

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 86 OF 2012

1. SANGEETA JAIN

W/o. Late. Shri. J. Lalith Kumar Jain, Old No. 20, New No. 29
College Road,
NANGANALLUR
CHENNAI - 600 114, TAMIL NADU

.....Complainant(s)

Versus

1. LIC OF INDIA & 3 ORS.

The Executive Director (Mktg) Yokashema, Mktg/CS/CRC
Dept
MUMBAI - 400 021.

MAHARASHTRA

2. THE ZONAL MANAGER

Life Insurance Corporation Of India, Southern Zonal Office,
153, ANNA SALAI,
CHENNAI - 600 002., T.M.

3. LIFE INSURANCE CORPORATION OF INDIA

Senior Divisional Manager., Divisional Office-1, P.B. No. 324
L.I.C. Building, 153, Anna Salai
CHENNAI - 600 002.

TAMIL NADU

4. LIFE INSURANCE CORPORATION OF INDIA

Divisional Office - 1, P.B. No. 324, L.I.C. Building,
153, ANNA SALAI,
CHENNAI - 600 002., T.M.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI,PRESIDENT

FOR THE COMPLAINANT : MR. APURV SINGHVI, ADVOCATE

FOR THE OPP. PARTY : MR. KAMAL GUPTA, ADVOCATE
MS. KOMAL CHHABRA, ADVOCATE

Dated : 01 November 2023

ORDER

A. P. SAHI, J (PRESIDENT)

1. This Complaint even though instituted in the year 2012 waited for long and it took some time to recover the hospital records that were ultimately supplied. The case was dismissed for non-prosecution on 10.11.2022 which order was recalled on 13.01.2023 whereafter adjournments were sought on 31.07.2023 and again on 13.10.2023. The case was directed to be listed today for disposal. Heard learned Counsel for the Complainant and learned Counsel for Insurance Company.

2. The Complaint arises out of a Health Insurance Claim stated to be covered under 9 Life Insurance Policies that were taken by the husband of the Complainant Late Shri J. Lalith Kumar Jain for an insured amount of Rs.2,00,00,000/-. The duration of the policies commenced from 20.04.2009 and 20.06.2009 respectively and were valid till 2027 and 2032. The chart indicating the status of the said policies is extracted here as under:

S. No.	Policy No.	Date of Commencement	LIC Table No.	Term	Sum assured [Rupees]	Installment premium payable [Rupees]
1.	704827400	20/04/2009	14 23	20,00,000/-	103115/-	
2.	704827401	20/04/2009	14 22	20,00,000/-	105353/-	
3.	704827402	20/04/2009	14 21	20,00,000/-	108976/-	
4.	704827398	20/04/2009	14 25	20,00,000/-	99006/-	
5.	704827399	20/04/2009	14 24	20,00,000/-	101465/-	
6.	704828541	20/06/2009	14 21	25,00,000/-	131770/-	
7.	704828542	20/06/2009	14 25	25,00,000/-	116007/-	
8.	704828544	20/07/2009	14 23	25,00,000/-	122991/-	
9.	704828545	20/07/2009	14 27	25,00,000/-	11,0551/-	
					TOTAL 2,00,00,000/-	999234/-

3. The Proposal Form as filled up by the Insured in respect of all the Polices contains column no. 11 which is extracted here as under for ready reference:

Personal History Answer 'Yes' or 'No' If 'yes' Please give full details

(a) During the last five years did you consult a Medical Practitioner for any ailment requiring treatment for more than a week? No -

(b) Have you ever been admitted to any hospital or nursing home for general check-up, observation, treatment or operation? Yes Except for Ectopic Testies right side removed 15 years back.

(c) Have you remained absent from place of work on grounds of health during the last 5 years No -

(d) Are you suffering from or have you ever suffered from ailments pertaining to Liver, Stomach, Heart, Lungs, Kidney, Brain or Nervous System No -

(e) Are you suffering from or have you ever suffered from Diabetes, Tuberculosis, High Blood-Pressure, Low Blood Pressure, Cancer, Epilepsy, Hernia, Hydrocele, Leprosy or any other disease? No -

(f) Did you have any bodily defect or deformity? No Except wearing glasses +1 B. E.

(g) Did you ever have any accident or injury? No -

(h) Do you have use or have you ever used?

(a) Alcoholic Drinks

(b) Narcotics

(c) Any other drug

(d) Tobacco in any form

(a) NO

(b) NO

(c) NO

(d) NO

(i) What has been your usual state of health GOOD

(j) Have you ever received or at present availing / undergoing medical advice, treatment or tests in connection with Hepatitis B or AIDS related condition NO

4. The Confidential Moral Hazard Report of the Insurance Agent reported that the general health of the life proposed was good, and a small surgery that happened 15 years prior to the date of proposal, namely Ectopic Testis right side, had been removed. No other medical abnormality was indicated. The Electrocardiogram test was conducted by the L. I. C. doctor has also been filed where the same disclosure was recorded on 26.04.2009 where no abnormalities have been disclosed as per the answers given by the insured to the doctor. The medical examiners confidential report also indicates the surgery as disclosed in the proposal form referred to herein above with no other abnormalities reported. In short, the insured was reported to be healthy. The acceptance of the Policy by the Marketing Manager's Confidential Report reiterates the same position and it is on the strength of these documents that learned Counsel contends that the Insured was hail and hearty and he suddenly died of a heart attack on 19.10.2009.

5. The death took place in a very close proximity of the commencement of the policy within 4 – 6 months.

6. The claim under the policy raised before the Insurance Company by the Complainant was repudiated vide letter dated 13.09.2010, which is extracted here as under:

“Smt Sangeetha Jain,

W/o. J. Lalith Kumar Jain,

Old No.20, New No.29,

College Road,

Nanganallur, Chennai-600 114.

Sir,

Re: Death claim under Pol.No.704828541 on

The life of Sri Lalithkumar Jain (Decd)

S.A – Rs.25 lacs P & T: 14-21.

*With reference to your claim under the above policy on the life of your deceased husband, we have to inform you that **we have decided to repudiate all liability under the***

policy on account of the deceased having withheld correct information regarding his health at the time of effecting the assurance with us.

In this connection, we have to inform you that in the proposal for assurance dated 24.6.2009, he had answered the following questions as under-noted:

<u>Questions</u>	<u>Answers</u>
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11b) Have you ever been admitted to any hospital or nursing home for general check-up, observation, treatment or operation?

Yes (Except for Ectopic testes Rightside Removed 15 years back)

d) Are you suffering from or have you ever suffered from ailments pertaining to Liver, Stomach, Heart, Lungs, Kidney, Brain or Nervous System

No

e) Are you suffering from or have you ever suffered from Diabetes, Tuberculosis, High Blood Pressure, Low Blood Pressure, Cancer, Epilepsy, Hernia, Hydrocele, Leprosy or any other disease?

No

h) Do you have use or have you ever used

(i) Alcoholic drinks

(ii) Narcotics

(iii) Any other drug

(iv) Tobacco in any form

No

No

No

No

We may, however, state that all these answers were incorrect as we have evidences and reasons to believe that before he proposed for the above policy, he was a smoker since 15 years and he had undergone treatment for Supra Ventricular Tachycardia and undergone 64 slice CT coronary angiogram at Appolo Hospital. He did not disclose these facts in his proposal. Instead he gave false answers therein as stated above. If he had disclosed, our underwriting decision would have been different.

It is therefore evident that he had made incorrect statements and withheld correct information from us regarding his health at the time of effecting the assurance and hence in terms of the policy contract and the declaration contained in the form of proposal for assurance, we hereby repudiate the claim and accordingly we are not liable for any payment under the above policy and all moneys that have been paid in consequence thereof belong to us.

In case, you are not satisfied with the above decision and feel that we have not considered any particular fact or circumstances in support of your claim, you may send your representation within a month for reconsideration of your claim to our Zonal office at the following address:-

The Zonal Manager,

Lic of India,
Southern Zonal office,
Anna Salai, Chennai – 2.”

7. A perusal thereof would indicate that three facts of non-disclosure and incorrect statements have been made the basis of repudiation holding that such facts were withheld and correct information was not furnished with regard to the status of the ailment and past history of the insured. This non-disclosure and incorrect statements invite the relevant clauses of the insurance claim which authorize the Insurance Company to repudiate the same.

8. The Insurance Company had also engaged the services of an Investigator namely, M/s Vasu Associates who had tendered their Report on 26.06.2010 reporting to the Insurance Company that documents have been made available with regard to the past medical history of the insured which demonstrate that he was in the habit of smoking and drinking for the past more than 15 years as per the 2007 hospital records of Sri Balaji Hospital, Chennai and of Apollo Hospital, Chennai.

9. The aforesaid documents were collected by the Investigator and placed before the Insurance Company who arrived at the said conclusion and repudiated the claim. The conclusion drawn was that the cardiac problem of the insured was long standing and these facts had not been disclosed at the time when the proposal form was filled up in the year 2009 that is extracted herein above.

10. Learned Counsel for the Complainant urged that at the time of tendering the proposal form, the Complainant was not suffering from any disease and he had been reported to be completely normal. The contention is that even when he was admitted in the year 2007 he was immediately discharged within 24 hours as the Cardiologist did not give any adverse opinion regarding Supra Ventricular Tachycardia. The report of Sri Balaji Hospital is dated 28.04.2007. The said document has been filed in the Evidence Affidavit of the Opposite Party which is on record and the said document has not been disputed. The consultant Cardiologist Dr. K. Kannan has also given a medical report stating that he was admitted in the hospital diagnosed as Supra Ventricular Tachycardia and was managed medically. Subsequently he underwent CT coronary angiogram at Apollo Hospital that showed a small block.

11. However, the 64 slice CT Angiogram appears to have not shown anything abnormal.

12. Learned Counsel for the Complainant contends that in the wake of these documents the co-relation of the death of the insured to any past history was not established so as to repudiate the claim.

13. Learned Counsel for the Insurance Company submitted that a perusal of the proposal form indicates that it was filled up in 2009 whereas the entire treatment taken by the Complainant in Sri Balaji Hospital after admission in an ICU for heart ailment in 2007 was not disclosed. This fact was discovered after the investigator had intimated after collecting all the documents. It is further submitted that this Commission had asked for documents from Sri Balaji Hospital which was received here by registered Speed Post dated 03.03.2015 and that is also on record where the case history sheet from Sri Balaji Hospital has been filed demonstrating that the insured had been admitted in the ICCU unit at the hospital where again it was recorded that he was reported to be a smoker for the past 15 years and also a social drinker 3 to 4 times a month.

14. It is then contended that non-disclosure of such important material was vital as the report of Sri Balaji Hospital dated 28.04.2007 confirmed the insured being a smoker and consumer

of alcohol and it is after being admitted in Sri Balaji Hospital he went to Apollo for CT Coronary Angiogram that was conducted in 2007. These are completely unhealthy signs and adverse facts regarding the health of the insured which were completely concealed in the proposal form. It is therefore contended that the statement of the proposer as recorded by the doctors of the L. I. C. after the filling up of the proposal form was also an incorrect disclosure as the past history was not informed to the doctors who examined the insured for certifying his health.

15. Learned Counsel for the Insurance Company had relied on the following judgments to urge that such non-disclosure is fatal and the repudiation has to be upheld:

1. Life Insurance Corporation of India versus Krishan Chander Sharma (23.01.2006 – NCDRC) : MANU/CF/0460/2006.

2. PC Chacko and another versus Chairman of LIC of India and another reported in 2008 (1) SCC 321.

3. Satwant Kaur Sandhu versus New India Assurance Co. Ltd. reported in (2009) 8 SCC 16.

4. Reliance Life Insurance Co Ltd And Anr. versus Rekhaben Nareshbhai Rathod, reported in AIR 2009 SC 2039.

5. Life Insurance Corporation of India vs. Smt. Kusum Patro (19.03.2012 – NCDRC) : MANU/CF/005/2012.

6. Life Insurance Corporation of India through Assistant Secretary (Legal) vs. Archana Dayanand Vakade (07.02.2014 – NCDRC) : MANU/CF/0038/2014.

7. Life Insurance Corporation of India versus Neelam Sharma (30.09.2014 – NCDRC) : MANU/CF/0627/2014.

8. Life Insurance Corporation of India versus Manish Gupta, in Civil Appeal No. 3944 of 2019, decided on 15.04.2019.

16. It is further submitted that such material mis-representation or concealment has a significant impact as it would influence the decision of an insurer in deciding as to whether or not to accept a risk. The fact of the ailment of the insured in the present case in the year 2007 was a material fact and hence concealment thereof disentitles the claimant for any such claim.

17. The judgments are not being discussed in detail or quoted inasmuch as the summary of the said decisions supports the contention of the Insurance Company on the facts as disclosed in the present case. However, in order to summarize that contracts of Insurance raised on proper disclosure on both sides and good faith the following paragraphs of the latest judgment of the Apex Court in the case of Texco Marketing Private Limited versus Tata AIG General Insurance Company Limited and Ors. reported in (2023) 1 SCC 428 are worth quoting:

Duty of disclosure, good faith and notice

15. The principles governing disclosure, good faith and notice are founded on the common law principle of fairness. These principles are meant to be applied with more rigour in

standard form contracts such as insurance contracts. Such an application is warranted much more when we deal with an exclusion clause. A very high standard of good faith, disclosure and due compliance of notice is required on the part of the insurer, keeping in view the unique nature of an insurance contract.

16. An act of good faith on the part of the insurer starts from the time of its intention to execute the contract. A disclosure should be a norm and what constitutes a material fact requires a liberal interpretation. It is only when an insurer is not intending to act on an exclusion clause, the aforesaid principles may not require a strict compliance. The three elements which we have discussed are interconnected and overlapping. It is the foremost duty of the insurer to give effect to a due disclosure and notice in its true letter and spirit. When an exclusion clause is introduced making the contract unenforceable on the date on which it is executed, much to the knowledge of the insurer, non-disclosure and a failure to furnish a copy of the said contract by following the procedure required by statute, would make the said clause redundant and non-existent.

17. Lord Denning succinctly describes the fallacy in making an inadequate disclosure in *George Mitchell (Chesterhall) Ltd. v. Finney Lock Seeds Ltd.* (QB pp. 296-97).

“None of you nowadays will remember the trouble we had — when I was called to the Bar — with exemption clauses. They were printed in small print on the back of tickets and order forms and invoices. They were contained in catalogues or timetables. They were held to be binding on any person who took them without objection. No one ever did object. He never read them or knew what was in them. No matter how unreasonable they were, he was bound. All this was done in the name of “freedom of contract.” But the freedom was all on the side of the big concern which had the use of the printing press. No freedom for the little man who took the ticket or order form or invoice. The big concern said, “Take it or leave it.” The little man had no option but to take it. The big concern could and did exempt itself from liability in its own interest without regard to the little man. It got away with it time after time. When the courts said to the big concern, “You must put it in clear words,” the big concern had no hesitation in doing so. It knew well that the little man would never read the exemption clauses or understand them.

It was a bleak winter for our law of contract.”

18. In a recent judgment, this Court in *Manmohan Nanda v. United India Assurance Co. Ltd.* [*Manmohan Nanda v. United India Assurance Co. Ltd.*, (2022) 4 SCC 582 : (2022) 2 SCC (Civ) 715], summarises the duty of an insurer and an insured to disclose any material facts : (SCC pp. 598-99, paras 31-33 & 35)

“*Uberrimae fidei*

31. It is observed that insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim *uberrimae fidei*.

32. *MacGillivray on Insurance Law*, 13th Edn. has summarised the duty of an insured to disclose as under:

‘...the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms.’

33. Lord Mansfield in *Carter v. Boehm* [*Carter v. Boehm*, (1766) 3 Burr 1905 : 97 ER 1162] has summarised the principles necessitating disclosure by the assured in the following words : (E.R. p. 1164)

‘Insurance is a contract of speculation.

The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured 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 underwriter into a belief that the circumstance does not exist, ...

The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the under-writer is deceived and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement.

The policy would be equally void against the under-writer if he concealed; ...

Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary’.

The aforesaid principles would apply having regard to the nature of policy under consideration, as what is necessary to be disclosed are “material facts” which phrase is not definable as such, as the same would depend upon the nature and extent of coverage of risk under a particular type of policy. In simple terms, it could be understood that any fact which has a bearing on the very foundation of the contract of insurance and the risk to be covered under the policy would be a “material fact”.

35. Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above. It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.”

19. On the principle of acting in good faith, it is held by this Court in *United India Insurance Co. Ltd. v. M.K.J. Corpn.* [*United India Insurance Co. Ltd. v. M.K.J. Corpn.*, (1996) 6 SCC 428] , that it is the primary duty of the parties to a contract to do so : (SCC p. 431, paras 6-7) “6. It is a fundamental principle of Insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, ‘similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured’.

7. The duty of good faith is of a continuing nature. After the completion of the contract, no material alteration can be made in its terms except by mutual consent. The materiality of a fact is judged by the circumstances existing at the time when the contract is concluded.”

20. A similar view is taken in *Modern Insulators Ltd. v. Oriental Insurance Co. Ltd.* [*Modern Insulators Ltd. v. Oriental Insurance Co. Ltd.*, (2000) 2 SCC 734] : (SCC p. 736, para 8) “8. It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the

insurance company and its agents to disclose all material facts in their knowledge since the obligation of good faith applies to both equally.”

18. Having considered the documents, the arguments and the judgments cited at the bar it is plain on record that the insured had been suspected of Tachycardia and had been admitted in ICCU Unit of Sri Balaji Hospital on 27.04.2007 from where he was discharged on his request on 28.04.2007. The medical documents and the of the Cardiologist Dr. Kannan clearly indicate towards a diagnosis relating to heart ailment, and it is for this reason that the insured went for CT Angiogram to Apollo Hospital in 2007. Any improvement thereafter may have happened but the fact remains that the insured had been treated for heart ailment as is evident from these facts that have come on record and the Insurance Company has procured it through its investigator. The conclusion therefore drawn in the Repudiation letter on facts does not suffer from any infirmity and rather the reports which are available in respect of the Sri Balaji Hospital and Apollo Hospital both confirm that the insured had been hospitalized and was reported to be a smoker and also a consumer of alcohol for the past 15 years way back in 2007 itself. This fact was material and relevant which has been completely withheld and an incorrect information has been given in Column 11 of the proposal form. Not only this, the Insured did not inform the doctors of the L. I. C. about this ailment and treatment which had been undergone by him in the year 2007 as well as about his personal habits. Such non-disclosure therefore was vital and therefore the argument of the learned Counsel for the Insurance Company placing reliance on the judgments referred to above has to be upheld.

19. In the background above, the repudiation is justified and the Complaint therefore deserves to be dismissed and is accordingly dismissed.

.....J
A. P. SAHI
PRESIDENT