

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

SA No. 84 of 2015

Nirmal Chandra @ Nirmal Sonar

-Vs-

Life Insurance Corporation of India & Ors.

For the Appellant	: Mr. Sharanya Chatterjee Mr. A Ghosh
For the Respondents	: Ms. Soma Roy Chowdhury Ms. Payel Khanra
Heard on	: 13.06.2024, 10.07.2024, 06.08.2024
Judgment on	: 12.12.2024

Ananya Bandyopadhyay, J.:-

1. The appellant/nominee had been the son of Shri Ranjit Chandra Sonar since deceased who was favoured with grant of an insurance policy bearing No.466064616 for a sum of Rs.2,00,000/ dated 25.10.2005 by the respondent/corporation during his lifetime.
2. On the demise of the aforesaid policy holder, the claim of the appellant was rejected vide a letter dated 04.10.2006 precisely on the ground of suppression of material fact resulting in repudiation of the aforesaid policy.
3. The petitioner challenged the rejection of the claim in the Court of Learned Civil Judge (Junior Division) Additional Court Asansol in T.S. No.76/2009. The Learned Trial Judge opined in absence of evidence to justify prolonged

disease suffered by the policy holder, the letter dated 04.10.2006 was illegal and the plaintiff/nominee was entitled to receive payment of policy money alongside bonuses and other benefits accrued on the said policy. Vide a communication dated 24.03.2007, the Senior Divisional Manager LIC Asansol Division affirmed the repudiation of the claim.

4. The respondent-corporation filed an appeal being Title Appeal No.15 of 2012 in the Court of the Civil Judge (Sr. Division Asansol) whereby the order in T.S. No.76/2009 was set aside considering the claimant to have suppressed facts regarding his health condition in the proposal form, which propelled the appellant/nominee to file the instant appeal.
5. The Learned Advocate representing the appellant submitted that the evidence of Dr. R.K Agarwal who deposed on behalf of the LIC being DW-3, was conspicuous that the deceased was not suffering from any prolonged disease. Proper reasons were not provided in the impugned judgment for not accepting the medical opinion and deposition of the doctors. It was further submitted the Hon'ble Supreme Court had on numerous occasions held that the court was not the expert with respect to technical issues and medical science, and had to rely on people having scientific knowledge. Moreover, the father of the petitioner being a layman was not competent to understand the medical terminology of COPD and such an ailment was neither prolonged, nor was it material for disclosure and therefore the impugned judgement should be set aside, granting benefits in favour of the petitioner.
6. The Learned Advocate representing the appellant relied on the following decisions with its respective observations:-

a. Mahakali Sujatha Vs. The Branch Manager, Future Generali India Life Insurance Company Ltd. & Anr. 2024 SCC Online 525:

“34. 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.”

Life Insurance Corporation of India Vs Jyotsna Dawn 2015 0 Supreme (Cal) 198.

Fact of the case:

The Insurance Company repudiated the claim of the plaintiff/respondent on the plea that such policy was obtained by the husband/plaintiff/respondent by suppressing material facts regarding rheumatic fever which he suffered at the age of 8 years and subsequently again at the age of 15 years.

Held:

Is there any human being who does not suffer any ailment in his lifetime? Everybody has some or the other disease. But is it possible for anybody to specify the clinical name of the disease which he suffered from? What is the after effect of the disease which he suffered from? What treatment is required if somebody suffers from any special form of disease. These are the business of the doctors and not of the patients. As such it is impossible for the patient to identify that the fever which he allegedly suffered at his early age can be clinically identified as rheumatic fever. Thus even assuming that the proposer suffered from fever at the age of 8 years and 15 years, still then there was nothing unusual if he failed to identify his disease as rheumatic fever resulting in non disclosure of the same while submitting the proposal form in 1990. In our experience we have seen that while consulting a doctor, the patient informs the doctor about his immediate sufferance and/or the sufferance which he earlier had in different parts of his body. On receipt of such information from the patient, the doctor identifies the disease which the patient is suffering or has suffered earlier and then prescribes medicine. Patient does not identify

the clinical name of the disease which he is suffering from and on the basis of such identification, the doctor does not treat him. As such, even if we find that the doctor who attended the plaintiff's husband at the time of his admission in the hospital, recorded that he suffered from rheumatic fever at the age of 8 years and subsequently again at the age of 15 years, still then we cannot conclude by holding that sufferance from such a disease, i.e., rheumatic fever at his age of 8 years and 15 years was known to him when he allegedly suffered the said illness and as such for non-disclosure of the same in the proposal from which he submitted in the year 1990, we cannot hold that he deliberately and willfully suppressed the sufferance of such disease by him at the age of 8 years and 15 years while submitting the proposal from in the year 1990. Doctor's detection of sufferance from such a disease by the husband of the plaintiff at the time of admitting him in the hospital cannot lead us to conclude that the husband of the plaintiff was aware of the clinical name of the disease which he allegedly suffered at the age of 8 years and subsequently at the age of 15 years and he suppressed the said disease by not disclosing the same in the proposal form submitted in 1990 for making any unlawful gain from the Insurance Company. Thus, we hold that the learned Trial Judge did not commit any mistake and/or illegality in arriving at the conclusion that there was no material suppression on the part of the plaintiff's husband while submitting the proposal form for obtaining the insurance policy under Jivan Sarathi (Doubled Accident Benefit) Scheme in the year 1993."

b. National Board of Examination vs Association of Md Physicians AIR 2022 (Dell 246)

"17. The foregoing cases cement the finding that Judges are not and cannot be experts in all fields, and the opinion of experts cannot be supplanted by a Court overstepping its jurisdiction. It needs to be demonstrated by a candidate that the key answers are patently wrong on the face of it, and if there is any exercise conducted by the Court

wherein the pros and cons of the arguments given by both sides need to be taken into consideration, that will inevitably amount to unwarranted interference on the part of the Court. When there are conflicting views, it is incumbent upon the Court to bow down to the opinion of the experts which, in this case, was the Expert Committee constituted by the NBE.

18. The submissions made by the learned Senior Counsel hold weight inasmuch as the Court cannot step into the shoes of the examiner and render an opinion contrary to that of the Expert Committee. If the error in the question is manifest and palpable, and does not require any elaborate argument, then the Writ court may choose to intervene. However, where the errors do not show their heads without a detailed and elaborate probe into the opinions of experts, the Court must stay its hands. It would not be prudent for a Court to conduct itself like an expert in a subject alien to it when an entire body of experts has arrived at a contradictory stand. It is also not for the Courts to interfere in such matters, except in absolutely rare and exceptional cases, especially in view of the fact that the instant examination pertains to the practice of medicine – a field that requires the exercise of utmost care and caution.

7. The Learned Advocate representing the respondents submitted as follows:-

- (i) Before issuance of the policy by the LIC authority, the relevant columns of the proposal for Insurance on own life was filled up and Ranjit Chandra (Sonar), since deceased, had signed the same. A contract of insurance involves utmost good faith.
- (ii) As per Section 45 of Insurance Act, the respondent LIC upon enquiry and investigation came to the decision that the contract entered into by and between the deceased Ranjit Chandra Sonar and the LIC suffered from suppression of material fact, as such the said

policy was repudiated. Upon completion of claim investigation, the Investigating Officer, Branch Manager, LIC Purulia Branch Sri. A.K. Das filed an Enquiry Report dated 19.5.2006 to the effect that the deceased life assured had been suffering from respiratory problems prior to the issuance of the insurance policy and had been treated earlier by Dr. R.K. Agarwal, Purulia on 28.07.2015 i.e. 3 months (approx.) prior to the date of commencement, ECG, blood sugar tests were done on the same day in this regard.

(iii) Relevant portions of special provision of Section 45 of the Insurance Act, 1938, which was applicable as on the dates of commencement of policy and that of death and later, repudiation of claim, were highlighted thereafter: *"No policy of life insurance shall, after the expiry of two years from date on which it was effected be called in question by an insurer on the ground that the statement made in the proposal.... 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"* The subject policy commenced on 25.10.2005, the life assured died on 02.12.2005, i.e. just after 38 days, and the policy claim was repudiated on 04.10.2006, hence the exclusion clause of Section 45 was very much applicable and the repudiation had taken place within one year of policy commencement,

(iv) Dr. Rajesh Agarwal, i.e. D.W.3 who had previously treated the deceased life assured, in his examination- in-chief deposed on 28.07.2015 he had treated the insured in his chamber and the patient had problems of asthma along with cough and cold and slight respiratory distress. As per his advice the ECG was done and report showed that the insured had Chronic Obstructive Pulmonary Disease (COPD), Thus, the life assured had suppressed information of being treated by the Doctor, of undergoing ECG and Blood Sugar Tests, and of incidence of Asthma and Chronic Obstructive Pulmonary Disease. Had this information not been suppressed, further medical tests might have been required by the insurer to determine the eligibility of the deceased life Assured for insurance and/or the policy might have been declined and/or accepted with modified terms. Thus, the insurer was entirely within its right, in terms of the provisions of Section 45, to repudiate the claim on grounds of suppression of material information.

(v) The Learned Trial Judge also placed reliance upon the evidence of the Dr. A.K. Hazari, who had attended the deceased life assured just prior to death categorically submitted the cause of death of the insured was primarily due to Cardio Vascular failure with secondary cause Uracania. Dr. Hazari further submitted the date of first consultation with life assured was 2 days prior to his death.

(vi) The respondent LIC clearly stated in their written statement filed before the Learned Trial Court that before insurance of the said policy the defendant LIC, the relevant columns of the "Proposal for

Insurance on own Life" was filled up and signed by insured Ranjit Chandra (Sonar) in presence of the witness on 25th day of October, 2015 where he declared that the statements and declaration would be the basis of the contract for assurance between Ranjit Chandra (Sonar) since deceased and Life Insurance Corporation of India and that if any untrue averments had been contained therein the contract would be absolutely null and void and all which would have been paid in respect thereof would stand forfeited to the Corporation. In this regard the respondents relied upon the judgments of the Hon'ble Apex Court in **2019(3) CHN (SC) 182 (Life Insurance Corporation of India -VS- Manish Gupta**, and (ii) **(2009)8 Supreme Court Cases 316 (Satwant Kaur Sandhu -VS- New India Assurance Company Limited)**. A contract of Insurance involves utmost good faith. The Hon'ble Supreme Court held that when information on a specific aspect is asked for in the proposal form, an assured was under a solemn obligation to make a true and full disclosure of all relevant information as the subject which is within his knowledge. The repudiation on the part of the respondent insurance company was absolutely legal which did not entail any legal obligation on the part of the same to pay whatever any benefit to the petitioner.

8. The insured Ranjit Chandra (Sonar) since deceased declared in the relevant column in the proposal form that he was not suffering from any prolonged or serious ailment, nor had consulted any doctor nor undergone any diagnostic test in the preceding five years, while he entered into the insurance with defendant/respondent LIC and obtained the aforementioned with Profit

Endowment Assurance policy for sum assured of Rs.2,00,000/- (Rupees Two Lakh) with accident benefit. The policy commenced on 25.10.2005 and the life assured died on 02.12.2005 i.e. just after 38 days from the date of commencement of the policy

9. The Hon'ble Supreme Court in **LIC v. Manish Gupta**¹ held the following:

“14. A contract of insurance involves utmost good faith. In Satwant Kaur Sandhu v. New India Assurance Co. Ltd. [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366], this Court has held thus : (SCC p. 322, para 18)

“18. ... Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment.”

15. The consumer fora have made a fundamental error in allowing the claim for reimbursement of medical expenses in the face of the uncontroverted material on record. The documentary material indicates that there was a clear failure on the part of the respondent to disclose that he had suffered from rheumatic heart disease since childhood. The ground for repudiation was in terms of the exclusions contained in the policy. The failure of the insured to disclose the past history of cardiovascular disease was a valid ground for repudiation.”

¹ (2019) 11 SCC 371

10. The Hon'ble Supreme Court ***Bajaj Allianz Life Insurance Co. Ltd. v.***

Dalbir Kaur,² held the following:-

*“7. 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 hospitalisation 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.***

8. *In LIC v. Asha Goel [LIC v. Asha Goel, (2001) 2 SCC 160] , this Court held : (SCC p. 168, para 12)*

*“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***

² (2021) 13 SCC 553

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.”

9. This has been reiterated in the judgments in *P.C. Chacko v. LIC* [*P.C. Chacko v. LIC*, (2008) 1 SCC 321 : (2008) 1 SCC (Civ) 235] and *Satwant Kaur Sandhu v. New India Assurance Co. Ltd.* [*Satwant Kaur Sandhu v. New India Assurance Co. Ltd.*, (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] In *Satwant Kaur Sandhu v. New India Assurance Co. Ltd.* [*Satwant Kaur Sandhu v. New India Assurance Co. Ltd.*, (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] , 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 : (SCC p. 324, para 25)

“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.”***

10. Recently, this Court in *Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod* [*Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod*, (2019) 6 SCC 175 : (2019) 3 SCC (Civ) 174] , has set aside the judgment [*Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod*, 2015 SCC OnLine NCDRC 1283]

of NCDRC, whereby 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 : (Reliance Life Insurance case [Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175 : (2019) 3 SCC (Civ) 174] , SCC p. 193, paras 30-31)

“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* [Satwant

Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] : (SCC p. 324, para 25)

‘25. ... 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.”

11. The decision of this Court in *Sulbha Prakash Motegaonkar v. LIC* [*Sulbha Prakash Motegaonkar v. LIC*, (2021) 13 SCC 561] , which has been relied upon by 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 spondylitis. 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.

12. 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 hospitalised 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, hospitalisation or treatment undergone by the proposer in Column 22 of the policy proposal form.** We are, therefore, of the view that the judgment [*Bajaj Allianz Life Insurance Co. Ltd. v. Dalbir Kaur*, 2020 SCC OnLine NCDRC 463]

of NCDRC in the present case does not lay down the correct principle of law and would have to be set aside. We order accordingly.

13. However, Mr Amol Chitale, learned counsel appearing on behalf of the appellants has informed the Court that during the pendency of the proceedings, the entire claim was paid over to the respondent, save and except for the amount of costs. Having regard to the age of the respondent, who is seventy years' old and the death of the assured on whom she was likely to be dependent, we are of the view that it would be appropriate for this Court to utilise its jurisdiction under Article 142 of the Constitution, by directing that no recoveries of the amount which has been paid shall be made from the respondent. However, while doing so, we expressly hold that the impugned judgment [Bajaj Allianz Life Insurance Co. Ltd. v. Dalbir Kaur, 2020 SCC OnLine NCDRC 463] of NCDRC does not lay down the correct position in law and shall accordingly stand set aside.”

11. The Hon'ble Supreme Court in **Manmohan Nanda v. United India Assurance Co. Ltd.**³ held the following:-

“37. 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.* [*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.

38. 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,

³ (2022) 4 SCC 582

it is not material if the result of the inquiries would have no effect on a prudent insurer.

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.*

40. *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.*

41. ***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.

42. 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.

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55.1. *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.*

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

55.3. *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.*

55.4. *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.

55.5. *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.*

55.6. *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.*

55.7. *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.*

12. In **Reliance Life Insurance Company Limited & Anr. Vs. Rekhaben Nareshbhai Rathod**, the Hon'ble Supreme Court held as follows:-

"14. *Section 45 stipulates restrictions upon the insurer calling into question a policy of life insurance after the expiry of two years from the date on which it was effected. After two years have elapsed the insurer cannot call it into question on the ground that : (i) a statement made in the proposal; or (ii) a statement made in any report of a medical officer,*

referee or friend of the insured; or (iii) a statement made in any other document leading to the issuance of the policy was inaccurate or false, unless certain conditions are fulfilled. Those conditions are that : (a) such a statement was on a material matter; or (b) the statement suppressed facts which were material to disclose and that (i) they were fraudulently made by the policy-holder; and (ii) the policy-holder knew at the time of making it that the statements were false or suppressed facts which were material to disclose. The cumulative effect of Section 45 is to restrict the right of the insurer to repudiate a policy of life insurance after a period of two years of the date on which the policy was effected. Beyond two years, the burden lies on the insurer to establish the inaccuracy or falsity of a statement on a material matter or the suppression of material facts. **Moreover, in addition to this requirement, the insurer has to establish that this non-disclosure or, as the case may be, the submission of inaccurate or false information was fraudulently made and that the policy-holder while making it knew of the falsity of the statement or of the suppression of facts which were material to disclose.**

15. Section 45 curtails the common law rights of the insurer after two years have elapsed since the cover for life insurance was effected. In the present case, the Court is called upon to determine the nature of the authority of the insurer where a policy of life insurance or a claim under it is sought to be repudiated within two years. The insurer submits that within a period of two years, its right to repudiate the respondent's claim is untrammelled and is not subject to the conditions which apply beyond two years. On the other hand, the submission of the respondent is that even within a period of two years, a non-disclosure or suppression must be of a material fact to justify a repudiation. In other words, before a non-disclosure can be utilised as a ground to repudiate, it must pertain to a realm where it can be found that the non-disclosure was of a circumstance or fact which would have affected the decision of the insurer regarding whether or not to grant a cover.

16. The fundamental principle is that insurance is governed by the doctrine of uberrima fidei. This postulates that there must be complete good faith on the part of the insured. This principle has been formulated in MacGillivray on Insurance Law [12th Edn., Sweet and Maxwell (2012).] succinctly, thus:

“[Subject to certain qualifications considered below], 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 or 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....”

The relationship between an insurer and the insured is recognised as one where mutual obligations of trust and good faith are paramount.

17. In *Condogianis* [*Condogianis v. Guardian Assurance Co. Ltd.*, 1921 SCC OnLine PC 39 : (1921) 2 AC 125 : AIR 1921 PC 195] , the Privy Council dealt with an appeal by special leave from a judgment [*Guardian Assurance Co. Ltd. v. Condogianis*, (1919) 26 CLR 231] of the High Court of Australia. The appellant had claimed a declaration under a policy of insurance that the insurer was liable to pay him for a loss sustained as a consequence of a fire. In response to the requirement of disclosing whether the proponent had ever been a claimant of a fire insurance company in respect of the property proposed or any other property, the insurer had disclosed one claim which had been made in the past but omitted to disclose another, in respect of the burning of a motor car. The terms of the declaration were as follows : (SCC OnLine PC para 5)

“5. ... ‘This proposal is the basis of the contract and is to be taken as part of the policy and (if accepted) the particulars are to be deemed express and continuing warranties furnished by or on behalf of the proponent; and any questions remaining unanswered will be deemed

to be replied to in the negative. The proposal is made subject to the Company's conditions as printed any/or written in the policy to be issued hereon, and which are hereby accepted by the proponent.”

Lord Justice Shaw, speaking for the Privy Council held : (SCC OnLine PC para 6)

“6. The case accordingly is one of express warranty : If in point of fact the answer is untrue, the warranty still holds, notwithstanding that the untruth might have arisen inadvertently and without any kind of fraud. Secondly, the materiality of the untruth is not in issue; the parties having settled for themselves—by making the fact the basis of the contract, and giving a warranty—that as between them their agreement on that subject precluded all inquiry into the issue of materiality. In the language of Lord Eldon in Newcastle Fire Insurance Co. v. Macmorran & Co. [Newcastle Fire Insurance Co. v. Macmorran & Co., (1815) 3 Dow PC 255 : 3 ER 1057] (ER p. 1060)

‘... it is a first principle in the law of insurance, on all occasions, that where a representation is material it must be complied with—if immaterial, that immateriality may be inquired into and shown; but that if there is a warranty it is part of the contract that the matter is such as it is represented to be. Therefore the materiality or immateriality signifies nothing.’”

Xxx

21.

“7. ... It is well settled that a contract of insurance is contract uberrima fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted. Section 45 of the Act has made special provisions for a life insurance policy if it is called in question by the insurer after the expiry of two years

from the date on which it was effected. Having regard to the facts of the present case, the learned counsel for the parties have rightly stated that this distinction is not material in the present appeal. If the allegations of fact made on behalf of the appellant Company are found to be correct, all the three conditions mentioned in the section and discussed in *Mithoolal Nayak v. LIC* [*Mithoolal Nayak v. LIC*, 1962 Supp (2) SCR 571 : AIR 1962 SC 814 : (1962) 32 Comp Cas 177] must be held to have been satisfied.”

22.

“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 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 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.”

23.

In taking this view, the Court relied upon the earlier decisions in *United India Insurance Co. Ltd. v. M.K.J. Corpn.* [*United India Insurance Co. Ltd. v. M.K.J. Corpn.*, (1996) 6 SCC 428] and *Modern Insulators Ltd. v. Oriental Insurance Co. Ltd.* [*Modern Insulators Ltd. v. Oriental Insurance Co. Ltd.*, (2000) 2 SCC 734] **Adverting to the expression “material fact” this Court explained it as : (Satwant Kaur case [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] , SCC p. 323, para 22)**

“22. ... any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be “material”.”

In a situation which was not governed by Section 45, this Court applied the fundamental tenet of insurance law, namely, utmost good faith.”

13. A communication dated 04.10.2006 from the Senior Divisional Manager, LIC, Asansol Division to Nirmal Chandra (Sonar) reflected as follows:

“Dear Sir,

Re: Pol. No.- 466064616 fvg. Ranjit Chandra (Sonar) (Decd.)

With reference to your Claim under the above policy on the life of your deceased father, we have to inform you that we have decided to repudiate all liability under the policy on account of the deceased having withheld correct information regarding his health at the time of effecting the assurance with us.

In this connection, we have to inform you that in the proposal for assurance dated 25.10.2005, he had answered the following questions as under noted:-

QUESTIONS

ANSWERS

No.11

a) During the last 5 years did you consult a medical Practitioner for any ailment requiring treatment For more than a week?

No

d) Are you suffering from or have you ever suffered From ailments pertaining to Liver, Stomach, Heart, Lungs, Kidney, Brain or Nervous system?

No

e) Are you suffering from or have you ever suffered from Diabetes, Tuberculosis, High Blood Pressure, Hydrocele, Leprosy or any other disease?

No

i) What has been your usual state of Health?

Good

We may, however, state that all these answers were false as we have evidence and reasons to believe that since about 3 months before he proposed for the above policy, he had been suffering from C.O.P.D., Respiratory distress, high blood pressure and also had a rhythm rate 100/min. with left axis deviation and non progression in V1-V4, as disclosed by an ECG done at that time, for which he had consulted medicalmen and he had taken treatment from them. He did not, however, disclose these facts in his proposal. Instead he gave false answers therein, as stated above.

It is, therefore, evident that he made **incorrect statements and withheld correct information from us regarding his health at the time of effecting the assurance** and hence in terms of the policy contract and the declaration contained in the forms of proposal for Assurance we hereby repudiate the claim and accordingly, we are not liable for any payment under the above policy and all moneys that have been paid in consequence thereof, belong to us.

If you are not satisfied with our decision you may send your representation to our Zonal Manager in the following address within one month:-

THE ZONAL MANAGER,
L.I.C. OF INDIA,
EASTERN ZONAL OFFICE,
HINDUSTHAN BUILDING,
4, C.R. AVENUE,
KOLKATA-72

Thanking you,

Yours faithfully,

Sr. Divisional Manager.”

14. A communication dated 24.03.2007 from Senior Divisional Manager, LIC, Asansol Division addressing to Nirmal Chandra Sonar reflected below:-

“Dear Sir,

Re: Review of Repudiation of Death Claim against Pol. No.- 466064616

Ranjit Ch. Sonar (D).

Consequent upon your appeal for re-consideration of repudiation of Death Claim against the above policy favouring your deceased father,

the Zonal Claims Review Committee at our Eastern Zonal Office, Kolkata, has carefully re-examined the case and upheld the repudiation action taken earlier from this end. Hence, nothing is payable under the policy.

In case you are not satisfied with our above decision you may appeal to the Insurance Ombudsman in the following address:-

*The Asstt. Secretary,
Office of the Insurance Ombudsman,
29, N.S. Road, 3rd Floor,
Kolkata-700001*

Thanking you,

*Yours faithfully,
Sr. Divisional Manager.”*

15. Vide order dated 27.04.2015 in S.A.T. No.100 of 2014 the Hon’ble Division Bench of this Court observed as follows:

“The appeal will be heard on the following substantial questions of law:

(a) Whether the finding of the First Appellate Court that the Plaintiff/Appellant was not entitled to the sum assured or other benefits accrued from the policy because of suppression of material facts regarding his condition of health when the policy was issued, is correct?

(b) Whether the repudiation of the claim of the Plaintiff/Appellant under the Life Insurance Policy No.466064616, is legal?”

16. Any incorrect statement in the proposal form or any other document directly affects a policy of life insurance granted in favour of the insured. Any incorrect statement or suppression of a fact is material to the expectancy of

the life of the insured. A policy of life insurance issued in favour of the insured acknowledges the expectancy of life of the insured. Expectancy of the life is assessed when an insurer is approached for a life insurance policy. The determining factor is the age, health of the insured as to whether the same pose a lower risk or a higher risk to the insurer in terms of settlement of claims as well as payment of premium.

17. Based on the procedure followed by the Insurance Companies irrespectively certain information regarding the principle of expectancy of the life of the insured assessed and evaluated by the insurer as a primary pre-condition can be quoted as follows:-

“When applying for term insurance, one key factor that significantly influences the premium amount is life expectancy. Insurers use this metric to assess the risk of insuring an individual. A higher life expectancy often results in lower premiums, as the policyholder is expected to live longer, reducing the likelihood of the insurer needing to pay out early. In contrast, a shorter life expectancy can lead to higher premiums due to the increased risk for the insurer. Understanding how life expectancy impacts term insurance premium helps in making informed decisions when choosing a policy.

.....

Life expectancy plays a major role in determining term insurance premiums, with longer life expectancy leading to lower premiums.

Other factors influencing premiums include age, health, lifestyle habits, occupation, and policy term.

Younger and healthier individuals generally pay lower premiums compared to older or less healthy applicants.

Risky habits like smoking or high-risk jobs can increase premium amounts.

Premiums are calculated based on a combination of factors such as life expectancy, sum assured, and policy duration.

Understanding these factors helps in selecting the right term insurance plan and ensuring optimal coverage at affordable premiums.

.....

Life expectancy refers to the average number of years a person is expected to live based on various factors such as age, gender, health, and lifestyle. It provides a statistical estimate of an individual's lifespan, considering societal and personal health conditions. Insurers use life expectancy as a crucial metric to evaluate the risk associated with providing coverage. The higher a person's life expectancy, the lower the risk for the insurer, as they are less likely to make an early payout, which in turn affects the premium amount charged for the insurance policy.

.....

Life expectancy directly impacts term insurance premiums, as it helps insurers gauge the likelihood of the policyholder passing away during the term of the policy. Individuals with a longer life expectancy pose a lower risk to the insurer, resulting in lower premiums. Conversely, those with a shorter life expectancy present a higher risk, leading to higher premiums. Insurers assess factors like age, health conditions, and lifestyle to determine life expectancy, which then influences the premium calculations. This ensures that the premiums align with the risk the insurer is taking by offering coverage.

.....

Life expectancy significantly influences term insurance premiums, as it helps insurers assess the risk of offering coverage. Higher life expectancy usually results in lower premiums, while shorter life expectancy can lead to higher costs. Alongside life expectancy, other factors such as age, health, lifestyle, and occupation also determine the premium amount. By understanding these elements, individuals can make better choices when selecting a term insurance policy that

fits their needs and budget, ensuring they get the most value from their coverage.”

18. The deposition of witness no.3/Dr. Rajesh Kr. Agarwal dated 11.08.2011 in T.S. 76 of 2009 is as follows:

“I treated Ranjit Sonar on 28.07.2005 in my chamber. The prescription shows that he had complaint of ASMA along with a cough and cold along with slight respiratory distress. I suggested to undergo clinical test of ECG, blood sugar and chest X ray. In my prescription it appears that the patient had blood sugar of 44 mg% and as per the report of chest X ray there was minor lungs congestion and the ECG showed symptom of Bronchitis. The prescription has been written in my handwriting and it bears my signature. Let the prescription dt. 28.07.2005 be marked as Exbt.-C (objected to).

The ECG has been done by me and the report was written in my own handwriting. The ECG report along with the remark be marked as Exbt. D, D/ 1. (after obj.).

I do not have any personal acquaintance with the patient. The rhythm rate of the patient was normal.

Cross-Examination:

The normal extend of blood sugar is upto 140 mg. At the treating Ranjit Sonar I did not find any symptom to show he was suffering from prolonged disease. The prescription does not bear the signature of the patient. I do not regularly maintain any register for keeping accounts of patients treated by me.

In very few fields, medical science can be considered as a science of exactitude.

I am not empanelled doctor of L.I.C.”

19. Section 45(4) of the Insurance Act, 1938 states as follows:-

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:....”*

5. The questions in column No.11 of the proposal form as mentioned above asked the proposed policy holder to reply as to whether he had consulted a medical practitioner for any ailment requiring treatment for more than a week. The policy holder (since deceased) had replied in the negative to the said question. He was further required to answer a question as to whether he was suffering from or had ever suffered from ailments pertaining to liver, stomach, heart, lungs, kidney, brain or nervous system which too was answered by the aforesaid policy holder in the negative. It was incumbent upon the insurer in compliance with the proviso to Section 45(4) of the aforesaid Act 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 was based.
6. Accordingly, on repudiation of the policy as aforesaid, a communication dated 04.10.2006 issued by the Senior Divisional Manager stated that the policy holder (since deceased) had been suffering from C.O.P.D., respiratory distress, high blood pressure and also had a rhythm rate 100/min. with left axis deviation and non-progression in V1-V4, as disclosed by an ECG done

at that time for which he had consulted medical men and he had taken treatment from them which was not disclosed in the proposal form and contrary negative answers reflected therein.

7. The word "ailment" means *"indisposition of body or mind a slight illness especially one that is not very serious."* The proposal form demanded an answer regarding consultation with a medical practitioner for any ailment wherein the treatment continued for more than a week. The query did not specify the extent and severity of an ailment in terms of its continuity or prolonged suffering within a preceding period of last 5 years or thereafter.
8. Evidently, the policy holder (since deceased) had consulted Dr. R. K. Agarwal OPW-3 on 28.07.2005 who had issued a prescription marked Exhibit-C whereby he had mentioned the ailments suffered by the aforesaid policy holder in terms of complaints of asthma along with cough and cold, slight respiratory distress etc. with an advice to undergo clinical test of ECG, blood sugar and chest X-Ray. The evidence of OPW-3 the aforesaid Dr. R. K. Agarwal disclosed the report of chest X-Ray to determine minor lung congestion and the ECG report mentioned symptoms of bronchitis. The prescription marked as Exhibit-C stated the medicines to be consumed by the policy holder for 5 to 10 days. The policy holder (since deceased) had deliberately violated to disclose the truth of the facts as was legally expected of him which he had exclusive knowledge.
9. C.O.P.D., bronchitis or any kind of respiratory distress pertained to an ailment of lungs which had been suffered by the policy holder as verily evident from the document marked as Exhibit-C as well as the deposition of

OPW-3 which yet again was not disclosed by the policy holder. As discussed earlier, the aforesaid facts are correlated to the expectancy of the life of the insured enabling the insurer to calculate and assess the rate of premium to be paid by the insured in terms of the policy of life insurance to be issued in his favour. Suppression of such facts violates the essence of contract legally entered into by and between the parties exclusively on good faith to predominantly ensure beneficial legislative intent in favour of the insured.

10. The age of the insured was 64 years when the proposal form was submitted. A policy of life insurance was issued in favour of the policy holder (since deceased) at the age of 64. The explanation appended to Section 45(4) of the aforesaid Act states as follows:-

“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.”

11. The misstatement or suppression of fact should not have been considered material unless it directly affected the risk to be undertaken by the insurer. Moreover, the insurer has to prove that prior knowledge of such misstatement or suppression of fact would have precluded the insurance company to issue a policy of life insurance in favour of the insured. The explanation in the communication dated 04.10.2006 as aforesaid explicitly described the suppression of the physical ailments undergone by the policy holder prior to his application for issuance of insurance policy which could have influenced the decision to preclude the insurance company from

issuing a policy of life insurance had there been a prior knowledge of the same. The reference or disclosure of elements assist the insurance company to decide to grant or to refuse to grant the life insurance policy.

12. In the instant case, the respondent-insurance company has accentuated upon suppression of material facts by the aforesaid policy holder a preliminary condition to have been fulfilled for execution of the contract. The subsequent event of death of the policy holder due to cardio vascular arrest is not related to the grant of insurance policy since the same is independent of the terms and conditions of the policy.
13. A normal healthy person can die out of a cardio vascular attack imminently irrespective of suffering from prolonged disease or otherwise. The proposal form did not indicate the severity of the ailment to be expressed or the prolonged illness of the policy holder to be mentioned. It was a simpliciter question to disclose of any ailment (concerning certain organs of the body) to have been suffered by the proposed policy holder within 5 years prior to the application for grant of policy of life insurance. The policy holder cannot deny to have attended the chambers of the doctor being DW-3, undergoing the process of ECG and chest X-ray having participated in the same personally reserving the knowledge to himself, deliberately withholding the same contrary to the terms and conditions of the proposed policy document contravening the proposition of utmost good faith being rudimentary and indispensable to execute a contract of insurance policy. The policy holder (since deceased) had suppressed material facts which could have affected the decision of the insurer to grant an insurance policy in favour of the person aged 64 years suffering from the ailments which transpired subsequently on

proof. Therefore, the repudiation of the claim of the plaintiff/appellant under the life insurance policy is legal.

14. The proviso to Section 45(4) of the aforesaid Act further stated:

“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.”

15. The repudiation of the policy of the life insurance has been legally repudiated on the ground of misstatement or suppression of material fact but not on the ground of fraud as evinced from the communication dated 04.10.2006 as aforesaid. Therefore, the premium collected on the policy till the date of repudiation should be paid to the insured or the legal representatives or nominees or assignees of the insured within the period of 90 days from the date of such repudiation.

16. The First Appellate Court, therefore, erred in observing that the plaintiff/appellant was not entitled to the sum assured or other benefits accrued from the policy because of suppression of material facts regarding his condition of health when the policy was issued.

17. The respondent-company is to refund the premium of Rs.24729/-collected for one time on the aforesaid policy along with an interest at the rate of 6% per annum from the date of filing of the claim application till the date of its realization. The respondent-insurance company is to deposit the aforesaid amount through a cheque at the Office of the Registrar General, High Court

at Calcutta to be disbursed in favour of the appellant within 60 days from the passing of this order on the proof of proper identification.

18. In view of the above discussions, the second appeal being SA 84 of 2015 is disposed of.

19. The Trial Court Records shall be sent down to the concerned Court forthwith.

20. Copy of the order be sent to the Department as well as concerned Court for information.

(Ananya Bandyopadhyay, J.)