



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5628 OF 2024

1. Life Insurance Corporation of India
through its Divisional Manager,
Divisional Office, Nanded
“Jeevan-Prakash” Gandhi Nagar,
PB. No.23, Hingoli Road, Nanded
Taluka and District Nanded, Maharashtra
2. Zonal Manager,
Life Insurance Corporation of India,
Yogakshema East Wing,
Jeevan Bima Marg, Mumbai,
Maharashtra.
3. The Secretary, CO/CRM
Life Insurance Corporation of India,
Yogakshema Building, Central Office,
Mumbai, Maharashtra

Petitioner Nos. 1 to 3 through its
Authorized person
Sukhdev s/o. Banshi Bansode
Age 59 years, Occ. Service,
Devilal Parisar, Opp HP Petrol Pump,
Beed Bypass Aurangabad.

. Petitioners

versus

Mohd. Sikander Mohd. Maulana
Age 52 years, Occ. Business,
R/o. Rahemat Nagar, Opp. Golden Bakery,
Near Water Tank, Deglur Naka, Nanded
Taluka and District Nanded, Maharashtra

..Respondent
(original complainant)

Mr. A.D. Kasliwal, Advocate for the petitioners.
Mr. P.C. Mayure, Advocate for respondent sole.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 20th JUNE, 2024.

PRONOUNCED ON : 28th JUNE, 2024.

JUDGMENT :-

1. The petitioner takes exception to the order dated 18.4.2024 passed by National Consumer Disputes Redressal Commission, New Delhi passed in F.A. No. 350 of 2016, thereby allowing the complaint Case No. 11 of 2015, filed by respondent for recovery of insurance claim for a sum of Rs. 20 Lakhs towards death of life assured.

2. The respondent - original complainant obtained life insurance policy for his wife effective from 4.7.2011 to July, 2026, on the basis of proposal dated 22.8.2011. The amount of Rs. 20 Lakhs was sum assured. During currency of the policy, she passed away on 20.9.2012. The complainant submitted claim. However, the Life Insurance Corporation rejected the same vide repudiation letter dated 1.3.2013 on the ground that material information was withheld pertaining to health condition. The material part of the repudiation letter reads thus :-

“ We may, however, state that all these answers were false as we have evidence and reasons to believe that Life Assured died of Chronic Renal Failure with history of DM for 15-20 years and was on insulin for 2 to 3 years as per consultation sheet of KEM Hospital, Mumbai. There is suppression of material facts. All this history goes prior to the date of commencement of policy; however it is not disclosed in the proposal ...”

3. The respondent assailed repudiation of the claim before the Consumer Disputes Redressal Commission, Mumbai, Bench at Aurangabad vide Consumer Complaint No. 11 of 2016. The State Commission, after hearing the parties dismissed the complaint vide order dated 6.5.2016. The petitioner assailed said order in appeal before the National Commission, which has been allowed by the impugned order dated 18.4.2024.

4. Mr. A.D. Kasliwal, learned advocate appearing for the petitioner contends that material information as regards health condition of the deceased-life assured (DLA) / Policy Holder had been withheld in proposal. He invites attention of this Court to the Consultation Sheet dated 12.9.2012 from Department of Nephrology, KEM Hospital, Parel. The DLA was examined. The history of illness records that she is suffering from diabetes for 15 to 20 years and Hypertension since 2 to 3 years. Document shows history to be recorded as per the information given by brother of the DLA.

5. Mr. Kasliwal would further invite attention of this Court to the proposal form which contains various columns. Column No. 3(C) pertains to the previous illness, which is answered as “Yes” with further remark, Diabetes from one year” According to Mr. Kasliwal, when DLA was suffering from diabetes for more than 15 to 20 years, false information regrading health status was supplied. Believing such statement, the insurance policy was issued. He would submit that considering the aforesaid aspects of the matter, the State Commission had rightly dismissed the complaint. However, National Commission erroneously allowed appeal and directed payment of Rs. 20 Lakhs to the

complaint towards claim amount. To buttress his submissions, Mr. Kasliwal relied upon the following judgments :-

1] Judgment of the Supreme Court in the case of ***Reliance Life Insurance Company vs. Rekhaben Nareshbhai Rathod***, reported in AIR 2019 SC 2039.

2] ***P.J. Chacko vs. Chairman, Life Insurance Corporation of India and others*** reported in AIR 2008 SC 424

3] ***Satwant Kaur Sandhu vs. New India Assurance Company*** 2009 AIR SCW 7213

4] Judgment of the National Commission dated 9.2.2024 in the case of ***Divisional Manager, Life Insurance Corporation of India through Assistant Secretary vs. Shriraj Amar Mahagaonkar***.

6. Per contra, Mr. Mayure, learned advocate for the respondent would submit that the DLA had clearly informed that she was suffering from *diabetes mellitus* in the proposal form. In pursuance to such disclosure, she was thoroughly examined by the consultee Doctor of Life Insurance Corporation. After medical examination, a confidential report was forwarded certifying her health condition to be healthy. He would further point out that DLA was subjected to special bio-medical test 0-13 for LIC proposal, wherein, report as to blood sugar level and other parameters were called. After considering the report of the medical examination and laboratory reports, the insurance policy was issued. Mr. Mayure would further point out that when DLA had consulted with KEM hospital, history was recorded on the basis of information supplied by Faijal Ahmed i.e. her brother. He has filed an affidavit before the State Commission stating that, he had informed to concern Doctor at KEM hospital that DLA suffers from Diabetes since last 15 to 20 Months, which

has been wrongly recorded as 15 to 20 years. Mr. Mayure further points out that cause of death of DLA is un-concerned with *Diabetes Mellitus*. Therefore, relying upon the information in consultation sheet of KEM Hospital, no inference of suppression of material information could have been drawn. The National Commission has rightly observed that such conclusion was wrong, consequently, allowed the complaint. He would submit that this Court, in exercise of writ jurisdiction may not enter into the factual aspects of the matter. No jurisdictional can be found in the impugned order. In support of his contentions, he relied upon the judgment of this Court in the matter of *Asha Goel Vs. LIC, reported in AIR 1986 Bom. 412*.

7. Having considered the submissions advanced by the learned advocates appearing for the respective parties, and after going through material on record, issue as regards to the correctness of order passed by the National Commission in exercise of appellate jurisdiction is raised for consideration before this Court in exercise of Writ jurisdiction under Article 227 of the Constitution of India. The conspectus of the jurisdiction of this court under Article 227 of the Constitution has been explained by the Supreme Court in the case of, *Estralla Rubber Dass Estate (P) Ltd AIR 2001 SC 3295* which has been consistently followed till date and recently reiterated in the case of *Garment Craft Vs. Prakash Chand Goyal AIR 2022 SC 422*, wherein the Apex Court observed thus :-

“The High Court exercising supervisory jurisdiction does not act as a court of first appeal to re-appreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final

finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse.”

8. Considering the aforesaid parameters of jurisdiction of this Court, whether any jurisdictional error occurred in impugned order while allowing appeal of Respondent-complainant needs to be examined. The petitioner contends that although DLA was suffering from *diabetes Mellitus* for more than 15 to 20 years, false statement was made in proposal form limiting period of such ailment to one year only. Such statement amounts to flagrant non disclosure of material fact. To support such contention, heavy reliance is placed on the observations of the Supreme Court of India, in case of ***Reliance Life Insurance vs. Rekhaben Rathod (supra)***, wherein, court observed thus :-

“Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure. The duty of disclosure in insurance contracts was established in a King’s Bench decision in Carter v Boehm¹⁹, where Lord Mansfield held thus:

-Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the under-

writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risk, as if it did not exist. 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.

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) 2009 AIR SCW 7213—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.”

Similar observations can be found in the case of P. J. Chacko (supra), wherein, the Apex Court observed in para. 16 as under :-

“16. The purpose of taking a policy of insurance is not, in our opinion, very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered. The proposer must show that his intention was bonafide. It must appear from the face of the record. In a case of this nature, it was not necessary for the insurer to establish that the suppression was fraudulently made by the policy holder or that he must have been aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose. A deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law.”

9. In the present case, petitioner relied on consultation sheet of DLA, dated 12.9.2012 at KEM Hospital, Mumbai, wherein, while recording history of illness, it is recoded that DLA was suffering from *Diabetes Mellitus* for 15 to 20 years. Pertinently, DLA made a specific statement that she was suffering from *diabetes* in her proposal form.

However, the period of ailment is stated to be one year prior to the date of proposal. In pursuance of the said proposal, Special Medical report was called pertaining to sugar levels and 17 other different tests. The medical examination report from Consultee Doctor was also called. He recorded observations on health parameters and reported that DLA was healthy. Consequently, proposal was processed and accepted leading to issuance of life insurance cover.

10. Apparently, there is no suppression of material fact that would have affected decision making of LIC while assessing insurance proposal. Pertinently, the DLA died of *Chronic renal failure* on 20.9.2012 i.e. after 14 months of commencement of the policy. The National Commission elaborately considered the aforesaid aspects. Except record of KEM Hospital in form of Consultation Sheet, no other material is placed on record to justify contention of the petitioner that the DLA was suffering from *Diabetes Mellitus* for more than 15 to 20 years. The statement made in the consultation sheet has been refuted on behalf of the complainant and clarificatory affidavit of Mr. Faijal Ahmed (brother of DLA) has been filed before the State Commission explaining circumstances leading to incorrect recording of information in consultation sheet of KEM Hospital. To controvert such statement, no evidence is brought on record by petitioner. Mr Faizal Ahemed is not subjected to cross examination. The person who recorded information in consultation sheet of KEM hospital not examined to prove correctness of information recorded. No material or medical reports to substantiate adverse medical condition of DLA and its suppression is brought on record.

11. Considering the aforesaid facts and legal position, no jurisdictional error is found in the view taken by the National Commission. No case is made out for interference under Article 227 of the Constitution of India. In the result, writ petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-