

DR. POONAM MAKHIJA V. SENIOR-DIVISIONAL-MANAGER, LIFE INSURANCE

1. DR. POONAM MAKHIJA
C/o SAKSHAM HOSPITAL, NEAR OFFICER COLONY,
DELHI ROAD,
SAHARANPUR – 247001
UTTAR PRADESH

.....Complainant(s)

Versus

1. SENIOR-DIVISIONAL-MANAGER, LIFE INSURANCE
CORPORATION OF INDIA
LIFE INSURANCE CORPORATION LTD. DIVISIONAL
OFFICE, "JEEVAN PRAKASH" HARDWAR ROAD,
DEHRADUN – 248001
UTTRAKHAND

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 2279 OF 2018

Date of Judgement: 11 Jan 2023

Judges:

Justice Rakesh Kumar Jain – Member (Judicial)

Dr. Alok Srivastava – Member (Technical)

**For the Complainant : Mr. Sukumar Pattjoshi, Sr. Advocate
Mr. B.S. Sharma, Advocate
Mr. Prem Prakash Panigrahi, Advocate
For the Opp.Party : Mr. D.N. Goburdhun, Sr. Advocate**

Mr. Rajat Bhalla, Advocate

Facts:

Dr. Poonam Makhija (nominee) filed a complaint against LIC for repudiating claim under 4 policies of her deceased husband Dr. Tilak Raj Makhija. Dr. Tilak Raj Makhija had taken 19 policies from LIC. He died on 02.12.2016 due to tongue cancer. LIC settled claim under 15 policies but repudiated it under 4 policies – “Amulya Jeevan-2” Nos. 273958332, 273958335, 273958337 and 274093132. The reason given was that he suppressed material facts regarding his health in the proposal forms. Dr. Poonam contested the repudiation alleging it as illegal and deficiency in service.

Elaborate:

The proposal forms contained 10 health related questions which were answered negatively. Investigation revealed deceased had undergone – Coronary Angiography (2010), RF Ablation (2010) for Paroxysmal Supra Ventricular Tachycardia, Laparoscopic Cholectetomy for gallstones. The policies were issued in 2014. LIC repudiated claim in 2017 alleging deliberate concealment of material facts. Section 45 of Insurance Act 1938 (before amendment in 2014) provided 3 years limitation to repudiate a policy. The complainant alleged repudiation was illegal as death occurred due to cancer in 2016 while proposal was in 2014.

Arguments by Parties:

Complainant:

No proof that deceased was suffering from cancer when proposal forms were filled up. Section 45 provides 2 years limitation to repudiate policy, which expired before repudiation. The undisclosed treatments were not material facts as per Insurance Act. LIC obtained medical examination before issuing the policies.

Insurer:

As per Section 45 (before amendment), 3 years limitation was

applicable. Deceased deliberately concealed material facts regarding his health in the proposal forms. Repudiation was justified. There was no deficiency in service.

Sections:

Section 45 of Insurance Act, 1938

Cases Referred:

Satwant Kaur Sandhu Vs. New India Assurance Company Ltd. Reliance Life Insurance Company Limited Vs. Rekhaben Nareshbhai Rathod.

Court's Observations and Decision:

Section 45 before amendment in 2014 provided 3 years limitation to repudiate policies. After 2014 amendment, 2 years limitation is applicable. Questions regarding health history are material facts as per Supreme Court rulings. It is proved deceased concealed material information about health issues in proposal forms. Repudiation of claim by LIC is justified. No deficiency in service is found. Complaint dismissed.

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Court

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Full Text of Judgment:

1. Heard Mr. Sukumar Pattjoshi, Sr. Advocate, assisted by Mr. B.S. Sharma, Advocate, for the complainant and Mr. D.N. Goburdhun, Sr. Advocate, assisted by Mr. Rajat Bhalla, Advocate, for opposite party.

2. Dr. Poonam Makhija (nominee/heir of the life Insured) has filed above complaint for quashing repudiation letter dated 16.12.2017 and directing Life Insurance Corporation of India (the Insurer) to pay (i) all benefits under policies with interest @18% per annum, from 21.01.2016 till actual payment, as the insurance claim; (ii) Rs.one crore, as compensation for mental agony and harassment; (iii) Rs.one lac, as the cost of

litigation; and (iv) any other relief which is deemed fit and proper, in the facts and circumstances of the case.

3. The complaint stated that Dr. Tilak Raj Makhija (the deceased life Assured) was an ENT Specialist. He used to take insurance policies from Life Insurance Corporation of India (the Insurer), which was a statutory corporation, since 1974 and took 19 policies in his name and 6 policies in the name of his wife (the complainant), time to time. Dr. Tilak Raj Makhija died on 02.12.2016 due to CA oral cavity i.e. tongue cancer. The Insurer honoured 15 life insurance policies of Dr. Tilak Raj Makhija but repudiated the claim under 4 life insurance policies, i.e. "Amulya Jeevan-2" Nos.273958332, 273958335 and 273958337 commenced on 19.03.2014 and No.274093132 commenced on 15.12.2014, giving liberty to send a representation to Zonal Office within 3 months, for which, total premium of Rs.27.69/- was paid. Dr. Tilak Raj Makhija was diagnosed with cancer i.e. CA Oral Cavity on 30.01.2015. He was admitted to BLK Super Speciality Hospital, New Delhi on 02.02.2015 for treatment, where he was operated on 04.02.2015 and discharged on 12.02.2015. Thereafter, Dr. Tilak Raj Makhija expired on 02.12.2016. The complainant intimated the demise of Dr. Tilak Raj Makhija to the branch office of the Insurer at Saharanpur and lodged insurance claim on 21.01.2017. An officer of the Insurer visited the house of the complainant on 16.02.2017, asked for Biopsy Report dated 30.01.2015 of LNJP Hospital, relating to Dr. Tilak Raj Makhija, which was supplied to him by the complainant. Thereafter, the branch office, Saharanpur issued a letter dated 28.02.2017, for supply of complete details of treatment of Dr. Tilak Raj Makhija at LNJP Hospital. The complainant, vide letter dated 14.03.2017, replied that due to painful ulcer in the tongue, Dr. Tilak Raj Makhija, who was an ENT Specialist, took medicines on his own, for some time. When the ulcer did not heal, in expected period, he consulted his colleague Dr. A. Gulati, Senior ENT Doctor in LNJP Hospital, New Delhi on 29.01.2015. After mutual discussion, he advised for biopsy to diagnose the decease. Biopsy report came on

30.01.2015, in which, CA Oral Cavity was diagnosed. Then he took treatment of Dr.W.V.B.S. Ramalingam, a Senior ENT Onco-Surgeon, in BLK Hospital, New Delhi, who was considered to be best in his field, in north India. He was admitted to BLK Super Speciality Hospital, New Delhi on 02.02.2015 for treatment, where he was operated on 04.02.2015 and discharged on 12.02.2015. Branch Manager, Saharanpur, after quite a long time, again vide letter dated 12.07.2017 asked the complainant to supply original papers of OPD treatment at LNJP Hospital, which were supplied on 19.07.2017. The Manager Claims, Divisional Officer, Dehradun vide letter dated 09.10.2017, asked for the papers regarding treatment of Hypertension for two years, Diabetes for one year, CAG and PSVT and previous operation of Laparoscopic Cholectectomy. The complainant through email dated 23.10.2017, supplied the CAG report and PSVT RF Ablation. Regarding Laparoscopic Cholectectomy, she replied that the papers could not be located as it was done 17 years back and explained about ailments. Thereafter, Divisional Manager repudiated the claim by the letter predating as 16.12.2017 (received on 02.01.2018). Predating is proved from the fact that franking machine impression affixed by LIC on the envelop bears the date 29.12.2017 and dispatched vide speed post No.EV745622738 IN on 30.12.2017. The Branch Manager called for an explanation, attaching the copy of repudiation letter, from the Agent Vineet Mittal, which was received to him on 15.01.2018. The complainant wrote an email dated 13.02.2018, asking for the copy of Policy No.273958332, copies of all medical tests and reports as conducted by LIC Doctors, for all the four policies, which were submitted along with claim form through the Agent on 10.12.2016 and received by Branch Office on 21.01.2017. The complainant gave a representation dated 26.02.2018 to Zonal Office of the Insurer. Divisional Manager, vide letter dated 09.04.2018, informed that the representation of the complainant was rejected by Zonal Office vide letter dated 27.03.2018. The complaint filed an appeal to Head Office on 23.04.2018, which was rejected on 10.09.2018 (communicated vide letter dated

12.09.2018). Then this complaint has been filed on 09.10.2018, alleging deficiency in service. The complainant stated that the repudiation of the claim on the ground of suppression of material facts in the proposal form by the deceased life assured is illegal inasmuch as the death had occurred on 02.12.2016 due to tongue cancer, while Proposal Forms for the policies were filled up on 26.02.2014, 19.03.2014, 19.03.2014 and 17.10.2014, respectively and there is nothing on record to prove that Dr. Tilak Raj Makhija was suffering from cancer at that time. Section-45 of Insurance Act, 1938 prescribed two years limitation for avoiding insurance policy on the ground of suppression of material fact, while in present case two years limitation has expired long before repudiation. The reports relating to CAG, PSVT, RF Ablation, Gallstone relating to Dr. Tilak Raj Makhija were not related deceases, carrying risk to life and not material as per Appendixes VI, VII, VIII of Agents Manual. The Insurer had also obtained medical examination report from its doctor, before issuing the policies and nothing adverse was found.

4. The Insurer filed its written reply on 11.12.2018, and contested the case. The Insurer does not deny issue of Amulya Jeevan-2" Policy Nos.273958332, 273958335 and 273958337 commenced on 19.03.2014 and No.274093132 commenced on 15.12.2014, to Dr. Tilak Raj Makhija, who died on 02.12.2016 due to CA oral cavity i.e. tongue cancer and repudiation of insurance claim under these policies, vide letter dated 16.12.2017 and honouring 15 other life insurance policies of Dr. Tilak Raj Makhija. The Insurer stated that Proposal Form for issue of the above policies contained 10 questions related to any ailment and its treatment within last 5 years, which all were answered in negative by the deceased life assured on 26.02.2014, 19.03.2014, 19.03.2014 and 17.10.2014, respectively. During investigation into the insurance claims, the competent authority found that (i) Coronary Angiography of the deceased was done on 18.09.2010 at MAX Hospital, Delhi, in which quadric polar electrode was introduced via right femoral vein and placed in the high atrium. (ii) For Paroxysmal Supra

Ventricular Tachycardia, RF Ablation was done by catheter ablation- modification of AV node using RF energy at MAX Hospital on 18.09.2010. (iii) Laparoscopic Cholectetomy for gallstones was done. (iv) Non-healing ulcer on right lateral border of the tongue from two months as mentioned in Discharge Summary of BLK Super Specialty Hospital, where the deceased was admitted on 04.02.2015. These diseases/treatments were known to the deceased life assured at the time of filling up the Proposal Forms but he had deliberately answered in negative, which amounts to fraudulent concealment of material facts, making the policy as void as held by Supreme Court in Satwant Kaur Sandhu Vs. New India Assurance Company Ltd., (2009) 8 SCC 316. Dr. Tilak Raj Makhija died on 02.12.2016 i.e. within three years of issue of above policies as such the Insurer is competent to avoid these policies under Section 45 of Insurance Act, 1938, as prior to its amendment w.e.f. 26.12.2014, three years limitation was provided. Other 15 policies were taken during 1975 to 2000 as such, the claim under these policies were settled. There was no deficiency in service on its part. The Insurer has not been impleaded as the opposite party rather Life Insurance Corporation Ltd. was impleaded and the complaint is liable to be dismissed on this ground alone.

5. The complainant filed Affidavit of Evidence of Dr. Poonam Makhija and documentary evidence. The Insurer filed Affidavit of Evidence of Prem Chandra, Assistant Secretary (Legal Cell). Both the parties filed their written synopsis.

6. We have considered the arguments of the counsel for the parties and examined the record. Although Life Insurance Corporation of India has not been impleaded rather Life Insurance Corporation Ltd. has been impleaded as opposite party but Life Insurance Corporation of India has filed its Written Reply and Affidavit of Evidence and contesting the matter as such due to typographical error in array of the parties, no prejudice has been caused to Life Insurance Corporation of India. As such we are not inclined to dismiss the complaint on this ground, instead we correct the array of

the party.

7. Section 45 of Insurance Act, 1938, as prior to its amendment w.e.f. 26.12.2014, provides three years limitation for avoiding the policy on the ground that statement made in the policy was inaccurate or false. Section 45 was amended by Act No.5 of 2015, w.e.f. 26.12.2014, which is quoted below:

“Section-45- Policy not to be called in question on the ground of misstatement 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 affected 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 statement made in the proposal 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 it suppressed facts which it was material to disclose; Provided that nothing in the section shall prevent the insurer from calling for the 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 life insured was incorrectly stated in the proposal.”

8. Amended Section-45 provides two years limitation for avoiding a life insurance policy on the ground that statement made in the proposal form was inaccurate or false. If the policy was issued prior to coming into force of amended provision, period of two years has to be counted w.e.f. 26.12.2014 and if policy was issued after 26.12.2014, then two years has to be counted from the date of issue of the policy. After expiry of two years, the Insurer can avoid a policy on the ground that statement made in the proposal form was

inaccurate or false and to prove that suppressed/false fact was material to be disclosed and it was fraudulently withheld by the policy holder, although he knew it at the time of making statement.

9. In the present case, the policies in issue were issued prior to 26.12.2014 as such this two years period expired on 25.12.2016. Therefore, the Insurer has to prove that suppressed/false fact was material to be disclosed and it was fraudulently withheld by the policy holder, although he knew it at the time of making statement. Supreme Court in Reliance Life Insurance Company Limited Vs. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175, held that 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 the fact also depends on the surrounding circumstances and the nature of information sought by the insurer, 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. If the proposer has knowledge of such fact, she or he is obliged to disclose it particularly while answering questions in the proposal form. The questioned regarding health history and other matters are relevant to insurability.

10. As such the information relating to health history in the case of life insurance policy are material facts. In present case, 10 questions were set forth in proposal form relating health history of the deceased life assured, which were answered in negative. The findings in repudiation letter that the Insured get treatments i.e. (i) Coronary Angiography of the deceased was done on 18.09.2010 at MAX Hospital, Delhi, in which quadric polar electrode was introduced via right femoral vein and placed in the high atrium, (ii) For Paroxysmal Supra Ventricular Tachycardia, RF Ablation was done by catheter ablation- modification of AV node using RF energy at MAX Hospital on 18.09.2010. (iii) Laparoscopic Cholectetomy for gallstones was done, are not challenged by the complaint to be incorrect. It is proved that the deceased life assured had withheld the material information regarding his heath history

in the proposal form, which amounts to fraudulent representation. The Insurer is perfectly justified to avoid the policy and repudiate the claim. Impugned repudiation letter dated 16.12.2017, does not suffer from any illegality.

O R D E R

In view of aforementioned discussion, the complaint is dismissed.