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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO. 116 of 2003 (O&M)
DATE OF DECISION: 01.05.2023

Harbans Singh Anand **...Appellant**

Versus

Life Insurance Corporation of India & another **...Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kuldeep Sanwal, Advocate
For the appellant.

Mr. Prateek Mahajan, Advocate,
For respondents No.1 and 2.

<u>ARUN MONGA, J. (ORAL)</u>

Plaintiff/appellant herein is in second appeal against the judgment and decree dated 28.02.2011 whereby his suit for recovery was decreed and he was held entitled to recover Rs.50,000/- from respondent-Life Insurance Corporation of India (hereinafter referred to as "LIC"). Aggrieved against the same, respondent/defendant went in appeal and vide judgment and decree dated 18.05.2022, learned First Appellate Court accepted the appeal and dismissed the suit of plaintiff.

2. Succinct facts first.

2.1 Appellant/plaintiff filed a suit for recovery of Rs.94,000/- (Rs.50,000/- as maturity value of Policy No.160194190 dated 30.09.1988 and Rs.44,000/- as interest by way of damages on said amount from 06.01.1989 to 16.05.1996.)

2.2 Jasbir Kaur wife of plaintiff/appellant had three policies with defendant-LIC. Plaintiff was appointed as nominee under the said policies in the event of death of assured before the maturity dates of policies. She was running the business under the name and style of M/s Veeran Di Hatti, Adalat Bazar, Patiala, as partner. At the time of purchasing the said policies, she was hale and hearty. On 09.11.1988, she fell from scooter and took treatment from Dr. Santosh Nayyar. On 12.11.1988 she noticed one lump in her breast and she was taken to Rajindra hospital, Patiala, where she died of cardiac arrest on 06.12.1988. Plaintiff filed claim regarding policy No.160194190 but his claim was repudiated on the ground that she furnished false information and did not disclose material facts about her health.

2.3 Plaintiff also filed complaint under Consumer Protection Act which was dismissed on the ground that the same was not filed within statutory period and the complainant should file civil suit. Hence suit was filed.

3. Upon notice, defendants appeared and filed written statement taking preliminary objections that due to suppression of facts, contract had become void ab initio; that suit is bad for non-joinder of necessary parties i.e for want of legal heirs of Jasbir Kaur ; that suit is time barred.

3.1 On merits, it was admitted that one policy bearing No.160194190 for Rs.50,000/- was purchased in the name of Jasbir Kaur. The said policy commenced from 21.11.1988. It was also admitted that plaintiff was appointed as nominee. However, the policy holder concealed material facts regarding her health. She died only after six days of purchase of policy and upon verification it was found that she had undergone an operation for carcinoma in left breast on 30.11.1988. It was further pleaded that she died due to breast cancer.

4. Replication was filed wherein facts as contained in the plaint were reiterated.

5. Based on rival pleadings, following issues were framed:

> *"(1). Whether the plaintiff is entitled to recover the suit amount, if so, to what extent ? OPP*
>
> *(2) If the plaintiff is entitled to interest, if so, at what rate ? OPP*
>
> *(3) Whether the contract of insurance of policy No.160194190 was void ab initio on the grounds stated in para no.1 of preliminary objections and written statement. If so, its effect ? OPD*
>
> *(4) Whether the suit is bad for non-joinder of necessary parties. If so, to what effect ? OPD*
>
> *(5) Whether the suit is time barred as alleged ? OPD*
>
> *(6) Whether the plaintiff has no cause of action and locus standi to file the suit ? OPD*
>
> *(7) Whether the suit is false, frivolous to the knowledge of the plaintiff and defendant is entitled to compensatory costs. If so, to what amount ? OPD*
>
> *(8) Relief"*

6. Parties to suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 3, being interlinked, were taken up together and decided in favour of plaintiff and against defendants. Issue No.2 was also decided in favour of the plaintiff. Consequently, suit of plaintiff was decreed to the extent of recovery of Rs.50,000/- from defendants towards insurance policy of deceased Jasbir Kaur, along with simple interest @ 6% per annum from the date of filing of suit till realization of entire amount.

8. Feeling aggrieved, defendant-LIC went in appeal which was allowed by learned First Appellate Court, which judgment has been challenged in instant second appeal.

9. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

> "xxx
>
> *17. It is, therefore, necessary in the first instance to scan the evidence on record to see whether the insured was guilty of fraudulent suppression of a material fact. Ex.DW2/A is the proposal form of the date 30 September, 1988, Column No.18, details the diseases and the information required is whether the applicant had suffered or is he suffering from any diseases which are detailed in sub head (a) to (h). The answers against each column are "NO NO" sub head (g) relates to the information to be given with regard to suffering of cancer, leprosy – or tumour. The answer is stated to be "NO". Likewise, in column No.20, information required to be supplied is whether the proposer had consulted a medical practitioner within the last five years for any ailment requiring treatment for more than a week, the answer is "NO".* ***Further, with regard to female proposer, there is one column in the proposal form i.e 26 and in sub-head (h1) there is information required to be furnished regarding the proposer having suffered or suffering from any disease of breast, ovaries or uterus. Qua this sub head also, answer furnished is "NO". In the end of proposal form****, Dr. Meena Garg, who is the doctor on the panel of the corporation has certified that proposer had signed in her presence, after admitting that all the answers have been correctly recorded. It is not disputed by the respondent/plaintiff that Smt. Jasbir Kaur had undergone breast operation in the year 1983 from Dr. Ajmer singh. There is ample evidence regarding the same coming on record. Even the plaintiff has stated so in his sworn testimony. There is nothing on record that whether at that stage of operation, there was malignancy or not. Anyhow, it was a major operation for the removal of allegedcyst. When the specific information was sought in the proposal form Lx. DW4/A, then why this undergoing of operation was suppressed by the deceased/assured. Though, it is now contended that the operation was minor, but there is nothing on record to that effect. Also, it has been contended that information to that effect was given to the doctor, who so examined the assured, but the doctor did not find it proper to record in the proposal form. However, this plea, so raised is misconceived. More so, when it has been stated by Dr. Meera Garg, while in the witness box as DW2, that nobody*

was present when Jasbir Kaur was examined by her. It has also been so admitted by the plaintiff in his cross-examination. Also, the proposal form Ex. DW2 A, which has been certified by Dr. Meena Garg the answers have been recorded as per those given by the proposer and are true. Even while in the witness box, Dr. Meena Garg had stated that she had recorded the answers in accordance with the replies given by proposer. Thus, the plea now so raised, pales into insignificance as the testimony of the plaintiff qua this plea does not at all help this court, to determine the question of disclosure so made to the doctor.

18. Faced with this conclusion, it has been argued that the assured was also examined by the doctor, on the panel of the Corporation and the doctor in her report Ex.DW2/B found the assured to be of good health and on the basis of this report only, policy was issued which now cannot be repudiated. No doubt, the doctor had examined the assured. But, however, it is pertinent to note that the doctor carried out the examination on the basis of the information given by the assured. Moreover, the fact of the doctor giving opinion of the assured to be of good health is not of much significance (reliance placed upon AIR 1986 Kerala, 201). In view of the above conclusion, ld. counsel for the respondent/plaintiff has argued that in the present case, proposal form was only got signed from the assured and the questionnaire was in English. It was not explained to the assured who was not literate. Since the contents of the questionnaire were not fully explained and were not understood by the insured, so it cannot be held that there was fraudulent concealment or suppression of material fact which was within her knowledge. However, this contention is without any substance. The proposal form has been signed by Smt. Jasbir Kaur, assured in English. It is no- where pleaded that Jasbir Kaur did not understand English language. Rather, it has come in the evidence that she was running business under the name and style of M/s Veeran Di Hatti since the year 1963. In view of the same, deceased/assured being in business for such a long period of time, it is not believable that she would put her signatures without understanding the contents of the proposal form. Moreover, Dr. Meena Garg, who examined the assured has specifically deposed in the witness box that she had recorded the answers as were given by the proposer. Thus, it cannot be concluded that signatures were put by Sint. Jasbir Kaur, without understanding the contents of the questionnaire.

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10. I have heard learned counsel for parties and perused the judgments of both the Courts below. On perusal of impugned judgments, my considered opinion is that the submissions made before the learned First Appellate Court, were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. There seems no substance in the submissions that the impugned judgments are based on surmises and conjectures.

11. That apart, it transpires that specific information sought to be provided by the insuree at the time of signing insurance contract in column 18, is as below :

Sr. No.	Have you ever suffered from or are you suffering from :	Answer Yes/No	If "yes" describe fully each ailment giving its nature, the number of attacks, dates, duration, severity treatment taken for it and names and addresses o doctors consulted giving reference to Question No. for question 18 to 22
a)	Persistent cough, asthma, bronchitis, pneumonia, pleurisy, spitting of blood, tuberculosis or any other disease of lungs ?	No	
b)	High or low blood pressure, rheumatic fever, pain in chest, breathlessness, palpitation, infarction or any other disease of the head or arteries ?	No	
c)	Peptic ulcer, colitis, jaundice, anemia, piles, dysentery or any disease of the stomach, liver, spleen, gall bladder or pancreas ?	No	
d)	Any disease of kidney, prostate or urinary system?	No	
e)	Paralysis, insanity, epilepsy, fits of any kind or nervous breakdown or any other disease of the b rain or the nervous system ?	No	
f)	Hernia, hydrocele, varicosele, fistula, varicose veins, skin eruption, filarasism goiter, gonorrhea, syphilis or any other venereal disease ?	No	
g)	Cancer, leprosy, rheumatism, gout enlarged glands or tumors?	No	
h)	Any disease of the ear, nose, throat or eyes, including defective sight or hearing and discharge from the ears	No	

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integrity of this order/ judgment

12. Answer to all of the above questions has been specific "NO" though knowing fully well that she is having medical history and had undergone surgeries for suspected cancer. In the premise, I am in agreement with the findings returned by learned First Appellate Court by reversing the findings of trial Court which were based on mis-appreciation of evidence. There being active concealment on the part of insure, no premium can be given for such a misdemeanor. No doubt she died of cardiac arrest. Her immediate cause of death was cardiac arrest but it cannot be lost sight that the reason of her having been admitted was for treatment for carcinoma in the hospital. It is common knowledge that cancer being a disease of kind can lead to multiple failure of organs and therefore, immediate cause of death is not really significant.

13. No new arguments have been raised other than reiteration of the stand taken before the Courts below.

14. To my mind, judgment under challenge has been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said finding. In this second appeal, no fresh ground worthy of interference is made out.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of the Civil Procedure Code.

17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, impugned judgment and

decree passed by learned trial Court is upheld and findings rendered by learned First Appellate Court are reversed.

18. Pending application/s, if any, shall also stand disposed of.

19. No order as to costs.

MAY 01, 2023 **(ARUN MONGA)**
Shalini **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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