

A P.C. CHACKO AND ANR.
v.
CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA
AND ORS.

B NOVEMBER 20, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

C *Insurance Act, 1938:*

s. 45—*Life Insurance policy—Non-disclosure and mis-statement in proposal form—Repudiation of policy within two years—Legality of—HELD: A deliberate wrong answer which has a great bearing on contract of insurance, if discovered, may lead to the policy being vitiated in law—On facts, it has not been shown that repudiation of contract of insurance was not done by insurer with extreme care and caution or was otherwise invalid in law.*

E One 'C' took an insurance policy on 21.2.1987. He died on 6.7.1987. The claim of his nominees, the appellants, was not acceded to by the respondent-Corporation for non-disclosure and mis-statement in the proposal form. The insured had undergone an operation for Adenoma Thyroid. But in the proposal form in answer to the question as to whether he ever had any operation he replied 'No'. Therefore, F the insurer repudiated the policy on 10.2.1989. However, the suit filed by the appellants for recovery of the insured amount was decreed by the trial court and the single Judge of the High Court declined to interfere. But the Division Bench of the High Court allowed the appeal of the insurer holding that the non-disclosure related to a material fact which G was required to be answered correctly. Aggrieved, the plaintiffs filed the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1. An insurance policy 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 *bona fide*. It must appear from the face of the record. 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. If a person makes a wrong statement with knowledge of consequence thereof, he would ordinarily be estopped from pleading that even if such a fact had been disclosed, it would not have made any material change.

[Para 15 and 16] [359-A-C; 358-G-H]

1.2. In the instant case, the basic fact of the matter is not in dispute. The insured had undergone an operation for Adenoma Thyroid. It was a major operation. Although the said operation was undergone by him four years prior to the date of the proposal made by him, he did not disclose thereabout prior to obtaining the insurance policy. He died within six months from the date of taking of the policy. 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.

[Para 10 and 16] [357-B-C; 359-B-C]

Mithoolal Nayak v. Life Insurance Corporation of India, [1962] Suppl. 2 SCR 571 and *Life Insurance Corpn. of India & Ors. v. Asha Goel (Smt) & Anr.*, [2001] SCC 160, relied on.

All India General Insurance Co. Ltd. and Anr. v. S.P. Maheshwari, AIR (1960) Madras 484, held inapplicable.

Allianz Und Stuttgarter Life Insurance Bank Ltd. v. Hemanta Kumar Das AIR (1938) CAL 641, cited.

Ratan Lal & Anr. v. Metropolitan Insurance Co. Ltd. AIR (1959) PAT 413, referred to.

1.3. Section 45 of the Insurance Act, 1938 postulates repudiation of the policy within a period of two years. The Statute, therefore, itself provides for the limitation for valid repudiation of an insurance policy.

A It takes into account the social security aspect of the matter. It has not been shown in the instant case that repudiation of the contract of insurance was not done by the respondent with extreme care and caution or was otherwise invalid in law. [Para 12 and 21] [358-A-C; 361-G]

B 1.4. Life Insurance Corporation being a State within the meaning of Article 12 of the Constitution of India, its action must be fair, just and equitable. This is not a case where the contract of insurance or a clause thereof is unreasonable, unfair or irrational. It is also not the case of the appellants that in framing the questionnaire in the application/ proposal form, the respondents had acted unjustifiably or the conditions imposed are unconstitutional. No case has been made out for interference with the impugned judgment.

[Para 20 and 26] [360-H; 361-A-B; 363-D]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5322 of 2007.

From the final Judgment and Order dated 17.12.2004 of the High Court of Kerala at Ernakulam in A.F.A. No. 18 of 2000.

R. Sathish for the Appellants.

E Paramjit Singh Patwalia, S. Rajappa for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

F 2. Application of Section 45 of the Insurance Act, 1938 is in question in this appeal which arises out of a judgment and order dated 17th December, 2004 passed by a Division Bench of the High Court of Kerala at Ernakulam in A.F.A. No. 18 of 2000 setting aside the judgment and order of a learned Single Judge dated 23rd September, 2000 passed in

G Appeal Suit No.633 of 1993 confirming the judgment and decree passed by the Subordinate Judge of Kozhikode in OS No. 240 of 1990 dated 27th February, 1993.

H 3. Plaintiffs in the suit are the appellants herein. They filed the said suit *inter alia* for recovery of the amount of insurance on the death of

one Chackochan (hereinafter referred to as 'the insured'). The insured A
took an insurance policy on 21st February, 1987. He died on 6th July,
1987. On his death, the appellants herein claimed the insured amount.
On the premise that the insured suppressed material facts, the policy had
been repudiated by the respondent on 10th February, 1989. Non- B
disclosure and mis-statement in the proposal form to the various questions
to which answers were given by the insured is said to be the reason for
the aforementioned repudiation of the contract of insurance.

4. It now stands admitted that the insured had undergone an
operation for Adenoma Thyroid. The particulars furnished by him while C
filling up the application form for obtaining the said policy were as under:-

“(a) Did you ever have any operation, accident or injury? The
answer was “No”. (b) Have you remained absent from place of
your work on ground of health during the last 5 years? To which
answer was “No”. (c) What has been your state of health? The D
answer was “good”.

The fact that the said answers were incorrect is not in dispute. The
suit filed by the appellants, however, was decreed.

5. On an appeal preferred by the respondents, on the premise that E
despite such wrong answers, as the injured died on account of
“polyneuritis”, a learned Single Judge of the High Court opined that there
was nothing to indicate that if the injured had disclosed the factum of
previous operation, the appellant-Corporation might not have inclined to
insure and insisted on a higher premium and thus there was no material F
to show that the non-disclosure was of a material fact justifying repudiation
of the policy by the Corporation.

6. On an intra court appeal, the Division Bench of the High Court,
however, by reason of the impugned judgment opined that the parties are G
bound by the warranty clause contained in the agreement which is also
clear from the declaration signed by the insured and the non-disclosure
related to a material fact which was required to be answered correctly
under question No.22(a).

A 7. Mr. R. Sathish, learned counsel appearing on behalf of the
appellants would submit that a clear finding of fact having been arrived at
by the trial court that despite undergoing Adenoma Thyroid operation four
years prior to the date of proposal of policy, the cause of insured's death
being "polyneuritis" which had no connection with the operation and the
B judgment of the trial court having been affirmed by the learned Single
Judge, should not have been interfered with by the Division Bench. Our
attention was further drawn to the fact that the medical officer had noted
a black mole on lower aspect of left side of neck and from Ext. A1
wherefrom it appeared that there had been no past history suggestive of
C allergies, injuries, operations, diseases like rheumatic fever, syphilis etc.
and the deceased having no other complaint due to operation, the
impugned judgment cannot be sustained.

D 8. Life Insurance policy, it was submitted is a requirement of social
security. In that view of the matter, a suppression could not have been
led to repudiation of policy, particularly when the doctor who examined
the insured was appointed by the respondent-Corporation itself. Our
attention in this behalf has been drawn to the decision of the Madras High
Court in *All India General Insurance Co. Ltd. and Anr. v. S.P.*
E *Maheshwari* : AIR (1960) Madras 484 for the proposition that there
exists a distinction between a 'representation' and a 'warranty'.

F 9. Mr. Patwalia, learned Senior Counsel, appearing on behalf of the
respondents, on the other hand, submitted that having regard to the
provisions contained in Section 45 of the Insurance Act and the policy
having been repudiated within a period of 2 years, the impugned judgment
should not be interfered with. It was submitted that undergoing of an
operation having a direct nexus with the health of the insured, suppression
thereof has rightly been considered with all seriousness by the Corporation.
G It was argued that the operation underwent by the insured being a major
one, was a material fact which ought to have been disclosed. Not only
the insured had given wrong answers to the questions, his brother himself
being a Life Insurance Corporation's agent and furthermore in view of
the fact that a declaration was given by the insured that no untrue averment
was made therein, the contract of insurance was null and void and all

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monies which had been paid in respect thereof would stand forfeited to the Corporation. Learned counsel for the Corporation has placed strong reliance on *Mithoolal Nayak v. Life Insurance Corporation of India* : [1962] Suppl 2 SCR 571. A

10. The basic fact of the matter is not in dispute. The insured had undergone an operation for Adenoma Thyroid. It was a major operation. Although the said operation was undergone by him four years prior to the date of the proposal made by him, he did not disclose thereabout prior to obtaining the insurance policy. We may notice that he died within six months from the date of taking of the policy i.e. on 6th July, 1987, policy having taken on 21st February, 1987. B C

11. Section 45 of the Insurance Act reads as under :-

“45. - Policy not to be called in question on ground of mis-statement after two years, - D

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 : E F

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.” G H

A 12. Section 45 postulates repudiation of such policy within a period of two years. By reason of the aforementioned provision, a period of limitation of two years had, thus, been specified and on the expiry thereof the policy was not capable of being called in question, *inter alia* on the ground that certain facts have been suppressed which were material to disclose or that it was fraudulently been made by the policy holder or that the policy holder knew at the time of making it that the statement was false. Statute, therefore, itself provides for the limitation for valid repudiation of an insurance policy. It takes into account the social security aspect of the matter

C 13. There are three conditions for application of second part of Section 45 of the Insurance Act which are :-

“(a) the statement must be on a material matter or must suppress facts which it was material to disclose;

D (b) the suppression must be fraudulently made by the policy-holder: and

E (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.”

[See *Mithoolal Nayak* (supra)]

F 14. The insured's brother was an agent of the Life Corporation of India. It was he, who had asked the insured to take the insurance policy. He, being an authorized agent of the Life Insurance Corporation, presumably knew the effect of misstatement of facts. Misstatement by itself, however, was not material for repudiation of the policy unless the same is material in nature.

G 15. The insured furthermore was aware of the consequence of making a misstatement of fact. If a person makes a wrong statement with knowledge of consequence therefor, he would ordinarily be estopped from pleading that even if such a fact had been disclosed, it would not have made any material change.

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16. The purpose for taking a policy of insurance is not, in our opinion, A
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 *bona fide*. It must appear from the face of the record.
In a case of this nature it was not necessary for the insurer to establish B
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 C
in law.

17. It is no doubt true that there exists a distinction between a
'representation' and a 'warranty'. A Division Bench of the Madras High
Court in *S.P. Maheshwari* (supra) upon taking into consideration the
history of insurance laws in United States of America, in England and in D
India stated :-

“(10) One great principle of insurance law is that a contract of
insurance is based upon utmost good faith *Uberrima fides*; in fact
it is the fundamental basis upon which all contracts of insurance E
are made. In this respect there is no difference between one
contract of insurance and another. Whether it be life or fire or
marine the understanding is that the contract is *uberrima fides* and
though there may be certain circumstances from the peculiar nature
of marine insurance which require to be disclosed, and which do F
not apply to other contracts of insurance, that is rather an illustration
of the application of the principle than a distinction in principle.
From the very fact that the contract involves a risk and that it
purports to shift the risk from one party to the other, each one is
required to be absolutely innocent of every circumstance which G
goes to influence the judgment of the other while entering into the
transaction.”

18. While the parties entered into a contract of insurance the same
shall, subject to statutory interdict, be governed by the ordinary law of H

A contract. The insurer may not rely upon the disclosures made by the insured. It may gather information from other sources. The Madras High Court, although in our opinion, has rightly issued a note of caution to construe a 'representation' and 'warranty' as a general proposition which may operate harshly against the policy holders, itself noticed :-

B “(12) The principles underlying the doctrine of disclosure and the rule of good faith oblige the proposer to answer every question put to him with complete honesty. Honesty implies truthfulness. But it happens that no man can do more than say what he believes to be the truth.”

C 19. Whether in a given case the court should take judicial notice of practice followed in such cases or not would depend upon the facts and circumstances of each case. If it is found that the agent himself was interested in getting the policy executed by the Life Insurance Corporation, D such common knowledge takes a back seat.

In *S.P. Maheshwari* (supra), it was stated :

E “(27) This brings us on finally to the topics of nondisclosure or misrepresentation which are practically the positive and negative aspects of the same thing. The effect of misrepresentation on the contract is precisely the same as that of non-disclosure; it affords the aggrieved party a ground for avoiding the contract. There are a number of *dicta* and one decision to the effect that life insurance is an exception to the general rule that innocent misrepresentation may afford grounds for avoiding a policy and that the misrepresentation must be fraudulent to have this effect upon a policy of life insurance. But in order to give the insurer grounds for avoidance both under non-disclosure as well as misrepresentations, both must relate only to material information.”

G The said decision, therefore, is of no assistance to the appellants herein.

H 20. We are not unmindful of the fact that Life Insurance Corporation being a State within the meaning of Article 12 of the Constitution of India,

its action must be fair, just and equitable but the same would not mean that it shall be asked to make a charity of public money, although the contract of insurance is found to be vitiated by reason of an act of the insured. This is not a case where the contract of insurance or a clause thereof is unreasonable, unfair or irrational which could make the court carried the bargaining powers of the contracting parties. It is also not the case of the appellants that in framing the aforesaid questionnaire in the application/proposal form, the respondents had acted unjustifiably or the conditions imposed are unconstitutional.

21. In *Life Insurance Corpn. of India & Ors. v. Asha Goel (Smt) & Anr.*, [2001] SCC 160, whereupon reliance has been placed by Mr. Sathish, it was held :

“The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (*sic* material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.”

It has not been shown in this case that repudiation of the contract of insurance was not done by the respondent with extreme care and caution or was otherwise invalid in law.

The Division Bench of the High Court has taken all the aspects of the matter in consideration and, in our opinion arrived at a just decision.

22. Strong reliance has been placed by the learned counsel for the appellants on *Allianz Und Stuttgarter Life Insurance Bank Ltd. v.*

A *Hemanta Kumar Das*, AIR (1938) CAL 641 wherein in regard to some purported statements made by the proposer in regard to his age was not found to be material as would appear from the following :

B “It is to be borne in mind that this was an insurance by a man who admittedly was, at any rate, at the age of over forty-five years. He himself stated that he was fifty four. Therefore, the transaction came within the category of those proposals which require at the outset the furnishing by the “proponents” of proof of their age. Noot Behari Das was required to furnish proof of his age. He produced a horoscope. The horoscope was accepted by the company as being sufficient. Therefore, we may take that the company issued the policy upon the footing that they were insuring the life of a man whose age was fifty four. This is not a case where the proposer says that his age was fifty four and the Company merely accepted that statement at its face value and proceeded to issue a policy on that footing and subsequently, either shortly afterwards or a long time afterwards, admitted the age as stated in the policy in accordance with the provisions of Cl.9(2) thereof. This was a case where the whole transaction from the very beginning proceeded upon the basis that the company had satisfied themselves that the proposer was of the age of fifty four and then issued the policy accordingly. In my view therefore the admission contained in the endorsement at page 3 of the policy is of such a character that the defendants when the policy matured could not be heard to say that the age of the insured was anything different from what he himself had stated it to be in February 1934. It is not necessary that one should apply in terms of the principle of estoppel, because that is merely a rule of evidence. In my view, this matter goes far deeper than that. The question of the age of the deceased was a definite and determining factor in the transaction from the very outset.”

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23. It is not a case where the company had further enquired into the matter in regard to the question as to whether the proposer was operated upon or not.

H 24. In *Ratan Lal & Anr. v. Metropolitan Insurance Co. Ltd.*, AIR

(1959) PAT 413, a distinction was made between as to what is material and what is not material. In regard to the disclosure of facts in that case itself, it was opined: A

“The well-settled law in the field of insurance is that contracts of insurance including the contracts of life assurance are contracts uberrima fides and every fact of materiality must be disclosed otherwise there is good ground for rescission. And this duty to disclose continues up to the conclusion of the contract and covers any material alteration in the character of the risk which may take place between proposal and acceptance.” B

25. Ratio of the said decision, therefore, instead of assisting the case of appellants, runs counter to his contention. C

26. Keeping in view the facts and circumstances of the case, we are of the opinion that no case has been made out for our interference with the impugned judgment. The appeal fails and is accordingly dismissed. D
No costs.

R.P.

Appeal dismissed.