

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1295 OF 2014

(Against the Order dated 31/07/2014 in Complaint No. 09/2013 of the State Commission
Chhattisgarh)

1. SHALINI SRIVASTAVA

R/O. SM 5, PADMANABHPUR,

DISTRICT-DURG

CHHATTISGARH

.....Appellant(s)

Versus

1. AVIVA LIFE INSURANCE CO. LTD. & ANR.

THROUGH BRANCH MANAGER, LALGANGA MIDAS,

THIRD FLOOR, NEAR SBI RAFADITH, RAIPUR,

CHHATTISGARH

2. AVIVA LIFE INSURANCE CO. LTD.,

THROUGH MANAGER, AVIVA MANAGER, AVIVA

TOWER, SECTOR ROAD, INFRONT OF GOLD COURSE,

DLF PHASE-5, SECTOR-43

GURGAON-122003

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER,MEMBER

FOR THE APPELLANT :

Dated : 23 April 2024

ORDER

For the Appellant Mr Azim H Laskar and Mr Bikas Kargupta,

Advocates

For the Respondents Mr Joydip Bhattacharya, Advocate

ORDER

PER SUBHASH CHANDRA

1. This appeal under Section 19 of the Consumer Protection Act, 1986 (in short, the 'Act') challenges the order dated 31.07.2014 of the Chhatisgarh State Disputes Redressal Commission, Pandri, Raipur (in short, the 'State Commission') in Complaint Case No. 13 of 2009 dismissing the complaint.
2. The delay of 100 days in the filing of this complaint is condoned for the reasons stated in the application for the condonation of delay in the interest of justice.
3. Briefly put, the relevant facts of the case are that the appellant's late husband, Pravir Shrivastava, had availed two life insurance policies dated 22.10.2011 for a sum of Rs 2,07,297/- and on 24.10.2011 for Rs.75,00,000/- respectively from the respondent insurance company. The appellant was the nominee in both policies. On the intervening night of 23-24.12.2011 the said Shri Pravir Shrivastava died in his sleep and was declared brought dead by Chandulal Chandrakar Hospital, Bhilai. A death certificate was issued by the Municipal Corporation, Bhilai. A postmortem was conducted following FIR No. 115/2011 registered with the Durg police. The report of the postmortem did not determine the cause of death specifically. Examination of the viscera by the State Forensic Test Laboratory, Raipur (FSL) on reference by the Police indicated presence of alcohol but no poison vide report dated 22.02.2013. The appellant filed claims as the nominee of the Deceased Life Assured (DLA) which were rejected by the respondent on the basis of investigations by M/s Sharp Eagle West Patel Nagar, New Delhi, appointed by them in view of the claim being within two years of the commencement of the policies. The ground of repudiation of the claim were that the DLA had a history of criminal charges and he failed to disclose that he was facing criminal charges in a matter of a murder under Section 302, IPC and that he had received medical or surgical treatment earlier and received treatment, *inter alia*, for bone fracture or alcohol which was violative of the principle of *ubberima fidei* on the basis of which the policies were issued. Aggrieved, the appellant approached the State Commission in CC No. 13 of 2009 which was dismissed by the order which is impugned before us praying to set it aside and to allow the claims under the policies with interest @ 18%, compensation of Rs 1,00,000/- for mental agony and Rs 20,000/- for litigation costs.
4. We have heard the learned counsels for the parties and given thoughtful consideration to the material on record.
5. The appellant has challenged the impugned order primarily on the grounds that there was no nexus between the pre-existing disease allegedly suppressed by the DLA at the time of obtaining the policies. It was contended that the postmortem did not conclusively establish the cause of death. Even the report of the FSL had not established any presence of poison in the viscera to establish any fraud or suppression of material facts. It was argued that the State Government erred in accepting the argument of the respondent that the criminal case under Section 302, IPC against the DLA was not even remotely connected to the ultimate cause of death and hence repudiation on this ground was arbitrary. The respondent, on the other hand, has relied upon the Policy proposal which required disclosure of information regarding criminal cases, if any, prior hospitalization and alcohol consumption by the DLA. In view of the disclosures in respect of these items having been in the negative by the DLA, and the findings by investigators appointed by the respondent having indicated to the contrary, it had been concluded that there was willful suppression of material facts which was contrary to the principle of *ubberima fidei*.

6. The repudiation letter dated 24.04.2011 by the respondent reads as under:

We wish to inform you that we have received the death intimation and all documents submitted by you. After close examination of the documents, we regret to inform you that the-death claim against the captioned policies cannot be admitted for following reasons.

As per the information procured by us during the course of claim evaluation, the deceased life assured had history of criminal charges against him which were not disclosed to us in the proposal form. In the proposal form dated October 24, 2011 the deceased life assured under the "Health and activity section" did not disclose the same against the specific question related in respect to criminal charges.

Also we have noted that the deceased life assured had history of mandible fracture and underwent operation for the same and had history of alcoholism prior to the proposal and which was not disclosed the same against the specific question related in respect to medical condition and habits.

This amounts to serious non-disclosure of material facts, which is a violation of the terms and conditions of the insurance policy, insurance being a contract of uberrimae fidae' (utmost good faith), the Policy Holder is duty bound to reveal all relevant facts to the Insurer in order for the insurer to determine the Policy Holder's eligibility for availing the insurance.

Our liability as an insurer is subject to the terms and conditions of the policy of insurance, and under the terms and conditions of the Policy such non-disclosure gives us the right of avoiding the Insurance. In light of the above, we regret to inform you that no claim is admitted against the company, and the policy shall be void and any benefits hereunder shall be forfeited.

A perusal of the Policy proposal reveals that the DLA had disclosed in the negative in respect to the following specific declarations to be made by him:

H. Do you have any history of criminal charges/proceeding against you and /or are there any criminal charges or proceeding pending against you currently or in the past and or were you convicted in any criminal proceeding and/or on bail/probation/suspended sentence? "NO"

B. Have you ever had any medical or surgical treatment, including investigation, tests, scans or X-ray for any of the following illnesses or medical conditions:

xii. arthritis, gout or joint pain, muscle, bone fracture or disorder? NO

xiv. Any other illnesses, surgery or injury?-"NO"

D. Alcohol

(i). Do you take or have ever taken alcohol ? - NO.

7. From the foregoing it is manifest that the DLA's responses with regard to three specific questions in the proposal form, viz., pendency of any criminal case, prior-hospitalization and consumption of alcohol was in the negative. The respondent has repudiated the claim on the ground that there was suppression of material facts. The appellant's contention is that the non-disclosure of this information did not amount to suppression of material facts since there was no connection with the cause of death, which, incidentally, was not determined even by the postmortem report.

8. The State Commission has held as under:

26. From the above discussions, it becomes clear that the complainant has not come with the clean hand and the deceased Pravir Shrivastava had suppressed material facts regarding his illness, regarding the previous disease and the fact that he was habituated to consume alcohol and these facts were not disclosed by him at the time of making proposal for the insured and it appears that the deceased suppressed material facts prior to obtaining insurance policy, therefore, the insurance company has rightly repudiated the claim of the complainant and the complainant is not entitled for getting compensation from the OPs as mentioned in the complaint.

27. In view of the aforesaid discussions, we find that the complainant has not been able to prove her case. In these circumstances, the complainant filed by the complainant is not maintainable and the complainant is not entitled for getting any compensation and the complaint is liable to be dismissed.

28. Therefore, the complaint of the complainant is liable to be and is hereby dismissed. Parties shall bear their own cost.

9. In ***P C Chacko & Anr. Vs. Chairman, LIC of India & Ors.***, C.A No. 5322 of 2007 decided on 20.11.2007, 2008 (1) SCC 321 it has been laid down by the Hon'ble Supreme Court that "*a contract of insurance is a contract of ubberima fidei (utmost good faith)*". It has also been held, in ***Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.***, C.A No. 2776 of 2022 decided on 10.07.2009, 2009 (8) SCC 316 that a contract of insurance falling under the category of *uberrimae fidei*,

“... an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, the obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment.”

In *Reliance Life Insurance Co. Ltd. Vs. Rekhabeen Nareshbhai Rathod*, (2019) 6 SCC 175 the Hon'ble Supreme Court held that

The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed and whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance was a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. Thus, the failure of the insured should disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

10. In the instant case the DLA was facing criminal charges in a case of alleged murder. He was a known alcoholic and had been hospitalized for fracture of leg. However, these facts had not been disclosed in the proposal form. The same are also not denied, The contention of the respondent is that the cause of death was not related to the information not disclosed.

11. In the light of the settled position of law, the contention of the appellant that the cause of death was not established or was not related to the information stated to have been withheld in the proposal form cannot be sustained. The DLA was under obligation to disclose all material facts known to him at the time of availing the policy. It is not material whether the cause of death was related to or not related to the facts not disclosed. The investigations of the respondent have revealed facts which were admittedly not disclosed at the time of the DLA's proposal for the policy. These have not been controverted by the appellant. Hence, respondent cannot be faulted for repudiating the claim on the basis of non-disclosure of material facts.

12. For the foregoing reasons we do not find reasons to disturb the finding of the State Commission. The appeal is therefore dismissed as being without merits. There shall be no order as to costs. Pending IAs stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER