

Branch Manager, Bajaj Allianz Life Insurance Company Ltd. and Ors. Vs. Dalbir Kaur

Civil Appeal No. 3397 of 2020 arising out of S.L.P. (C) No. 10652 of 2020
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Full judgment text

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Dr Dhananjaya Y Chandrachud, J

1 Leave granted.

2 This appeal arises from the judgment and order dated 20 March 2020 of the National Consumer Disputes Redressal Commission.

3 On 5 August 2014, a proposal for obtaining a policy of insurance was submitted to the appellants by Kulwant Singh. The proposal form indicated the name of the mother of the proposer, who is the respondent to these proceedings as the nominee. The proposal form contained questions pertaining to the health and medical history of the proposer and required a specific disclosure on whether any ailment, hospitalization or treatment had been undergone by the proposer.

Column 22 required a declaration of good health. The proposer answered the queries in the negative, indicating thereby that he had not undergone any medical treatment or hospitalization and was not suffering from any ailment or disease. The declaration under Item 22(c) of the proposal form was in regard to whether any diseases or disorders of the respiratory system such as but not limited to blood in sputum, tuberculosis, asthma, infected respiratory disease or any respiratory system disease including frequent nose bleeding, fever and dyspnoea were involved. This query was also responded to in the negative. Acting on the basis of the proposal submitted by the proposer, a policy of insurance was issued by the appellants on 12 August 2014. Under the policy, the life of the proposer was insured for a sum of Rs. 8.50 lakhs payable on maturity with the death benefit of Rs. 17 lakhs.

4 On 12 September 2014, Kulwant Singh died, following which a claim was lodged on the insurer. The death occurred within a period of one month and seven days from the issuance of the policy. The claim was the subject matter of an independent investigation, during the course of which, the hospital treatment records and medical certificate issued by Baba Budha Ji Charitable Hospital, Bir Sahib, Village Thatha (Tarntaran) were obtained.

The records revealed, according to the insurer, that the deceased has been suffering from Hepatitis C. Copies of the investigation report dated 20 December 2014 and 9 January 2015 have been placed on the record. The investigation reports indicate that proximate to the death, the deceased had been suffering from a stomach ailment and from vomiting of blood, as a result of which he had been availing of the treatment at the above hospital. The claim was repudiated on 12 May 2015 on account of the non-disclosure of material facts.

5 The respondent instituted a consumer complaint before the District Consumer Disputes Redressal Forum. The District Forum allowed the complaint and directed the appellants to pay the full death claim together with interest. The first appeal was rejected by the State Consumer Disputes Redressal Commission (hereinafter referred to as "SCDRC") and the revision before the National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC") has also been dismissed.

The NCDRC has relied on the decision of this Court in *Sulbha Prakash Motegaonkar & Ors vs Life Insurance Corporation of India*¹. According to the NCDRC, a disease has to be distinguished from a mere illness. It held that the death had occurred due to natural causes and there was no reasonable nexus between the cause of death and non-disclosure of disease. Consequently, while affirming the judgment of the SCDRC, the NCDRC imposed costs of Rs. 2 lakhs on the appellants, of which, an amount of Rs. 1 lakh was to be paid to the complainant and Rs. 1 lakh was to be deposited with the Consumer Legal Aid Account of the District

Forum.

6 Mr Amol Chitale, learned counsel appearing on behalf of the appellants states that the judgment of the consumer fora in the present case are contrary to the law which has been laid down by this Court in *Life Insurance Corporation of India vs Asha Goel*², *P.C. Chacko vs Chairman, Life Insurance Corporation of India*³ and *Satwant Kaur Sandhu vs New India Assurance Company Limited*⁴. Learned counsel submitted that a policy of insurance is governed by the principles of utmost good faith.

In the present case, the investigation reports revealed that proximate to the date of death, the deceased had been hospitalized in July 2014 with a complaint of having vomited blood and a non-disclosure of the material facts would justify the repudiation of the claim by the insurer. It was urged that the proposer was duty bound to make a full disclosure in response to the queries in the proposal forum, which he failed to do.

The suppression of material facts by the insured entitles the appellants to repudiate the policy under Section 45 of the Insurance Act 1938. Section 45 stipulates that an insurer is restricted from calling into question a life insurance policy after an expiry of two years from the date on which it was effected on the ground that a false or inaccurate statement has been made in the (i) proposal; (ii) report of a medical officer, referee or a friend of the insured; or (iii) in any other document leading to the issue of policy. On the expiry of two years, the burden of proof shifts to the insurer who has to establish that the false or inaccurate statement was a material matter or related to material facts. In the present case, the claim in question was repudiated within two years from the commencement of the policy.

7 Notice was issued by this Court on 21 September 2020, in pursuance of which the respondent has entered appearance through Mr. Aniket Jain, learned counsel.

8 Mr Jain has supported the reasoning of the NCDRC, urging that the death in the present case occurred due to natural cause and there was no nexus between the cause of death and the alleged non-disclosure.

9 A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk.

In the present case, as we have indicated, the proposer failed to disclose the vomiting of blood which had taken place barely a month prior to the issuance of the policy of insurance and of the hospitalization which had been occasioned as a consequence. The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had not been disclosed. This brings the ground for repudiation squarely within the principles which have been formulated by this Court in the decisions to which a reference has been made earlier. In *Life Insurance Corporation of India vs Asha Goel*, this Court held:

"12...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 risk which may take place between the proposal and its acceptance.

If there is 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."

10 This has been reiterated in the judgments in *P C Chacko vs Chairman, Life Insurance Corporation of India* and *Satwant Kaur Sandhu vs New India Assurance Company Limited*. In *Satwant Kaur Sandhu vs New India Assurance Company Ltd.*, at the time of obtaining the Mediclaim policy, the insured suffered from chronic diabetes and renal failure, but failed to disclose the details of these illnesses in the policy proposal form. Upholding the repudiation of liability by the insurance company, this Court held:

"25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If

the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance."

11 Recently, this Court in *Reliance Life Insurance Co. Ltd. vs Rekhaben Nareshbhai Rathod*⁵, has set aside the judgement of the NCDRC, whereby the NCDRC had held that the failure of the insured to disclose a previous insurance policy as required under the policy proposal form would not influence the decision of a prudent insurer to issue the policy in question and therefore the insurer was disentitled from repudiating its liability.

This Court, while allowing the repudiation of the insurance claim, held: "30. It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to 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.

31. 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 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."

12 The decision of this Court in *Sulbha Prakash Motegaonkar vs Life Insurance Corporation of India*, which has been relied upon by the NCDRC, is clearly distinguishable. In that case, the assured suffered a myocardial infarction and succumbed to it. The claim was repudiated by the insurance company on the ground that there was a suppression of a pre-existing lumbar spondilitis. It was in this background that this Court held that the alleged concealment was of such a nature that would not dis-entitle the deceased from getting his life insured. In other words, the pre-existing ailment was clearly unrelated to the cause of death. This Court had also observed in its decision that the ailment concealed by the deceased was not a life-threatening disease. This decision must, therefore, be distinguished from the factual position as it has emerged before this Court.

13 The medical records which have been obtained during the course of the investigation clearly indicate that the deceased was suffering from a serious pre-existing medical condition which was not disclosed to the insurer. In fact, the deceased was hospitalized to undergo treatment for such condition in proximity to the date of his death, which was also not disclosed in spite of the specific queries relating to any ailment, hospitalization or treatment undergone by the proposer in Column 22 of the policy proposal form. We are, therefore, of the view that the judgment of the NCDRC in the present case does not lay down the correct principle of law and would have to be set aside. We order accordingly.

14 However, Mr. Amol Chitale, learned counsel appearing on behalf of the appellants has informed the Court that during the pendency of the proceedings, the entire claim was paid over to the respondent, save and except for the amount of costs. Having regard to the age of the respondent, who is seventy years old and the death of the assured on whom she was likely to be dependent, we are of the view that it would be appropriate for this Court to utilize its jurisdiction under Article 142 of the Constitution, by directing that no recoveries of the amount which has been paid shall be made from the respondent. However, while doing so, we expressly hold that the impugned judgment of the NCDRC does not lay down the correct position in law and shall accordingly stand set aside.

15 The appeal is accordingly disposed of. In the circumstances of the case, there shall be no order as to costs.

16 Pending applications, if any, stand disposed of.

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