C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

THURSDAY, THE 25TH DAY OF MAY 2023 / 4TH JYAISHTA, 1945

AS NO. 570 OF 2002

AGAINST THE JUDGMENT AND DECREE DATED 25.06.2002 IN OS 478/1997 OF PRINCIPAL SUB COURT, ERNAKULAM

APPELLANTS/DEFENDANTS:

1 ZONAL MANAGER, LIFE INSURANCE CORPORATION OF INDIA, ZONAL OFFICE,ANNA SALAI, P.B.NO.2450,MADRAS.

2 THE SENIOR DIVISIONAL MANAGER, LIFE INSURANCE CORPORATION OF INDIA, DIVISIONAL OFFICE,JEEVANPRAKASH, M.G.ROAD,ERNAKULAM.

3 THE BRANCH MANAGER, L.I.C.OF INDIA, BRANCH OFFICE NO.11, 39/1965,"KRISHNA KRIPA",SOUTHERN RAILWAY STATION, ERNAKULAM,KOCHI-16.

BY ADV SRI.R.S.KALKURA

RESPONDENT/PLAINTIFF:

SMT.ROSAMMA VARKEY, W/O LATE P.I.VARKEY, ALAPPAT,PALATHINGAL,LURDPURAM, TRICHUR.

BY ADV SRI.C.P.RAVIKUMAR

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 25.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C. R.

SATHISH NINAN, J.

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AS No.570 of 2002

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Dated this the 25th day of May, 2023

J U D G M E N T

The defendant in a suit for money is the appellant. The claim is for the sum assured under a life insurance policy on the life of late P.I.Varkey, the husband of the plaintiff.

2. On 01.11.1993, Sri.P.I.Varkey submitted Ext.A4 proposal for insurance on own life to the defendant. Based on Ext.A4 proposal, Ext.A5 policy dated 14.02.1994 was issued in favour of Sri.P.I.Varkey. The sum assured was ₹ 3 lakhs. On 10.07.1995, he died due to cardiac issues. On 04.09.1995, the plaintiff, who is the nominee under the policy claimed the sum assured. However, the claim was repudiated by the defendant alleging furnishing of false information and suppression of material facts by the assured in the proposal, regarding his health condition. It is thereupon that the suit has

been instituted.

3. The defendants in their written statement reiterated their stand that the plaintiff is not entitled for any claim under the policy consequent on the suppression of material facts and furnishing of false information. It was contended that, in the proposal (Ext.P4), specific queries with regard to prior treatment and admission of the assured in the hospital, were wilfully and fraudulently answered in the negative and therefore, the defendants repudiated Ext.P4 policy.

4. The trial court though found that the assured-late P.I.Varkey had not furnished all true facts in Ext.A4 proposal, and proceeded to find that Ext.A4 proposal was filled up by the agent/employee of the defendant company and that the assured could not be held responsible for incorrect facts in Ext.A4 proposal. The suit was decreed for the policy amount and benefits thereunder. It is aggrieved thereby that the defendants have come up in appeal.

5. The points that arise for determination are :-

1) Did the proposer/assured furnish false information in Ext.A4, the proposal for policy?

2) Is it open for the claimant to contend that the proposal form was filled up not by the proposer/assured but by an employee/agent of the Insurance Company and hence mentioning of false information in the proposal cannot be attributed to the proposer?

6. I have heard Sri.R.S.Kalkura, the learned counsel for the appellant. There is no appearance for the respondent.

7. A contract of insurance is a contract uberrima fidei meaning, “of utmost good faith”. The law with regard to insurance contracts, the consequence of furnishing false information and suppression of material information by the assured at the time of availing the policy, is too well settled. All material facts within the knowledge of the proposer are matters to be disclosed while submitting the proposal. The health

condition of the proposer/assured is a factor relevant for the insurer to decide upon whether to assure on the life or in arriving at the quantum of premium payable.

8. In ***Reliance Life Insurance Co. Ltd. and Ors. v. Rekhaben Nareshbhai Rathod (2019) 6 SCC 175,*** the Apex Court held:-

> *"The fundamental principle is that insurance is governed by the doctrine of uberrima fidei. This postulates that there must be complete good faith on the part of the insured. This principle has been formulated in* ***MacGillivray on Insurance Law*** *succinctly, thus :*
>
> *Subject to certain qualifications considered below, 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 or 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 ...*
>
> *The relationship between an insurer and the insured is recognized as one where mutual obligations of trust and good faith are paramount."*

Decisions are umpteen explaining the law as above, and it may not be necessary to refer to any further authorities.

9. The information provided by a proposer/insured at the time of giving proposal are mostly matters within his knowledge in exclusion to the insurer. It is on the basis of such details that an insurance company decides to issue a policy on the life and fixes the premium payable. In E.R. Hardy Ivamy on General Principles of Insurance Law, Fourth Edition, at page 157 it is stated thus:

> *"Those whose business is to insure lives calculate on the average rate of mortality, and charge a premium which on that average will prevent their being losers. Hence, facts which tend to show that the average span of life will be shortened in the case of the particular insured will be regarded as material Usually, of course, the insurance company puts specific questions in its proposal form which the insured is required to answer."*

10. In ***Satwant Kaur Sandhu v. New India Assurance Co. Ltd. (2009) 8 SCC 316,*** the Apex Court observed:-

> *"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".*

11. The expression "proposal form" is defined in Regulation 2(d) of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations 2002, thus:-

> *2(d)"Proposal form" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted.*
>
> *Explanation: "Material" for the purpose of these Regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer."*

In ***United India Insurance Co. Ltd. v. MKJ Corporation 1996(6) SCC 428*** and ***Modern Insulators Ltd. v. Oriental Insurance Co. Ltd. 2000 (2) SCC 734,*** the expression *"material fact",* is explained thus, ***"****Any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be "material".*

In ***Reliance Life Insurance Company case (supra),*** the Apex Court held thus:-

> *"25. The expression "material" in the context of an insurance policy can be defined as any contingency or event that may have an impact upon the risk appetite or willingness of the insurer to provide insurance cover. In MacGillivray on Insurance Law it is observed thus:*
>
> > *The opinion of the particular assured as to the materiality of a fact will not as a Rule be considered, because it follows from the accepted test of materiality that the question is whether a prudent insurer would have considered that any particular circumstance was a material fact and not whether the assured believed it so ...*

Materiality from the insured's perspective is a relevant factor in determining whether the insurance company should be able to cancel the policy arising out of the fault of the insured. Whether a question concealed is or is it not material is a question of fact."

Therein the Apex Court further held:-

"26. Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure. The duty of disclosure in insurance contracts was established in a King's Bench decision in ***Carter v. Boehm*** *(1766) 3 Burr 1905, where Lord Mansfield held thus:*

> *Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured 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 under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist."*

From the above it is beyond doubt that, furnishing of false information or suppression of material facts while availing a policy is decisive on its validity.

12. Now coming to the facts of the case, Ext.A4 is the proposal. Column No.11(b) in Ext.A4 reads thus:-

> ***"Have you ever been admitted to any hospital or nursing home for general check-up of observation, treatment or operation ?"***

13. The answer given by the proposer/assured to the above is ***"No"***. However, it has come out in evidence that from 24.06.1992 till 01.07.1992, the assured was admitted in Mother Hospital, Thrissur on complaints of breathlessness/palpitation, recurring chest pain and high blood pressure, and was under the treatment of a Cardiologist. The Cardiologist was examined as PW2. PW2 deposed that the insured was treated as an inpatient from 24.06.1992 and was to be discharged from hospital on 01.07.1992. He further deposed that, on 01.07.1992 the assured had underwent a vasectomy operation and

therefore he was discharged only on 03.07.1992. So, the assured was admitted in Mother Hospital from 24.06.1992 to 03.07.1992. However, in spite of the above, in clause 11(b) of the proposal form, as noticed supra, to the specific query whether the assured was admitted in any hospital for treatment or operation, the answer was a categoric "No". It needs no further elaboration to hold that there has been not just wilful suppression of a relevant fact but, there has been furnishing of false information by the insured to the defendants while availing the policy. The trial court though decreed the suit, had also entered a like finding. The Court held, *"It is true that with regard to column (b) it can be said that information furnished by the assured is not correct in view of the evidence of PW2"*. The case at hand is not one of mere omission to furnish material facts but is one of positive assertion of a fact which to the knowledge of the proposer/insured was, incorrect.

14. It is true that all facts mentioned in the proposal may not be “material facts”. However, details regarding the illness suffered by the proposer/assured, the previous treatment administered to him including hospitalisation etc., which was a specific query in the proposal form, could by no stretch of imagination be understood to be not a “material fact”. The Insurance Company would fix premium having due regard to the previous illness and health conditions of the proposer. Thus, it could only be concluded that there has been material suppression and furnishing of false information by the proposer/assured while availing the insurance policy. Hence, the point is answered in the affirmative.

15. The trial court held that, the proposal form was filled up by an employee of the defendant and hence the correctness or otherwise of the entries therein cannot be attributed to the proposal. The Court has concluded that, the responsibility for having made a wrong statement in the proposal cannot be fastened upon

the proposer. I am unable to agree with the said finding. Taking it to be that or accepting that the proposal form was filled up not by the proposer but by any other person including an agent/employee of the defendant, that could only be construed to have been done for and on behalf of the proposer and on his instructions. The proposer has signed the proposal form undertaking that all the entries made in the proposal are true and correct. He cannot be heard to say that it was someone else who filled up the proposal form and that he affixed signature to the proposal form without reading or understanding the materials furnished therein.

16. The plea that, the proposal form was filled up not by the proposer and hence he cannot be pinned to its contents, has been dealt with by the Apex Court in ***Reliance Life Insurance Company case (supra).*** Turning down the plea the Apex Court held :-

"29. We are not impressed with the submission that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and the grant of the insurance cover was on the basis of the statements contained in the proposal form. .....

xxxxx xxxxx xxxxx xxxxx xxxxx

31. Finally, the argument of the Respondent that the signatures of the assured on the form were taken without explaining the details cannot be accepted. A similar argument was correctly rejected in a decision of a Division Bench of the Mysore High Court in VK Srinivasa Setty v. Messers Premier Life and General Insurance Co. Ltd. AIR 1958 Mys 53 where it was held :

> *Now it is clear that a person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequence arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it. This is because, in filling up the proposal form, the agent normally, ceases to act as agent of the*

> *insurer but becomes the agent of the insured and no agent can be assumed to have authority from the insurer to write the answers in the proposal form.*
>
> *If an agent nevertheless does that, he becomes merely the amanuensis of the insured, and his knowledge of the untruth or inaccuracy of any statement contained in the form of proposal does not become the knowledge of the insurer. Further, apart from any question of imputed knowledge, the insured by signing that proposal adopts those answers and makes them his own and that would clearly be so, whether the insured signed the proposal without reading or understanding it, it being irrelevant to consider how the inaccuracy arose if he has contracted, as the Plaintiff has done in this case that his written answers shall be accurate."*

Therefore, the contention of the plaintiff disowning the statements in the proposal form for the reason that it was filled up by someone else cannot be accepted or countenanced. The proposer is bound by the particulars furnished in the proposal form. The finding of the trial

court to the contrary is liable to be set aside. Thus, it is held that the proposer had made a false declaration with the defendant in the proposal form or had suppressed material facts in the proposal form and hence the Insurance Company is not liable under the policy in question and is entitled to repudiate it.

In the result, this appeal is allowed. The decree and judgment of the trial court are set aside. The suit will stand dismissed.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge