BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	01.07.2024
Pronounced On	09.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.15397 of 2018

T.Radhungah ... Petitioner

Vs.

1.The Divisional Manager,
LIC of India,
Divisional Office,
Thanjavur District.

2.The Manager,
LIC of India,
Divisional Office,
Thanjavur District.

3.The Branch Manager,
LIC of India,
Pudukkottai,
Pudukkottai District.

4.The Marketing Manager,
LIC of India,
Divisional Office,
Thanjavur District. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent vide his proceedings Nil, dated 14.09.2017, quash the same as illegal and consequently, direct the respondents to disburse the amount covered under the Insurance Policy vide Policy No.757770214, within the period that may be stipulated by this Court.

[Prayer amended vide order dated 06.06.2024 in W.M.P.(MD)No.9253 of 2024 in W.P.(MD)No.15397 of 2018]

For Petitioner	: Mr.S.Mohamed Suhail for M/s.Ajmal Associates
For Respondents	: Mr.G.Prabhu Rajadurai Standing Counsel

ORDER

Initially, this Writ Petition was filed by the petitioner, who is the wife of one Late.Thirumaran, for the following relief:-

> *"To issue a Writ of Mandamus, directing the respondents to disburse the amount covered under the Insurance Policy vide Policy No.757770214, within a period that may be stipulated by this Court."*

2. Later, the prayer in this Writ Petition, which was amended vide the order of this Court, dated 06.06.2024 in W.M.P.(MD)No.9253 of 2024, reads as under:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent vide his proceedings Nil, dated 14.09.2017, quash the same as illegal and consequently, direct the respondents to disburse the amount covered under the Insurance Policy vide Policy No.757770214, within the period that may be stipulated by this Court."

3. The case of the petitioner is that the petitioner's husband namely, Thirumaran, who died on 14.07.2016 after taking a Life Insurance Policy from the respondents on 11.05.2016 for a sum of Rs.10,00,000/-. In the proposal for the above said Insurance Policy, the petitioner's husband declared his usual state of health as "good", when indeed, the petitioner's husband was suffering from Multiple Lymphadenopathy (Cancer).

4. The law on the subject is clear. The Policy of Insurance operates the doctrine of *uberrima fides i.e.,* there must be complete good faith on the part of the insured. The Hon'ble Supreme Court has indeed examined the issue in **Reliance Life Insurance Company Limited** vs. **Rekhaben Nareshbhai Rathod**, 2019 (6) SCC 175. In the said case, the Hon'ble Supreme Court has referred plethora of decisions rendered in the context of Section 45 of the Insurance Act, 1938 and held as under:-

"19. In Sheoshankar [Sheoshankar Ratanlalji Khamele v. LIC, 1970 SCC OnLine Bom 117 : AIR 1971 Bom 304] , a Division Bench of the Bombay High Court noted : (SCC OnLine Bom para 12)

> *"12. The law with respect to insurance previously was that any misstatement on the part of the assured while making the proposal or at any stage thereafter avoided the contract of policy and the insurer was not liable for the claim on such policy. In Condogianis v. Guardian Assurance Co. Ltd. [Condogianis v. Guardian Assurance Co. Ltd., 1921 SCC OnLine PC 39 : (1921) 2 AC 125 : AIR 1921 PC 195] , their Lordships pointed out that 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 contract and giving warranty—that as between them their agreement on that subject precluded all inquiry into the issue of materiality."*

The High Court observed that the law of insurance had, however, undergone a material change by the enactment of Section 45 of the Insurance Act, 1938. Explaining the provisions of Section 45, the High Court held : (SCC OnLine Bom para 14)

> *"14. ... The section is divided into two parts. Under the first part, if the insurer calls in question the policy within a period of two years from the date on which it was effected, then the insurer company has only to show 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. Even an incorrect statement which may not be on a material fact and suppression of fact which may not be on a material point, would be enough for the insurer company to avoid the contract of policy under this part. Under the second part, where a period of two years expired after the date of policy was effected without any challenge to it by the insurer, the insurer could call it in question only on showing that such statement by the insured 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 question as to the date on which the policy could be said to be effected and the date on which the proposal can be said to have been accepted assumes importance in this case as on the determination of this question will depend whether the repudiation by the insurer has been within two years or after a period of two years from the date on which the policy was effected."

21. In LIC v. G.M. Channabasamma [LIC v. G.M. Channabasamma, (1991) 1 SCC 357] , a two-Judge Bench of this Court held : (SCC pp. 359-60, para 7)

"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."*

23. In Satwant Kaur [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] this Court considered a case which arose from a decision of the Ncdrc. The insurer had repudiated a claim under a health insurance policy on the ground that the policy-holder was suffering from chronic diabetes and renal failure. This, according to the insurer, was a material fact a non-disclosure of which in the proposal form justified repudiation of the claim. Section 45, which applies to policies of life insurance, was not applicable since the case related to a mediclaim policy. D.K. Jain, J. speaking for the Bench of two learned Judges, held : (SCC p. 322, para 18)

"18. A mediclaim policy is a non-life insurance policy meant to assure the policy-holder in respect of certain expenses pertaining to injury, accidents or hospitalisations. Nonetheless, it is a contract of insurance falling in the category of contract uberrima fidei, meaning a contract of utmost good faith on the part of the assured. 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, the 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. (See Joel v. Law Union and Crown Insurance Co. [Joel v. Law Union and Crown Insurance Co., (1908) 2 KB 863 (CA)])"   (emphasis supplied)

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.

29. 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. Boehm [Carter v. Boehm, (1766) 3 Burr 1905 : 97 ER 1162] , where Lord Mansfield held thus : (ER p. 1164)

> *"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 underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist." "*

5. The records that have been filed before this Court indicate that the petitioner's husband Late.Thirumaran, who died on 14.07.2016, was under treatment with Lymphoma for the above said disease and was not in pink of health when the proposal was made by him on 11.05.2016. Therefore, this Writ Petition filed by the petitioner for compensation cannot be entertained. Thus, the said Writ Petition is liable to be dismissed and accordingly, is dismissed. No costs.

Index : Yes/ No 09.07.2024
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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C.SARAVANAN, J.

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