

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

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CWP No. 1743 of 2018 (O & M)
Date of Decision : 4.8.2023

*Sushma Sareen**..... Petitioner**versus**Insurance Ombudsman and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vijay K. Jindal, Senior Advocate with
Mr. Jagdeep Singh Rana, Advocate, for the petitioner

None for respondent no.1

Mr. Akash Mehta, Advocate, for respondents no.2 and 3

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed seeking a writ of *certiorari* for quashing the order dated 12.4.2017 (Annexure P-4) passed by the Insurance Ombudsman regarding claim submitted by the petitioner/insured's wife towards Policy No.15512190 (commencement date 12.10.2012, and conveyed on 17.10.2012) and Policy No.16464208 (commencement date 3.12.2013, issued on 26.12.2013, and conveyed on 27.12.2013). the claims were repudiated by the respondents/Insurance company on account of suppression of relevant information at the time of taking the life insurance policies. Further, the petitioner is seeking a writ of *mandamus* directing the respondents to pay the insurance amount in terms of the aforesaid policies with interest at the rate of 18% per annum from the due date, i.e., death of the petitioner's husband, till realisation.

the proposal forms (Annexures R-2/1 and R-2/3 respectively), and the aforementioned two insurance policies (Annexures R-2/2 and R-2/4) were issued to him on 17.10.2012 and 27.12.2013 respectively. The insured/petitioner's husband died on 3.8.2015. The petitioner approached the Insurance company by submitting a 'death claim form' dated 24.8.2015 alongwith requisite documents, including the Doctor's Certificate as also the discharge summary (Annexure R-2/5). The claim was, however, repudiated by the Insurance company on the ground of concealment of relevant information. The Doctor's Certificate submitted alongwith the 'death claim form' revealed that the deceased was a chronic patient of diabetes and hypertension (hereinafter referred to as 'the chronic disease') for the last fifteen years. This shows, at the time of taking the insurance policies he was suffering from pre-existing illness, which was not disclosed to the Insurance company.

3. The repudiated claims were approved by the Claimants Review Committee of the Insurance company. The petitioner was, thereafter, asked to approach the Insurance Ombudsman/respondent no.1. Death claims in respect of the two policies were submitted before the Ombudsman on 24.3.2016 (Annexures P-6 and P-7). The same were, however, rejected by respondent no.1 vide order dated 12.4.2017 (Annexure P-4), accepting the ground of repudiation of the claims by the Insurance company.

4. Learned Senior counsel for the petitioner contends that the death claim was wrongly rejected by the respondents, since there was no material concealment of any fact by the deceased at the time of taking the insurance policies. He contends, the fact that deceased was suffering from

diabetes and hypertension was not to his knowledge at the time of taking the policies, the same, accordingly, could not have been disclosed by him. He further contends that even otherwise, this is not a material fact which was required to be disclosed at the time of taking the policies. He has relied upon the judgment of this Court passed in *Vidya v. Life Insurance Corporation of India and another*, 2004 (3) RCR (Civil) 793. He contends that mere inaccuracy of statement at the time of taking the insurance policies cannot be a ground for repudiating the claim after two years. Section 45 of the Insurance Act, 1938 (for short 'the Act'), prevents the respondents from doing so. He has further referred to a judgment of the Supreme Court passed in *Manmohan Nanda v. United India Assurance Company Limited and another*, 2022 (4) SCC 582, to contend that as the deceased/insured himself was not aware of the stated ailment, the claims could not have been rejected by the respondents.

5. Learned counsel for the Insurance company, on the contrary, contends that there is a clear violation of terms of the insurance policies by the deceased. He concealed vital information at the time of taking the policy that he was a chronic patient of diabetes mellitus and hypertension (DM and HTN). Therefore, the contract of insurance between the parties was void being in violation of the standard terms and conditions of the policy, and the claim was rightly repudiated by the Insurance company. Had this vital information about chronic disease of the deceased disclosed at the time of taking the policy, the Insurance company would have taken an informed decision as to the nature of the policies that were required to be issued to the deceased, as also the higher premium that he might have been required to pay for the same. Since material facts have been

fraudulently suppressed at the time of taking the policy, Section 45 of the Act will be applicable that entitles the Insurance company to repudiate the claims in such an eventuality. He has relied upon a judgment of the Supreme Court in *Branch Manager, Bajaj Allianz Life Insurance Company Limited and others v. Dalbir Kaur*, 2021 (13) SCC 553, to contend that non-disclosure of material information is a valid ground for repudiating the insurance claim.

6. Learned counsel for the parties have been heard, and case file has been perused.

7. It is apt to reproduce Section 45 of the Act herein for convenience of reference:

45. Policy not to be called in question on ground of mis-statement after two years.—No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and 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:

Provided that 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.

8. As per facts apparent on record, the petitioner's husband/

insured took the aforementioned policies of life insurance on 13.10.2012 and 3.12.2013. Premium for the same was duly paid till his unfortunate death on 3.8.2015. This led to filing of the death claim by the petitioner, being the deceased's nominee, on 24.8.2015. Death certificate of the insured, dated 4.8.2015, was also attached along with the claim, certifying the date of death as 3.8.2015. In the claim form, cause of death was mentioned as 'natural'. Details of medical consultation were also attached with the form, i.e., a certificate of the Doctor, who treated the insured from 8.5.2015 to 14.5.2015. He diagnosed the illness as pre-existing/co-existing/chronic Diabetes Mellitus (DM) /Hypertension (HTN), apart from other illnesses, for which the patient/insured was treated.

9. Evidently, the Doctor's Certificate only establishes that the insured was treated by him for the stated illness from 8.5.2015 to 14.5.2015, the date of discharge. The discharge summary, dated 14.5.2015, enclosed with the Doctor's Certificate also mentioned the same diagnosis, and the conservative management of his during admission in the hospital. The Certificate does not, in any manner, indicate that there was any connection between the cause of death and the chronic illnesses diagnosed, i.e., diabetes mellitus and hypertension. Nor could it have done so, since the insured died after more than two and a half months of his discharge from the hospital. The fact remains that he died a natural death on 3.8.2015, as claimed by the petitioner in the 'death claim form' submitted to the Insurance company. The medical reports attached with the form do not, in any manner, indicate any other cause of death. It is also not disputed by learned counsel representing the Insurance company that no investigation was carried out by the company to

ascertain the insured's cause of death, or the fact that the stated chronic disease had any connection to it. In this factual background, the chronic disease of diabetes mellitus and hypertension cannot be said to have any bearing on the cause of death, as there is no evidence to that effect on record. Repudiation of death claim by the Insurance company on the ground of non-disclosure of the said chronic disease by the insured at the time of taking the policies cannot, therefore, be accepted as valid.

10. The mandate of Section 45 of the Act is that no policy can be called in question by the Insurance company on the ground of mis-statement after two years from the date on which it came into effect, except when a fact which was material to disclose was suppressed by the insured, and it was fraudulently done. And the insured knew at the time of making the statement that it was false or it suppressed fact which was material to disclose. In the instant case, the fact of the insured suffering from diabetes mellitus and hypertension, said to have been suppressed by him at the time of taking the policies, cannot be termed a material fact since no relation between the said disease and the cause of death could be established on record. A fact to be material has to be one which has a direct bearing on the cause of death. Mere proximity to the cause of death or any incidental relation to it, would not suffice. Besides, no element of fraud on the part of insured has either been pleaded or established even *prima facie* on the record. It is, therefore, apparent that suppression of the said chronic disease was taken as a ruse to reject the insurance claim which is patently illegal and in violation of provisions of Section 45 of the Act.

11. It has been held in *Manmohan Nanda* case (*supra*) also that

materiality of a fact is determined by circumstances of each case as proved by evidence. Para 39 to 39.3. of the judgment are reproduced hereinafter:

39. 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:

39.1. 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'.

39.2. 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'.

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

12. Further, the Insurance company's own case is that disclosure of the said chronic disease by the insured at the time of taking the policy would have enabled the Company to suitably increase the amount of premium. It is not their case that the disease disentitles the insured from taking the policy altogether. This makes the repudiation of claim unwarranted and groundless. In similar factual background, the Supreme Court in *Sulbha Prakash Motegaonkar v. LIC*, (2021) 13 SCC 561, has held, in case the alleged concealment was not of a nature that would disentitle the deceased from getting insured, the repudiation would be unjustified. Relevant paragraph of the judgment reads as under:

6. We are of the opinion that the National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to *ischaemic* heart disease and myocardial infarction had nothing to do with his lumbar spondylitis with PID with sciatica. In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified.

13. The judgment relied upon by learned counsel for the respondent in *Dalbir Kaur (supra)* has no application to the facts and circumstances of this case. In that matter, the Insurance policy was issued on 12.8.2014 and the insured died on 12.9.2014. The claim was subjected to independent investigation which revealed that the insured/diseased was suffering from a pre-existing disease consequent upon alcohol abuse and had vomiting of blood only a month prior to taking the policy, which was not disclosed despite specific queries; rather, the insured stated that he had not undergone any treatment and was not suffering from any disease or dis-order. The claim was repudiated with two years of commencement of policy. In the instant case, there is no evidence of any such pre-existing disease, nor any independent investigation with regard to the stated chronic disease of Hypertension and diabetes mellitus or its connection to the cause of death was conducted by the Insurance company. Besides, the claim has been repudiated after two years of issuing the policy. Therefore, materiality of the fact allegedly suppressed must be established, which could not be done.

14. In view of the above discussion, the petition is allowed by quashing the orders dated 12.4.2017 (Annexure P-4) passed by the

Insurance Ombudsman under policies No.15512190 and 16464208.

Respondents no.2 and 3 are directed to pay the insurance amount in terms of the aforesaid policies with interest at the rate of 9% per annum from the due date till actual payment. In the facts and circumstances of this case, there shall be no order as to costs.

15. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

4.8.2023

Ashwani

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No