SUPREME COURT OF INDIA

P.C. Chacko

Vs.

Chairman, Life Insurance

C.A.No.5322 of 2007

(S.B.Sinha and H.S.Bedi JJ.)

20.11.2007

JUDGMENT:

S.B SINHA, J.

1. Leave granted.

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 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.

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 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-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 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 your 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 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 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 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 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).

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 insureds death being polyneuritis which had no connection with the operation and the 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 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.

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 another vs. S.P. Maheshwari : AIR 1960 Madras 484 for the proposition that there exists a distinction between a representation and a warranty.

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. 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 Corporations 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 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 vs. Life Insurance Corporation of India : 1962 Suppl (2) SCR 571.

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.

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, -

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.

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

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

(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]

14. The insureds 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.

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.

16. The purpose for taking a policy of insurance is not, in our opinion, 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 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 police being vitiated 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 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 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 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 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 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 :- (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.

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, such common knowledge takes a back seat.

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

(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.

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

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. Hemanta Kumar Das [AIR 1938 CAL 641] wherein in regard to some purported statements made by the proposor in regard to his age was not found to be material as would appear from the following :

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.

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

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 :

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.

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

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. No costs.