IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15815 OF 2024

HDFC Life Insurance Co. Ltd. **... Petitioner**

Versus

Sonal Naykodi & Anr. **... Respondents**

Mr. Vrushbh Vidyarthi *a/w Mr. Mohit Turakhia, Mr. Pranav D. i/b Mr. A. S. Vidyarthi for the Petitioner.*

Mr. Ramesh Ramamurthy *a/w Mr. Saikumar Ramamurthy & Ms. Seema Sorte for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

DATE : 25 MARCH 2025.

P.C. :

1) Petitioner has filed this Petition challenging order dated 1 March 2024 passed by the Insurance Ombudsman, Pune allowing the Complaint filed by Respondent No. 1 and directing it to pay to Respondent No.1 death benefit under the insurance policy.

2) I have heard Mr. Vidyarthi, the learned counsel appearing for Petitioner and Mr. Ramamurthy, the learned counsel appearing for Respondent No.1. I have also gone through the findings recorded by the Insurance Ombudsman in the impugned order as well as various documents filed alongwith the Petition.

3) It appears that the deceased had availed housing loan from Axis Bank of Rs. 24,00,000/-. There was apparently a tie-up between Axis Bank and Petitioner, under which the Petitioner had floated a group insurance scheme for insuring the amount of credit facilities disbursed by Axis Bank. The scheme was known as "HDFC Life Group Credit Protect Plus Insurance Plan". Thus, purchase of insurance policy by the insured was essentially on account of internal arrangement between the Petitioner and Axis Bank. Usually in a case like this, credit facilities are sanctioned by luring the borrowers to avail group insurance scheme under a tie-up insurance company. True it is that there is no compulsion on the borrower to avail the insurance scheme, but the manner in which loans are disbursed to the borrowers in cases involving tie-up with insurance company, the borrowers have little choice of refusing to opt for the insurance policy. It is sort of internal business arrangement, where the insurance companies secure business without soliciting customers. On account of such internal tie ups, the documents of loan and insurance policy are many times executed simultaneously.

4) It appears that under the tie-up with Axis Bank, the borrower purchased the group insurance scheme of the Petitioner for sum assured of Rs. 24,00,000/-, which was essentially to secure the amount of home loan availed by him from the Axis Bank. While filling up "Member Enrollment Form – SMQ" one of the disclosures which the insured was liable to make was "*Have you ever suffered or are currently suffering from (a)... (g) Diabetes, high blood pressure*." It appears that option "No" was ticked against the said query. It is the case of Respondent No.1 that the enrollment form was filled up by the agent. However, Mr. Vidyarthi is right in contending that once the insured affixes his signature to the enrollment form, he cannot

seek to distance himself from the declarations made therein by seeking to blame the agent.

5) It appears that towards purchase of the group insurance scheme, the insured paid single premium of Rs.23,478/- and the scheme was to remain in effect for only two years from 20 November 2019 to 19 November 2021. The fact that the insurance was availed only for a period of two years in respect of credit facilities of Rs.24,00,000/- disbursed by Axis Bank, would also show that the policy was sold essentially on account of internal tie-up between the Petitioner and Axis Bank.

6) It appears that the insured was detected with Covid-19 infection and was admitted to Aditya Birla Memorial Hospital on 31 October 2021 and unfortunately passed away on 9 November 2021, which was just 10 days short of the expiry of the insurance scheme. It appears that in the death summary, it was disclosed that the insured was suffering from Diabetes Mellitus and was on medication for the last 10 years. Mr. Vidyarthi has also placed reliance on certificate issued by the consulting physician of the insured certifying that the insured was under his treatment for diabetes since August 2019 and that he was suffering from diabetes for 10 years.

7) The Insurance Ombudsman has recorded a finding of fact that there is no co-relationship between the pre-existing diabetes suffered by the insured and the cause of his death.

8) Mr. Vidyarthi has submitted that disclosure of pre-existing ailment was a material factor to be taken into consideration while entering into contract of insurance. He would submit that

since a contract of insurance is based on the principle of utmost good faith, it was the duty of the insured to act fairly by making true and correct disclosures. In support of his contentions, he would place reliance on judgment of the Hon'ble Apex Court in ***Reliance Life Insurance Company Limited Vs. Rekhaben Nareshbhai Rathod***[1] in which it is held in paragraphs 27 to 29 and 32 as under:

> 27.Materiality from the insured's perspective is a relevant factor in determining whether the insurance company should be able to cancel the policy arising out of the fault of the insured. Whether a question concealed is or is it not material is a question of fact. As this Court held in Sawant Kaur (SCC p.323, para 22)
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> > "22. … Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be "material"."
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> 28. Materiality of a fact also depends on the surrounding circumstances and the nature of information sought by the insurer. It covers a failure to disclose vital information which the insurer requires in order to determine firstly, whether or not to assume the risk of insurance, and secondly, if it does accept the risk, upon what terms it should do so. The insurer is better equipped to determine the limits of risk-taking as it deals with the exercise of assessments on a day-to-day basis. In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not accept the risk is a material fact. If the proposer has knowledge of such fact, she or he is obliged to disclose it particularly while answering questions in the proposal form. An inaccurate answer will entitle the insurer to repudiate because there is a presumption that information sought in the proposal form is material for the purpose of entering into a contract of insurance.
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> 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, where Lord Mansfield held thus: (ER p.1164
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> > "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

1(2019) 6 SCC 175

> 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 risque, as if it did not exist."
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> xxx
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> 32. In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.

9) However the case before Hon'ble Apex Court in ***Reliance Life Insurance Company Limited*** (supra) involved unique facts where the spouse of the Respondent therein had initially taken a policy of another insurance company for a sum of Rs.11,00,000/- and within two months thereafter, he submitted a proposal for term insurance policy from the Appellant for additional insurance cover of Rs.10,00,000/- without disclosing the factum of having already purchased life insurance from another insurance company for Rs.11,00,000/-. After death of the spouse, the Respondent therein first raised a claim from another insurance company for Rs.11,00,000/- and the same was settled. The second claim was raised against Appellant insurance company, which was repudiated on the ground of non-disclosure of purchase of another insurance policy for Rs.11,00,000/-. Thus, observations by the Apex Court in paragraphs 27 to 29 and 32 of the judgment are made in the unique facts and circumstances of that case. It is well settled principle of law that observations made by Courts in judgments are

to be understood in the context in which they are made. Little difference in facts would make such observations inapplicable to another case.

10) In the present case, there are unique facts and circumstances where the insurance scheme was sold essentially on account of tie-up between Axis Bank and the Petitioner where the insurance was availed possibly as a precondition for disbursement of credit facilities by Axis Bank. The policy was aimed at securing repayment of the credit facilities disbursed by Axis Bank. The insured has lost his life battling with COVID-19 infection. The intention behind availing the insurance was to secure loan availed by him, which now his spouse (Respondent No.1) is liable to repay. Considering these unique facts and circumstances of the present case, in my view, the ratio of the judgment of the Apex Court in ***Reliance Life Insurance Company Limited*** (supra) cannot be applied to the present case for interfering in the order passed by the Insurance Ombudsman.

11) Mr. Vidyarthi has also relied on Judgment of coordinate bench of this Court in ***Aditya Birla Sunlight Insurance Company Limited Vs. Insurance Ombudsman Goa***[2] which follows the judgment of the Apex Court in ***Reliance Life Insurance Company Limited*** (supra). In case before this Court, the insured had failed to disclose that he was undergoing treatment for schizophrenia and hypertension much prior to making a proposal for insurance. One of the causes for death in that case was hypertension. In my view, therefore, the judgment of this Court in ***Aditya Birla Sunlight Insurance Company Limited***, rendered in the facts of that case would have no application here.

2(2023) 1 Mh.LJ 291

12) Petitioner has invoked jurisdiction under Article 227 of the Constitution of India. The jurisdiction is corrective in nature and the same need not be exercised to correct every error of law or fact. This Court has noticed unique facts and circumstances of the present case where the insured had purchased the insurance policy with a view to secure peace of mind in respect of repayment of credit facilities availed by him. He has lost life on account of COVID-19 infection, which apparently did not have any co-relation with the pre-existing ailment suffered by him. Though it may well be contended that persons suffering from diabetes were at the high risk of fatality on account of Covid-19 infection, there is no evidence on record that the decease of diabetes has contributed to the death the insured. Respondent No.1 now has liability of repaying the credit facilities disbursed by the Axis Bank, which were sought to be insured through the insurance policy purchased by her husband. Considering the unique facts and circumstances of the present case where the justice appears to be on the side of Respondent No.1, I am not inclined to exercise jurisdiction of this Court under Article 227 of the Constitution of India to interfere in the order passed by the Insurance Ombudsman. It is however clarified that the order is passed in unique facts and circumstances of the present case and shall not be treated as a precedent for any other case. The Writ Petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]