taken by an Insurance Company at the stage of submission of the proposal form and that the obligation cast upon the proposer cannot be obviated for the said reason.

14. Learned counsel appearing on behalf of the respondent No.1/applicant has, however, contended that the submissions made by the petitioner are immaterial and irrelevant and have no bearing on the merits of the present case. He contends that the cause of death being entirely an unrelated independent cause having no direct or indirect proximity to cause of death, the benefit accrued in favour of respondent No.1-applicant cannot be denied on the pretext of suppression. He contends that in the event the death being attributable to any ailment/disease or health condition, the Insurance Company may have been justified in claiming refuge under *uberrima fides*. It is submitted that the judgment of the Hon'ble Supreme Court in the matter of **Branch Manager, Bajaj Allianz Life Insurance Company Limited and others (supra)**, is not applicable to the facts of the present case inasmuch as in the said case, the proposer had failed to disclose vomiting of blood that had taken place barely a month prior to the issuance of the Insurance

Policy and the cause of death was Hepatitis – C. He thus contends that the information regarding the health would be material in the said case since the cause of death was directly attributable to bad health, which is not the position of the case in hand. While adverting to the judgment of *Life Insurance Corporation of India and others Vs. Asha Goel (supra)*, learned counsel appearing on behalf of respondent No.1 contends that even the aforesaid judgment is not applicable to the facts of the present case. The cause of death in the said case was acute myocardial infarction and cardiac arrest which is a health related issue.

15. The concealment or suppression of facts in relation to an ailment suffered by the deceased in the said judgments were thus essential since cause of death was directly related to failure of health / ill-health which is not the fact in the present case. Resultantly, the claim of the respondent No.1-applicant could not have been denied.

16. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the pleadings as well as the judgments cited by them.

17. There is no dispute to the proposition of law that insurance contracts are based on *uberrima fides* and a proposer is obligated to disclose all material information essential to enable the Insurance Company to take a decision whether or not to assume a risk. The said principles flow from Section 45 of the Insurance Act, 1938 which is reproduced as under:-

“45. Policy not be called in question on ground of misstatement after three years. —

(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., 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.

(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.

Explanation I. —For the purposes of this sub-section, the expression “fraud” means any of the following acts committed by the insured or by his agent, with intent to deceive the insurer or to induce the insurer to issue a life insurance policy: —

- (a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;*
- (b) the active concealment of a fact by the insured having knowledge or belief of the fact;*
- (c) any other act fitted to deceive; and*
- (d) any such act or omission as the law specially declares to be fraudulent.*

Explanation II. —Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to

them, it is the duty of the insured or his agent keeping silence, to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the misstatement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact are within the knowledge of the insurer:

Provided that in case of fraud, the onus of disproving lies upon the beneficiaries, in case the policyholder is not alive.

Explanation. —A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) 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 that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:

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 to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation. —For the purposes of this sub-section, the misstatement of or suppression of fact shall not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.”

18. The statute creates a distinction between false or inaccurate mis-statement of fact and protects a policy against all such misdeclaration after expiry of a period of two years and carves an exception when the insurer shows that such mis-statement was on a “material matter” and was “fraudulently made” by the policy holder being fully aware about it being material.

19. The object of the Section 45 of the Insurance Act, 1938, is to protect the interest of the insured and entitle him to the benefit under a

policy unless it is shown that concealment was of a material fact and can be resorted to by the Insurance Company on establishing the exceptions.

20 The necessary conditions for fulfilling the requirements of Section 45 of the Insurance Act, 1938, have been summarized by the Hon'ble Supreme Court of India, in the matter of **Mithoolal Nayak Vs. LIC of India, reported as AIR 1962 SC 814**, which are reproduced as under:-.

“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 is suppressed facts which it was material to disclose.”

21. The question which thus, comes up for consideration is as to what information is material?

22. Broadly, an information can be categorized as “relevant” and “material.”

23. The provisions of the Insurance Act, 1938, however, does not define what is “material” information or “relevant” information. Hence, reference can be made to the Black's Law Dictionary for their

meaning. (Black's Law Dictionary, 4th Edition Rev., 1971). The same reads thus:-

MATERIAL: Important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form. Representation relating to matter which is so substantial and important as to influence party to whom made is "material." McGuire v. Gunn, 133 Kan. 422, 300 P. 654, 656.

RELEVANT: Applying to the matter in question; affording something to the purpose. Fact is relevant to another fact when, according to common course of events, existence of one taken alone or in connection with the other fact renders existence of the other certain or more probable. Gulf, C. & S. F. Ry. Co. v. Downs, [Tex.Civ.App.](#), 70 S.W.2d 318, 322.

24. Definition of “material” has, however, been provided in Section 2 (d) of **the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002**, which reads thus:-

“2. Definitions – In these regulations, unless the context otherwise requires -

*(d) "**Proposal Form**" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept to decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted.*

*Explanation. - "**Material**" for the purpose of these regulations shall mean and include all important, essential*

and relevant information in the context of underwriting the risk to be covered by the insurer.”

25. A perusal of the aforesaid would show that every information which has a connect or relation to the policy document can be classified as relevant. “Material” on the other hand, would mean all essential information that would be integral to the decision of assuming the risk. While all information may be relevant to a decision, the same may not be “material.” As to whether an information is material or not has to be seen from the significance of information, its objective as well as the nature and its significance to the dispute involved. Thus, while an information may be material in a particular situation, it may be immaterial in a different set of circumstances even though it still remains a relevant information.

26. The Hon’ble Supreme Court of India has not linked the relevance of “material information” solely in the context of issuance of a policy and has enlarged equitable interpretation while applying the said test and considering the same in the context of the consequence or the dispute. The Insurance Companies have thus been held liable to honour the policy when the cause for claiming the policy had no nexus to the concealment. The principle of *uberrimae fide* is thus not linked solely to the preliminary stage of assuming the risk but a more comprehensive humane and practical approach which balances the rival claims.

27. Significantly, the judgment of **Branch Manager, Bajaj Allianz Life Insurance Company Limited and others (supra)**, relied on

by the petitioner was duly taken into consideration by the Hon'ble Supreme Court in the judgment of *Manmohan Nanda Vs. United India Assurance Co. Ltd. and another, bearing Civil Appeal No.8386 of 2015, decided on 06.12.2021.*

28. In the aforementioned case, the dispute pertained to an alleged suppression of material information pertaining to ECG query which as per the Insurance Company had been concealed. The following points arose for consideration before the Hon'ble Supreme Court amongst others:-

“(i) Whether the appellant herein had suppressed or not disclosed material facts in the proposal form which could have led the insurer to repudiate the policy in question?”

(ii) Whether the Commission was justified in dismissing the complaint?”

(iii) What Order?”

While responding to the aforesaid issues, the Hon'ble Supreme Court dealt with the principle of *uberrimae fides* and held as under:-

“Uberrimae Fidei

30. It is observed that insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim uberrimae fidei.

31. *Mac Gillivray on insurance law 13th Ed.* has summarised the duty of an insured to disclose as under:

...the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms.

32. Lord Mansfield in ***Carter v. Boehm (1766) 3 Burr 1905*** has summarised the principles necessitating disclosure by the assured in the following words:

“Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement. The policy would be equally void against the underwriter if he concealed...Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary.”

The aforesaid principles would apply having regard to the nature of policy under consideration, as what is necessary to be disclosed are material facts which phrase is not definable as such,

as the same would depend upon the nature and extent of coverage of risk under a particular type of policy. In simple terms, it could be understood that any fact which has a bearing on the very foundation of the contract of insurance and the risk to be covered under the policy would be a “material fact.”

xxx

xxx

xxx

34. *Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above. It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.*

35. *The duty of the insured to observe utmost good faith is enforced by requiring him to respond to a proposal form which is so framed to seek all relevant information to be incorporated in the policy and to make it the basis of a contract. The contractual duty so imposed is that any suppression or falsity in the statements in the proposal form would result in a breach of duty of good faith and would render the policy voidable and consequently repudiate it at the instance of the insurer.*

36. *In relation to the duty of disclosure on the insured, any fact which would influence the judgment of a **prudent insurer** and not **a particular insurer** is a material fact. The test is, whether, the circumstances in question would influence the prudent insurer and not whether it might influence him vide **Reynolds v. Phoenix Assurance Co. Ltd. (1978) 2 Lloyd’s Rep. 440**. Hence the test is to be of a prudent insurer while issuing a policy of insurance.*

37. *The basic test hinges on whether the mind of a prudent insurer would be affected, either in deciding whether to take the risk at all or in fixing the premium, by knowledge of a particular fact if it had been disclosed. Therefore, the fact must be one affecting the risk. If it has no bearing on the risk it need not be disclosed and if it would do no more than cause insurers to make inquiries delaying issue of the insurance, it is not material if the result of the inquiries would have no effect on a prudent insurer.*

38. *Whether a fact is material will depend on the circumstances, as proved by evidence, of the particular case. It is for the court to rule as a matter of law, whether, a particular fact is capable of being material and to give directions as to the test to be applied. Rules of universal application are not therefore to be expected, but the propositions set out in the following paragraphs are well established:*

(a) Any fact is material which leads to the inference, in the circumstances of the particular case, that the subject matter of insurance is not an ordinary risk, but is exceptionally liable to be affected by the peril insured against. This is referred to as the 'physical hazard.'

(b) Any fact is material which leads to the inference that the particular proposer is a person, or one of a class of persons, whose proposal for insurance ought to be subjected at all or accepted at a normal rate. This is usually referred to as the 'moral hazard.'

The materiality of a particular fact is determined by the circumstances of each case and is a question of fact.

39. *If a fact, although material, is one which the proposer did not and could not in the particular circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty.*

40. *Full disclosure must be made of all relevant facts and matters that have occurred up to the time at which there is a concluded contract. It follows from this principle that the materiality of a particular fact is determined by the circumstances existing at the time when it ought to have been disclosed, and not by the events which may subsequently transpire. The duty to make full disclosure continues to apply throughout negotiations for the contract but it comes to an end when the contract is concluded; therefore, material facts which come to the proposer's knowledge subsequently need not be disclosed.*

41. *Thus, a proposer is under a duty to disclose to the insurer all material facts as are within his knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. Whilst the proposer can only disclose what is known to him, the proposer's duty of disclosure is not confined to his actual knowledge, it also extends to those material facts which, in the ordinary course of business, he ought to know. However, the assured is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to know at the material time. The second aspect of the duty of good faith arises in relation to representations made during the course of negotiations, and for this purpose all statements in relation to material facts made by the proposer during the course of negotiations for the contract constitute representations and must be made in good faith.*

42. *The basic rules to be observed in making a proposal for insurance may be summarized as follows:*

(a) A fair and reasonable construction must be put upon the language of the question which is asked, and the answer given will be similarly construed. This involves close attention to the language used in either case, as the question may be so framed that an unqualified answer amounts to an assertion by the proposer that he has

knowledge of the facts and that the knowledge is being imparted. However, provided these canons are observed, accuracy in all matters of substance will suffice and misstatements or omissions in trifling and insubstantial respects will be ignored.

(b) Carelessness is no excuse, unless the error is so obvious that no one could be regarded as misled. If the proposer puts 'no' when he means 'yes' it will not avail him to say it was a slip of the pen; the answer is plainly the reverse of the truth.

(c) An answer which is literally accurate, so far as it extends, will not suffice if it is misleading by reason of what is not stated. It may be quite accurate for the proposer to state that he has made a claim previously on an insurance company, but the answer is untrue if in fact he has made more than one.

(d) Where the space for an answer is left blank, leaving the question un–answered, the reasonable inference may be that there is nothing to enter as an answer. If in fact there is something to enter as an answer, the insurers are misled in that their reasonable inference is belied. It will then be a matter of construction whether this is a mere non–disclosure, the proposer having made no positive statement at all, or whether in substance he is to be regarded as having asserted that there is in fact nothing to state.

(e) Where an answer is unsatisfactory, as being on the face of it incomplete or inconsistent the insurers may, as reasonable men, be regarded as put on inquiry, so that if they issue a policy without any further enquiry they are assumed to have waived any further information. However, having regard to the inference mentioned in head (4) above,

the mere leaving of a blank space will not normally be regarded as sufficient to put the insurers on inquiry.

(f) A proposer may find it convenient to bracket together two or more questions and give a composite answer. There is no objection to his doing so, provided the insurers are given adequate and accurate information on all points covered by the questions.

(g) Any answer given, however accurate and honest at the time it was written down, must be corrected if, up to the time of acceptance of the proposal, any event or circumstance supervenes to make it inaccurate or misleading.

[Source : Halsbury's Laws of England, Fourth Edition, Para 375, Vol.25 : Insurance]

43. Sometimes the standard of duty of disclosure imposed on the insured could make the insured vulnerable as the statements in the proposal form could be held against the insured. Conversely, certain clauses in the policy of insurance could be interpreted in light of the contra proferentem rule as against the insurer. In order to seek specific information from the insured, the proposal form must have specific questions so as obtain clarity as to the underlying risks in the policy, which are greater than the normal risks.”

After considering all the precedent judgments by the Hon'ble Supreme Court, it was recorded as under:-

“51. We have also considered the following judgments :

c) In Branch Manager Bajaj Allianz Life Insurance Co. v. Dalbir Kaur – AIR 2020 SC 5210, a proposal form was

submitted to the appellant therein for a life insurance policy containing questions pertaining to the health and medical history of the proposer and required a specific disclosure as to whether the proposer had undergone any treatment. The proposer answered the queries in the negative. Further a query regarding specific diseases or disorders suffered was also responded to in the negative. A policy of insurance was issued by the insurer on 12th August, 2014, insuring the life of the proposer for a sum of Rs. 8.50 lakhs payable on maturity with the death benefit of Rs. 17 lakhs. On 12th September, 2014, the insured, Kulwant Singh, died giving rise to a claim under the policy. The claim was subjected to an independent investigation and the records revealed that the deceased had been suffering from hepatitis C. The claim was repudiated giving rise to a consumer complaint which was allowed by the District Forum. The appeal before the State Forum was also dismissed, so also by the National Commission, the revision was dismissed. Being aggrieved the insurance company had preferred an appeal before this Court. It was held that the investigation conducted by the insurer in the said case clearly indicated that the deceased was suffering from a pre-existing medical condition which was not disclosed to the insurer despite specific queries relating to any ailment, hospitalisation or treatment undergone by the proposer in column 22 of the proposal form therein. Hence the judgment of the Commission was set aside but since the claim amount was paid to the respondent, exercising jurisdiction under Article 142 of the Constitution it was directed that no recoveries be made by the respondent insurer therein.

*In the aforesaid judgment, this Court distinguished **Sulbha Prakash Motegaonkar and Ors. v. Life Insurance Corporation of India, Civil Appeal No. 8245/2015** decided on 5th October, 2015, by holding*

that in the said case the assured therein suffered myocardial infraction and succumbed to it. The claim was repudiated by the insurance company on the ground that there was a suppression of a pre-existing lumbar spondylitis. It was in this background that this Court held that the alleged concealment was of such a nature that would not dis-entitle the deceased from getting his life insured. In other words, the pre-existing ailment was clearly unrelated to the cause of death.

52. On a consideration of the aforesaid judgments, the following principles would emerge:

(i) There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the insurance policy to be taken, the risk to be covered, as well as the queries that are raised in the proposal form.

(ii) What may be a material fact in a case would also depend upon the health and medical condition of the proposer.

(iii) If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.

(iv) If any query or column in a proposal form is left blank then the insurance company must ask the insured to fill it up. If in spite of any column being left blank, the insurance company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or

non-disclosure of a material fact, and seek to repudiate the claim.

(v) The insurance company has the right to seek details regarding medical condition, if any, of the proposer by getting the proposer examined by one of its empanelled doctors. If, on the consideration of the medical report, the insurance company is satisfied about the medical condition of the proposer and that there is no risk of pre-existing illness, and on such satisfaction it has issued the policy, it cannot thereafter, contend that there was a possible pre-existing illness or sickness which has led to the claim being made by the insured and for that reason repudiate the claim.

(vi) The insurer must be able to assess the likely risks that may arise from the status of health and existing disease, if any, disclosed by the insured in the proposal form before issuing the insurance policy. Once the policy has been issued after assessing the medical condition of the insured, the insurer cannot repudiate the claim by citing an existing medical condition which was disclosed by the insured in the proposal form, which condition has led to a particular risk in respect of which the claim has been made by the insured.

(vii) In other words, a prudent insurer has to gauge the possible risk that the policy would have to cover and accordingly decide to either accept the proposal form and issue a policy or decline to do so. Such an exercise is dependent on the queries made in the proposal form and the answer to the said queries given by the proposer.”

29. A perusal of the said judgment of the Hon'ble Supreme Court shows that even it does not over-rule the judgment of ***Sulbha Prakash Motegaonkar and Ors.*** (supra) and rather accepts the principle that where the cause of death has no nexus to the information concealed, claim ought not to be rescinded. It further holds that 'material fact' would depend upon the nature of the insurance policy taken and the risk to be covered. The information regarding health is intended to assess the loss of life due to disease and not due to any other unrelated cause. It is also noticed that the Insurance Company has a right to seek the details regarding medical condition of a proposer from its empanelled doctors. The Insurance Company has chosen to keep silent on the said issue or to disclose as to whether the insured was subjected to any medical examination or not. As a prudent insurer, it ought to have sought verification of all health related claims from its empanelled doctors, if all such facts were considered "material" for its decision making.

30. If the Insurance Company chose not to subject the insured to medical examination before issuing the policy, it ought not rescind the claim as it had options not to rely on such declaration and to satisfy itself about the medical and health conditions. Having exercised its commercial prudence, it should not be permitted to escape its liability. Once it chose to not subject the proposer to medical examination, it can be safely assumed that such information was not grossly material to its decision or that the cost of medical examination to ascertain the health condition was not worth the risk to be covered. 1231

31. In both the set of circumstances, a conscious decision is deemed to be taken by the Insurance Company. It having chosen to waive its right to seek medical examination cannot be allowed to claim protection of alleged suppression in all sundry eventualities.

32. The Insurance Company having chosen to stay silent on the said aspect or to refer to such material, an inference has to be drawn against it.

33. The test of prudent insurer must also be applied to the Company and the presumption is that it exercised due prudence and business efficacy. The requirement of “material information” is that **it should have direct bearing** on the decision and not just that **it might have a bearing** on the decision. The response of the Counsel to the query was that disclosure of information ‘might’ have had a bearing thus fails to satisfy the list. Besides, no tangible material has also been placed to show that there was exercise of due prudence of a reasonable person. Non-disclosure by the insured was rather compounded by total lack of prudence by the Insurer and it cannot be allowed to sit on the proceeds of its negligence and to disown liability as and when it comes.

34. The Hon’ble Supreme Court has even though laid emphasis on the requirement of disclosure of all material information, but has not restricted “material” in the context of as on the date of issuance of the policy. It has rather also upheld the “**test of material information**” in the context of cause and effect on the date of claim. Thus, the conceptual and circumstantial aspect of “material information” has been approved.

The principle in the case of *Sulbha Prakash Motegaonkar and Ors.*

(supra) regarding “material” in the context of cause of death has been approved by necessary inference.

35. The judgment of *Sulbha Prakash Motegaonkar and Ors.* (supra) was also noticed in the matter of *Branch Manager, Bajaj Life Insurance Co. Ltd. (supra)* and was distinguished on facts. The factual matrix of the dispute involved in the present case is more similar to the facts of *Sulbha Prakash Motegaonkar and Others (supra)*.

36. Even otherwise, when perceived from a third dimension, the petitioner Insurance Company never cancelled the insurance policy. An act of repudiation cannot itself be construed as an act of annulment of the policy itself. In the event of noticing any discrepancy in the policy and the same having been obtained by concealment of any material fact or information, it was incumbent for the Insurance Company to seek termination of the contract of insurance and cannot unilaterally deny its liability and repudiate the claim while choosing to keep the contract alive. It needs no reiteration that any act of concealment would at best render the policy voidable at the instance of the Insurance Company. Failure to exercise any such jurisdiction, the policy document is presumed to be alive.

37. Taking into consideration the circumstances referred to above as well as the alleged suppression of material facts and the undisputed factual aspect that the cause of death was neither directly nor indirectly related to any health issues, ailment, sickness or disease and was altogether an independent, unrelated risk i.e. the motor vehicular accident, this Court is of the opinion that the fact of suppression of

coronary angiography would have been a material information in case the cause of death was directly or indirectly linked to health. However, since the cause of death has no proximity to health, the said information would only be a relevant information. The insurance policies intend to provide respite to the family upon occurrence of an unfortunate event, the interpretation to be adopted should advance the object of law. The legislative intent of information to be “material” cannot be completely ignored and to deprive an insured of all benefits treating all information to be material.

38. The Legal Services Authorities Act, 1987, prescribes that the Permanent Lok Adalat shall be guided by principles of natural justice; objectivity; fair play; equity and other principles of natural justice under Section 22 - D of the Act. The award of the Permanent Lok Adalat (Public Utility Services), Gurgaon, is based upon principles of “equity” and “other principles of justice.” There is thus no reason why the jurisdiction exercised by the Court should be held as bad in exercise of judicial review.

39. The present petition is, accordingly, dismissed and the award passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon, dated 17.03.2015 (Annexure P-1) is upheld.

40. Ordered accordingly.

October 17, 2022
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No