IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 508 of 2022

1. S. Sangeetha
2. G. Deepika
3. G. Sanjay Krishna ... Appellants / Respondents 1 to 3/ Plaintiffs

Vs.

1. The Divisional Manager,
   Life Insurance Corporation
   of India,
   Salem. ... 1st Respondent/ Appellant/ 2nd Defendant

2. The South Regional Manager,
   Life Insurance Corporation
   of India,
   Chennai. ... 2nd Respondent/ 4th Respondent/ 1st Defendant

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 19.12.2019 made in A.S. No.11 of 2018 on the file of the Hon'ble Principal District Judge, Dharmapuri reversing the Judgment and Decree made in O.S. No.86 of 2016 dated 27.03.2018 by the Subordinate Judge Court, Dharamapuri.

For Appellants : Mr. S. Sathiaseelan

For Respondents : M/s. S.P. Patel

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JUDGMENT

This second appeal has been filed challenging the judgment and decree of the lower Appellate Court, reversing the finding of the Trial Court and set aside the judgment and decree of the Trial Court, thereby, rejected the claim of compensation made by the plaintiff.

2. The appellants herein are the plaintiffs. The first plaintiff is the wife and the 2nd and 3rd plaintiffs are children of the deceased Ganesamurthy, who was an Advocate by profession. He has insured himself with the respondent insurance company by way of four policies Nos.701362505, 701109489, 303712613 and 706029669. On 11.03.2013, the said Ganesamurthy died due to Cardio respiratory arrest, since the above policies were in force at the time of his death, his legal representatives came forward for filing the claim petition for dispersing of the insured amount for the four policies. Based on the claim made, the respondent had paid the insured amount for two policies bearing Nos.701363505 and 701109489 and denied the other two policies bearing Nos.703712613 and 706029669 on the ground that these two policies had not completed two years from the date of issuance of policies. The insurance company had also conducted investigation and contended that there was

suppression of medical ailments of the deceased, therefore, the insurance company is not liable to pay the insured amount, as per the policies. Aggrieved over the same, the plaintiffs have come forward to file a suit for claiming the insured amount from the insurance company.

3. The insurance company has contested the suit by stating that the deceased Ganesamurthy was suffering from Type-II Diabetes Mellitus as well as Chronic Acidic Peptic Ulcer and has undergone medical treatment for more than two years. It is also stated that as per the terms of the insurance policy, the coverage will come into force only after completion of two years from the date of insurance. The deceased had taken four insurance policies and since two policies have already completed two years, under Section 45 of the Insurance Act, 1938, they have not questioned the previous medical ailments of the deceased and dispersed the coverage amount. Since, two other policies have not completed two years and based on investigation, they have issued a refusal letter to the claimants. They further stated that since there is false declaration and suppression of illness by the deceased while taking policies, they are not liable to pay the coverage amount.

4. Based on the pleadings made on both sides, the Trial Court framed the following issues.

1. Whether the plaintiffs are entitled to avail the insurance amount of Rs.7,50,000/- from the defendants?

2. Whether the plaintiffs are entitled to the interest at 12% from 11.03.2013?

3. Whether the policy holder was effected by diabetes, Chronic Acidic Peptic Ulcer and Cancer at the time of taking policy?

4. Whether the insurance corporation liable to pay the insurance amount?

5. To what relief?

5. Before the Trial Court, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A.1 to A.6 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B.1 to B.17 were marked. The Trial Court after considering the representation made on both sides and evidence placed on record had held that the documents produced on the side of the defendants were came into existences only after the death of the deceased and further no documents were produced to prove the treatment taken by the deceased during his life time, thereby the Trial Court accepted the case of the plaintiffs and decreed the suit.

6. Aggrieved over the judgment and decree of the Trial Court, the insurance company had filed an appeal before the lower Appellate Court. The lower Appellate Court after appreciating the evidence placed on record, by placing reliance on Section 45 of the Insurance Act, 1938 and Sections 17 and 19 of the Contract Act, 1872 had held that the deceased had committed fraud by suppressing the vital facts related to his illness and the same was not property appreciated by the Trial Court, thereby set aside the judgment and decree of the Trial Court.

7. Aggrieved over the same, the plaintiffs have come forward with this second appeal. This Court, while admitting this appeal framed following question of law:

a) Whether the Ld.First Appellate Judge correct in invoking S.45 of the Insurance Act, 1938, since as per proviso to Sub-Section (2) of the Act, the Insurer ought to have communicated in writing to the insured or the legal representatives or nominees or assignees of the insured that the grounds and materials on which such decision of fraud or suppression of fact is based; but no such materials were produced along with Ex.B.13 sent to the 1st plaintiff repudiating the policy claim, and both D.W.2 and D.W.3 failed to substantiate their version or certificate by producing any documents or materials as contemplated in Proviso to Sub-Section (2) of S.45 of the Act?

b) Whether the Ld.First Appellate Judge proper in not appreciating

the well settled position in law that burden of proof always lies on the person repudiating / denying the claim namely, in the case on hand the Ïnsurer"states that the "Insured" was suffering from Type-II Diabetes Mellitus Mellitus and Acid Peptic Disorder and that has been suppressed and fraud played by the deceased policy holder; and that the "Insurer" should have proved the same in the manner known to law i.e., in accordance with S.101 and 102 of the Indian Evidence Act, 1872?

c) Whether the Ld.First Appellate Judge is correct in not drawing "adverse inference", in view of the fact that the LIC Agent who signed the Proposal Form namely, one A.Venkatesan was not examined and his Confidential Report submitted to the Insurer along with Proposal Form was not marked before the Court below which has given "Nil" adverse material facts about the physical condition of the deceased Ganesamurthy, as mandated by Regulation 8(i)(g) of the IRDA (Licensing of Insurance Aggents) Regulations, 2000 and accepted the Proposal Form?

d) Whether the Ld.First Appellate Judge is correct in relying the documentary evidences in Ex.B.3, Ex.B.13, Ex.B.14 and Ex.B.16 which are not proved by the defendants in the manner known to law and in not considering the oral evidences of D.W.2 and D.W.3 properly?

e) Whether the Ld.First Appellate Judge is correct in not appreciating the fact that the alleged suppression of facts, i.e., the deceased Ganesamurthy had not disclosed the fact that he had been suffering from Type-II Diabetes Mellitus Mellitus and Acid Peptic Disorder for two years prior to the date of proposal, was not proved by the defendants in the manner known to law to repudiate the policy claim in Ex.B.13?

8. The learned counsel appearing for the appellants/ plaintiffs submits that, the specific case of the plaintiffs is that the deceased Ganesamurthy was not

having severe illness, he was only in the border stage of diabetes and for that purpose, he was taking care of his health condition and he does not have any serious health issues as contended by the Insurance company. Since there was no ailments, he had submitted the proposal for issuance of insurance policy, thereby, there is no suppression of illness. This fact was also investigated by the insurance agent and there was also a Confidential Report submitted along with the insurance proposal at the time of availing insurance policy. Though, it is admitted that there are confidential reports attached along with the proposal of the insurance policy, the insurance company has not produced the same before the Trial Court, to substantiate their case that there is a suppression of illness. Section 45 of the Insurance Act, 1938 only provides that the insurance company is not entitled to question the ailment of the insured, if the policy period is completed two years. It does not mandates that in case, if the policy holder died within the period of two years from the date of issuance of insurance policy, the insurance company need not pay the coverage amount. He further submitted that by invoking Section 45 of the Insurance Act, 1938, the insurance company can conduct investigation regarding the cause of death of the insurer and if they found that, if there is any suppression or fraud, they are entitled to avoid the payment of the coverage amount. In this case, they have not proved their case that there is suppression of illness by the deceased or any fraud on the part of the

deceased, at the time of entering into the contract of insurance. Before the Trial Court, the evidences of D.W.2 and D.W.3, who are alleged to be given treatment to the deceased, have not produced any treatment record to substantiate or corroborate the case of the insurance company and the Trial Court rightly decreed the suit in favour of the plaintiffs. He further submitted that the lower Appellate Court had misread these evidences without any documentary proof and erred in setting aside the judgment and decree of the Trial Court, therefore prays to restore the judgment and decree of the Trial Court.

9. Per contra, the learned counsel appearing for the insurance company submits that as per Section 45 of the Insurance Act, 1938, if the insured died within the period of two years, the insurance company is entitled to repudiate the claim and the burden is on the claimants that the deceased was not having any medical ailments prior to the period of two years from the date of issuance of insurance policy, and relied on the judgment of the Hon'ble Apex Court in ***Mahakali Sujatha vs. Branch Manager, Future General India Life Insurance Company Limited and Another [(2024) 8 SCC 712]***. He further submitted that the evidence of the Doctors D.W.2 and D.W.3 have been properly appreciated by the lower Appellate Court and rightly accepted the case of the insurance company, and set aside the judgment and decree of the Trial Court. Therefore,

prays to confirm the judgment and decree of the lower Appellate Court.

10. I have considered the submissions made on both sides and perused the records placed on record.

11. Before dealing with the merits of the case, the scope of Section 45 of the Insurance Act, 1938 (Section 45, hereafter) which is relied on both sides is hereby considered. The Hon'ble Apex Court judgment in ***Mahakali Sujatha case*** cited supra, interpreted Section 45 of the Insurance Act, 1938 and held in paragraph Nos.19 to 21 as follows:

> *"**19.** The repudiation of an insurance claim is largely governed by Section 45 of the Insurance Act, 1938. Section 45 is a special provision of law, which bars the calling in question of an insurance policy beyond expiry of the stipulated period, except in a few circumstances that have to be proved by the insurer. The relevant part of the said provision, as it stood at the material time, is reproduced as under:*
>
> > ***45.** Policy not 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.

20. *A three-judge bench of this Court in Mithoolal Nayak v. Life Insurance Corporation of India MANU/SC/0255/1962 : 1962:INSC:4 : AIR 1962 SC 814, explained the scope of the operating part of Section 45 as under:*

7. *...It would be noticed that the operating part of Section 45 states in effect (so far as is relevant for our purpose) that no policy of life insurance effected after the coming into force of the 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; the second part of the Section is in the nature of a proviso which creates an exception. It says in effect that if 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 policyholder 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, then the insurer can call in question the policy effected as a result of such inaccurate or false statement.*

21. *The scope of Section 45 was dealt with by this Court in the case of Reliance Life Insurance Co. Ltd., vs. Rekhaben Nareshbhai Rathod [(2019) 6 SCC 175] 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 policyholder while making it knew of the falsity of the statement or of the suppression of facts which were material to disclose."*

12. The Hon'ble Apex Court has read down the Section into two parts and the first part, bars the insurance company from repudiating the policy after two years from the date of issuance of policy on certain grounds. The second

part is an exception to first part. First part lays down the grounds on which the policy could not be repudiated after two years, on the ground that in the statement of insured, report of Medical Officer, or referee, or friend of insured, or any document contains false or inaccurate information. The second part lays down that if the statement or information referred in first part is made on material matter or suppressed fact which was material to disclose and that it was made fraudulently, with knowledge that the statement is false, then insurance company is eligible to question the policy effected. This Section has not totally prohibit the Insurance Company from repudiating the insurance policy even after lapse of two years from the date of insurance policy, if the insurance company is able to show that the conditions stated above are satisfied. Cumulative effect of the Section 45, is to restrict the right of insurer to repudiate the policy of Life Insurance, after the period of two years of the date on which insurance of policy was effected. This section does not provide or permits the insurer from repudiating the policy, if the insured is injured or died within the period of two years, even in the absence of any of the grounds stated in the above section. In other words, the contention of the insurance company that, since the deceased was died within the period of two years from the date of policy was effected, they need not pay the insured coverage to the dependants of the insured, is not prescribed under Section 45 of the Act.

13. In this case, admittedly the deceased has taken four policies and out of four policies, claim for two policies were considered by the insurance company and the coverage amount were paid. They have not invoked Section 45 and repudiated the claim for the above two policies. Per contra, they have honoured the claim and paid the insurance coverage. According to them, the deceased was suffering from Type-II Diabetes Mellitus and Acidic Acidic Peptic Ulcer, which had been suppressed at the time of proposing the insurance policies. Whereas, it is the case of the plaintiffs that the deceased was only having border line diabetes and he was not having Type-II Diabetes Mellitus and Acidic Peptic Ulcer as contended by the insurance company and there is no suppression of any material information or any false statement was made by the insured. Since, the insurance company has come forward to repudiate the claim by stating that there is a false information regarding the medical ailments on the side of the deceased, the burden in on the insurance company to prove the same.

14. For the purpose of proving the same, the insurance company have come forward to examine D.W.1 to D.W.3, who are the Insurance Official and the Doctors, who have given treatment to the deceased, respectively. The D.W.1 - Insurance Official has stated that on the basis of their investigation, it was

found that the deceased has undergone treatment for Type-II Diabetes Mellitus and Acidic Peptic Ulcer for more than three years and this illness was suppressed and the insurance policies bearing Nos.703712613 and 706029669 were taken by the deceased and further contended that the deceased being an Advocate by profession, the conduct of the deceased is not appreciable.

15. The evidence of D.W.2 is that he is working as an Assistant Medical Officer in Government Medical College, Dharmapuri and having a private clinic in the name of Aswin Pravin Clinic near Dharmapuri Bus Stand and a clinic in Papparapatti. He has also stated that for the past three years, the deceased has undergone treatment for Type-II Diabetes Mellitus as an out-patient and he has issued the Medical Attendant's Certificate, which is marked as Ex.B.1. He further deposed that he is not having medical records to show that the deceased was taken treatment with him. In the cross examination, it was elicited that he has issued Ex.B.1, only after the death of the deceased. Further Ex.B.1 also shows that it was issued in the "Format" containing some questions raised by the defendant, in which he has filled certain portions. According to him, this Ex.B.1 is not a medical sheet maintained by his hospital. Except this evidence, he is not able to produce any documents to show that the deceased Ganesamurthy was taking treatment under him.

16. On careful perusal of the evidence of D.W.2 also shows that he has casually stated that he has given treatment for the deceased for the past two years, but he is not able to pin point the days on which, the deceased came to his hospital for treatment, with corroborative medical treatment records. Further, in the Ex.B.1, D.W.2 has stated that the deceased was suffering from diabetes, however, he has not clarified the stage of the diabetes of the deceased.

17. It is the case of the plaintiff that the deceased was having a border line of diabetes and no other ailments. Similarly, the D.W.3 - Doctor, who had also issued treatment certificate only after the death of the deceased and he has also stated that he is running an hospital in the name of Scahidanandha Diabetic Centre at Dharmapuri. The deceased had suffered from Type-II Diabetes Mellitus and Peptic Ulcer and he had taken treatment as an out-patient. He further supported the case of the insurance company by stating that this Type-II Diabetes Mellitus would lead to damage to the heart and kidney, if treatment was not properly taken. However, he was not able to produce any documentary evidence to show that the deceased Ganesamurthy undergone treatment and when he had visited hospital and what kind of medical treatment and prescription was issued. Except these oral evidence of D.W.2 and D.W.3, the insurance

company is not able to produce any documentary evidence relating to treatment or medical records to show that the deceased Ganesamurthy was taken treatment prior to his death, and suffered serious illness.

18. In ***Mahakali Sujatha's case*** cited supra, the Apex Court has considered the meaning of word "material fact" and test to find out suppression of material fact, after taking note of the Insurance Regulatory and Development Authority (Protection of Policy holder's Interests) Regulations, 2002, has observed in paragraph Nos.28, 29, 32, 33, 34 and 35 as follows:

> *"**28 .** Under the provisions of Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 the explanation to Section 2(d) defining "proposal form" throws light on what is the meaning and content of "material." For an easy reference the definition of "proposal form" along with the explanation under the aforesaid Regulations has been extracted as under:*
>
> > *"**2.** Definitions.- In these Regulations, unless the context otherwise requires-*
> >
> > *x x x*
> >
> > *(d) "Proposal Form" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a*

cover to be granted.

Explanation: "Material" for the purpose of these Regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer.

Thus, the Regulation also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the context of guiding the insurer in deciding whether to undertake the risk or not."

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

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

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

prudent insurer while issuing a policy of insurance.

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

33. *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:*

> *33.1. 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".*
>
> *33.2. 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".*
>
> *33.3. The materiality of a particular fact is determined by the circumstances of each case and is a question of fact.*

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.*

> ***35.*** *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."*

19. The plaintiffs are claiming that the deceased was not having any serious ailments and in the cross examination of D.W.1 - Insurance Official, it is admitted that there was an investigation done on the side of the insurance company by engaging one insurance agent A. Vengadesan and Confidential Health Report was obtained. This Report was not produced before the Court and this Confidential Health Report is the basis for the insurance company to enter into a contract of insurance and it is a vital document, which was suppressed by the insurance company. Though the insurance company has come forward to file an Ex.B.3 - The proposal form submitted by the deceased, they have not come forward to submit other connected records including these confidential records. Thereby, the Trial Court has rightly observed that the defendants have failed to prove their case on the touch stone of the preponderance of probabilities. Whereas the lower Appellate Court had refused to accept this finding, without

discussing the credential of the evidence of D.W.2 and D.W.3.

20. The Trial Court has accepted the plaintiff's claim that, at the time of entering into the insurance contract with the insurance company, the health condition was verified, and evidence of D.W.2 and D.W.3 are not inspiring confidence, since their evidence has no corroborative material, more importantly, the medical records showing treatment, if any undergone by the deceased. The absence of any medical records to show the ailments of insured and suppression of the confidential report by the insurance company was not taken note by the lower Appellate Court. Since the burden to prove the suppression of material fact has not been discharged by the insurance company, marking proposal form alone is not sufficient to prove the suppression of material fact. The lower Appellate Court also failed to appreciate the fact that, admittedly the deceased was died due to cardiac arrest and there is no evidence placed on record to link the ailment with the cardiac arrest of the deceased.

21. As held in paragraph No.34 in ***Mahakali Sujatha's case*** cited supra, if the fact is not material, would not have been apparent to a reasonable man, his failure to disclose it, is not a breach of his duty. In this case, the insurance company entered into contact of insurance, after verifying the health

condition of the insured, shall not entitled to claim that, they were not aware about the ailment of insured and there is a suppression of fact by the insured. The insurance company is trying to avoid honouring his contractual obligations based on events, which were not in existence at the time of entering into contract of insurance. Hence, the insurance company is estopped from repudiating the contract entered with the insured herein. Further, they are not entitled to claim since the deceased was died within two years from the date of insurance policy was effected, they are entitled to repudiate the claim by invoking Section 45 of the Act.

22. In the said circumstances, interference of the lower Appellate Court in the well considered judgment and decree of the Trial Court is not proper and the same is liable to be set aside. Accordingly, the substantial question of law 1 to 5 framed by this Court is answered that, non production of confidential report on the health of the deceased is fatal to the case of defendant, and it attracts adverse inference against the defendant herein. The lower Appellate Court has wrongly applied the burden of proving the fact of non-suppression of illness of the deceased on the plaintiffs. The lower Appellate Court has failed to consider, whether this non-disclosure of ailment i.e., border line diabetes in Ex.B.3 - Proposal form is a suppression of material fact or not, and same is intentional as

prescribed under Section 45 of the Act, to attract the right of insurance company to repudiate the claim. Though, oral evidence of D.W.2 and D.W.3 were placed on record, no documentary evidence to prove the fact, that the deceased was taking treatment before his death is available before the lower Appellate Court and without sufficient evidence to probablize the case of the defendant, the lower Appellate Court has accepted the case of the defendant only based on the documents came into existence after the death of the deceased, such as Exs.B.13, B.14 and B.16, which is impermissible under rules of evidence. In view of the same, the judgment and decree of the lower Appellate court is liable to be set aside, accordingly, the judgment and decree of the Trial Court is restored.

23. In the result, this second appeal is allowed and the judgment and decree of the lower Appellate Court is hereby set aside. There shall be no order as to costs.

25.10.2024

stn
Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To:

1. The Section Officer,
   VR Section,
   High Court, Madras.

K. RAJASEKAR, J.

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S.A. No. 508 of 2022

25.10.2024