



CWP-3682-2022 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-3682-2022 (O&M)

Date of Decision : February 11, 2025

LIC OF INDIA AND OTHERS

-PETITIONERS

V/S

JYOTI @ JYOTI MEHTA

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Piyush Sharma, Advocate
for the petitioners.

Mr. Jaideep Verma, Advocate
for the respondent No.1.

KULDEEP TIWARI, J. (ORAL)

1. The petitioner No.1, which is a body corporate constituted under the Life Insurance Corporation Act, has instituted the instant writ petition by enclosing therein prayer for setting aside the award dated 09.12.2021 passed by the respondent No.2- Permanent Lok Adalat (P.U.S.), Rupnagar.

2. Succinctly stated; the husband of the respondent No.1 (hereinafter referred to as the 'policy holder') had insured himself vide Policy No.165999266 of ₹ 5,00,000/-, excluding Policy Bonus. This policy commenced from 20.09.2017 and the policy holder started making payment of ₹ 2,663/- against this policy to the petitioners through auto debit mode from his salary account. Unfortunately, the policy holder died on 14.08.2018, whereupon, the respondent No.1 lodged a claim with the

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petitioners for payment of the assured sum. However, the claim of the respondent No.1 was repudiated by the petitioners, on the ground that, at the time of obtaining policy, the policy holder had suppressed material facts about his preexisting disease. Consequently, the respondent No.1 filed an application under Section 22-C of the Legal Service Authority Act, 1987, before the respondent No.2, thereby seeking to recover ₹ 9,30,000/- for deficiency in service, ₹ 50,000/- for unfair trade practices and ₹ 20,000/- for mental agony and harassment from the petitioners.

3. Contesting the application (supra) before the respondent No.2, the petitioners took a categorical stand that, the policy holder deliberately concealed that he was suffering from Coronary Artery Disease (Myocardial Infraction) and was operated on 29.08.2016. Therefore, since the cause of death has direct nexus with the preexisting disease of the policy holder, which was concealed by him at the time of obtaining policy, hence the respondent No.1 is not entitled for any claim.

4. Both the parties led their respective evidence before the respondent No.2, and thereupon, efforts were made to settle the dispute through conciliation, however, the conciliation proceedings did not reap any fruits. Finally, the respondent No.2 passed the impugned award by observing that insertion of stents is not life threatening, and that, the concealment (supra) does not disentitle the heirs of the deceased policy holder from claiming the assured sum. The relevant extract of the impugned award is reproduced hereunder:-

“12.....We have come across a judgment of the Hon'ble Supreme



Court of India in Civil Appeal No. 3397 of 2020 titled as “Branch Manager, Bajaj Allianz Life Insurance Company Ltd. & Others versus Dalbir Kaur”. Herein, it was observed that concealment of the diseases which are not life threatening do not disentitle the heirs of the deceased insured from claiming the assured sum. We are of the opinion that the ailments of CAD (Myocardial infraction) and insertion of stunts in the heart by way of medical procedure is for the regulation of proper flow of the blood in arteries. The insertion of stunts as such is not life threatening as people with such procedures after recovery spend rest of life without any complication. Hence, this concealment does not disentitle the heirs of the deceased insured from claiming the assured sum from the respondents.”

5. At this stage, it would be apt to refer to the cause of death of the policy holder, which is extracted hereunder:-

“Perianal Abscess with septic” “septic shock with cardio-arrest” and “coronary artery disease un-controlled blood sugar T-2 diabetics”

6. This Court has perused the entire available record and what emanates from a studied survey thereof is that, the demise of the policy holder occurred on account of cardiac arrest and coronary artery disease. The cause of death is directly related to the previous medical history of the policy holder, for which he had even underwent a heart surgery and stent was inserted in his arteries. Therefore, when the policy holder had admittedly, at the time of obtaining policy from the petitioners, concealed the factum of his preexisting disease, hence this Court is of the view that the observations recorded by the respondent No.2 in the impugned award do not pass the test of legality.

7. The verdict rendered by Hon’ble the Supreme Court in **“Life**



Insurance Corporation of India Vs. Manish Gupta, 2019(2) R.C.R. (Civil) 906, lends vigour to the inference (supra) drawn by this Court. In this verdict, Hon'ble the Supreme Court has held that, failure of insured to disclose past history of cardiovascular disease was valid ground for repudiation. The relevant paragraph of this verdict is reproduced hereunder:-

“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.”

8. Gainful reference can also be made to the verdict rendered by Hon'ble the Supreme Court in ***“Reliance Life Insurance Co Ltd. and others Vs. Rekhabe Nareshbhai Rathod”***, 2019(2) R.C.R. (Civil) 909.

The relevant paragraphs of this verdict are reproduced hereinafter:-

“25. The expression “material” in the context of an insurance policy can be defined as any contingency or event that may have an impact upon the risk appetite or willingness of the insurer to provide insurance cover. In MacGillivray on Insurance Law it is observed thus:

[4] Twelfth Edition, Sweet and Maxwell (2012). See Pg. 493 for cases relied upon.

“The opinion of the particular assured as to the materiality of a fact will not as a rule be considered, because it follows from the accepted test of materiality that the question is whether a prudent insurer would have considered that any



particular circumstance was a material fact and not whether the assured believed it so ...”

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 Satwant Kaur (supra):

“Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be “material”.”

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.

26. 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,



(1766) 3 Burr 1905, 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 underwriter 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 risque, 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 other matters 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) "there is a clear presumption that any information sought for in the proposal form is material for the purpose of

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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."

9. In summa, the instant writ petition is **allowed** and the award dated 09.12.2021 is set aside.

10. Pending application(s) stand disposed of accordingly.

February 11, 2025
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No