Reliance Life Insurance Co. Ltd. vs Rekhaben Nareshbhai Rathod on 24 April, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2039, 2019 (6) SCC 175, AIRONLINE 2019 SC 191, 2019 (4) ABR 106, (2019) 3 ACJ 2196, (2019) 137 ALL LR 245, (2019) 200 ALLINDCAS 202, (2019) 2 RECCIVR 909, (2019) 2 WLC(SC)CVL 250, (2019) 3 CAL HN 147, (2019) 4 ANDHLD 83, (2019) 4 CIVLJ 106, 2019 (4) KCCR SN 352 (SC), (2019) 4 MAD LJ 115, (2019) 4 TAC 406, (2019) 6 SCALE 734, AIR 2019 SC (CIV) 1538

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Bench: Hemant Gupta, Dhananjaya Y Chandrachud

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4261 of 2019
(Arising out of SLP (C) No 14312 of 2015)

Reliance Life Insurance Co Ltd & Anr .... Appell

Versus

Rekhaben Nareshbhai Rathod ....Respond

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal is from a decision of the National Consumer Disputes Redressal Commission1 dated 20 February 2015. The State Consumer Disputes Redressal Commission2 at Ahmedabad allowed an appeal of the insured – respondent and sustained a claim under a policy of life insurance. This decision has been upheld in revision by the NCDRC. The insurer is hence in appeal.

3 On 10 July 2009, the spouse of the respondent took a policy of life insurance from Max New York Life Insurance Co Ltd, for a sum of Rs 11 lakhs. Barely two months thereafter, on 16 September 2009 he submitted a proposal for a life insurance □NCDRC □SCDRC term plan policy of the

appellant for an insurance cover of Rs 10 lakhs. Among the questions that the proposer was required to answer in the proposal form was whether he was currently insured or had previously applied for life insurance cover, critical illness cover or accident benefit cover. This query was answered in the negative. Item 17 of the proposal form required a disclosure of:

□DETAILS OF LIFE INSURANCE POLICIES HELD/PROPOSALS APPLIED WITH LIFE INSURANCE COMPANIES (INCLUDING EXISTING POLICIES WITH RELIANCE LIFE INSURANCE COMPANY LTD.) The information which was required to be furnished under the above head included: (i) name of the life to be assured/proposer; (ii) name of company; (iii) contract/proposal number; (iv) basic sum assured; (v) sum assured under rider; and (vi) year of commencement. The proposer was also required to furnish details in regard to the present status and terms of acceptance and to fill up one of the accompanying boxes namely: (i) declined; (ii) postponed; (iii) rated up; (iv) rejected; (v) in force; (vi) lapsed; and (vii) applied.

4 The proposer answered the query as to whether he was currently insured for a cover of life insurance, critical illness or accident benefit in the negative. On the details of other insurance covers held by him, the proposer had indicated □NA or a □not applicable response. The declaration which was required to be furnished by the proposer with the proposal form was in the following terms:

> □I understand and agree that the statements in this proposal form shall be the basis of the contract between me and Reliance Life Insurance Company Limited (□the Company) and that if any statements made by me are untrue or inaccurate or if any of the matter material to this proposal is not disclosed by me then the Company may cancel the contract and all the premiums paid, will be forfeited.

5 On 22 September 2009, the appellant issued a policy of life insurance to the spouse of the respondent based on the disclosures contained in the proposal form. The respondent's spouse died on 8 February 2010. On 24 May 2011, nearly fifteen months after the date of death, the respondent, who was a nominee under the policy issued by the appellant, submitted a claim of Rs 10 lakhs under the terms of the policy. The claim was supported by a medical certificate stating that the policy holder had suffered from sudden chest pain prior to his death. On 7 June 2011, the appellant sought copies of medical reports including, as the case may be, death or discharge summaries together with previous medical records of the deceased. On 14 July 2011, in response to the appellant's e-mail dated 29 June 2011, Max New York Life Insurance Co Ltd informed the appellant that the spouse of the respondent had been insured with them for a sum of Rs 11 lakhs and that the claim had been settled. The appellant repudiated the respondent's claim on 30 August 2011 stating thus:

> □In the light of suppression of material fact, where glaring omission to answer especially the question no (17) relating to details of the life insurance policies held by the life assured, we are constrained to repudiate the claim under the policy in terms of Section 45 of the Insurance Act 1938.

6 On 24 February 2012 the respondent addressed a legal notice alleging a deficiency in service and then moved a consumer complaint before the District Consumer Disputes Redressal Forum, Bhavnagar3. The appellant contested the claim.

7 On 31 August 2013, the District Forum dismissed the complaint inter alia, on the ground that there was a non-disclosure of the fact that the insured had held a previous policy in the proposal form filled up by the proposer. The appeal filed by the respondents was, however, allowed by the SCDRC on 28 November 2014 relying on □District Forum a decision of the NCDRC in Sahara India Life Insurance Company Limited v Rayani Ramanjaneyulu4. This decision of the SCDRC was affirmed by the NCDRC on 6 February 2015, for the reason that the omission of the insured to disclose a previous policy of insurance would not influence the mind of a prudent insurer as held in Sahara India (supra).

8 On 14 May 2015, this Court while issuing a notice, stayed the execution of the decision of the NCDRC, subject to the appellant depositing 50 percent of the decretal amount before the District Forum. The respondent was permitted to withdraw the amount on deposit. Pursuant to the interim order of 1 June 2015, the appellant handed over a demand draft in the amount of Rs 16,18,987 drawn on the State Bank of India to the respondent, which has been encashed.

9 Learned counsel appearing on behalf of the appellant submits that:

> (i) In spite of the specific disclosures required in item 17 of the proposal form, the proposer suppressed the fact that he had an existing policy of insurance. In answering the query in the negative the proposer submitted ex facie false information.

This was in breach of the bounden duty of the proposer to furnish full and complete details in response to the queries contained in the proposal form;

(ii) The commencement date of the policy being 22 September 2009, the claim in the present case was repudiated within two years, on 30 August 2011, due to the non- disclosure of the previous life insurance policy held by the proposer. If the information sought by the insurer in the proposal form is not disclosed, is suppressed or if a false answer is furnished by the proposer, the insurer is entitled to repudiate the insurance III (2014) CPJ 582 policy or any claim arising from it under Sections 17 and 19 of the Contract Act 1872 (Mithoolal Nayak v LIC5);

(iii) In a case covered by (ii) above, the insurer is not required to establish that the non-disclosure, suppression or falsity of response by the proposer is material. This is for the reason that it is for the insurer, and not the proposer, to determine whether the information which has specifically been sought in the proposal form is material or otherwise (Satwant Kaur Sandhu v New India Assurance Co Ltd6);

(iv) It is only when an insurer seeks to repudiate a policy of life insurance or a claim arising under it after two years of the effective date of the policy that by reason of Section 45 of the Insurance Act

1938, the insurer will have to demonstrate that the information sought in the proposal form was material;

(v) Disclosure of a pre-existing life insurance cover of the proposer is necessary to enable the insurer to assess the human life value of the proposer before the issuance of a policy. The consequence of non-disclosure of a pre-existing cover is that the insurer is unable to assess the real risk. This is an important facet of financial under- writing;

(vi) Section 45 modifies the common law where a life insurance policy is repudiated due to a misstatement or suppression of facts after two years have expired from the date of commencement of the policy. A repudiation within two years is not governed by Section 45 (Sheoshankar Ratanlalji Khamele v Life Insurance Corporation of India7);

1962 Suppl (2) SCR 531 (2009) 8 SCC 316 AIR 1971 Bom 304

(vii) The judgment of the NCDRC is contrary to the law laid down by this Court in Satwant Kaur Sandhu (supra) and the earlier decisions of the NCDRC itself (LIC of India v Vidya Devi8 and Dineshbhai Chandarana v LIC9);

(viii) In Sahara India (supra) which was relied upon by the NCDRC, the earlier decision in Vidya Devi (supra) which in turn had followed Chandarana (supra) was noticed but erroneously not followed. Vidya Devi and Chandarana specifically, dealt with non-disclosure of the previous policies by the insurer in the proposal form and upheld the repudiation of the claim by the insurer;

(ix) In Vidya Devi, the NCDRC rejected the argument that the suppression of a previous policy was not material since the insured was an illiterate person had affixed a signature on blank papers; and

(x) In Condogianis v Guardian Assurance Company Ltd10, the Privy Council has held that even a partial non-disclosure or ambiguous disclosure regarding the previous policies in the proposal form vitiates the policy, which is thus liable to be rescinded.

On the above grounds, a challenge has been addressed to the judgment of the NCDRC.

10 On the other hand, learned counsel appearing on behalf of the respondent supported the decision appealed against, urging that:

> (i) The insurance agent induced the insured to take a policy of life insurance by taking his signature on a blank proposal form together with the premium in cash. The insured was not conversant with English and it was the duty of the insurer to translate (2012) 3 CPJ 288 (NC) (2010) 3 CPJ 358 (NC) AIR 1921 PC 195 the proposal form into Gujarati. The proposal form was either filled in by the appellants or their agent and the witness was unknown to the insured;

(ii) Though in the letter of repudiation dated 30 August 2011, it was only the alleged suppression of a previous policy which was pressed in aid, the appellants sought to support the repudiation before the consumer forum on the ground that there was a pre-existing urinary bladder ailment. The insured had suffered from the infection in 2002, several years before the submission of the proposal form;

(iii) A non-disclosure of a previous insurance policy cannot be a valid ground for repudiation of the claim. There is no prohibition in law from a person holding any number of life insurance policies from different insurers. The insurer has admitted that the death of the insured on 8 February 2010 was due to a heart attack and hence the claim was covered within the terms of the policy;

(iv) The non-disclosure of a previous insurance cover is not of any material consequence under Section 45 of the Insurance Act 1932. The alleged omission or commission is not of any material consequence and would have not influenced the mind of the appellant while issuing the policy nor would it affect the rate of premium;

and

(v) A Special Leave Petition [SLP (C) No 130740 of 2014] against the decision of the NCDRC in Sahara India (supra) has been dismissed.

On the above grounds, learned counsel appearing on behalf of the respondent supported the view of the NCDRC.

11 While considering the rival submissions, it is necessary to preface our analysis with reference to two basic facts. The first pertains to the nature of the disclosure made by the insured in the proposal form. The second relates to the ground for repudiation of the claim. The proposal form required a specific disclosure of the life insurance policies held by the proposer and all proposals submitted to life insurance companies, including the appellant. The proposer was called upon to furnish a full disclosure of covers for life insurance, critical illness or accident benefit under which the proposer was currently insured or for which the proposer had applied. The answer to this was given in the negative. Furthermore, item 17 of the proposal form required a detailed disclosure of the other insurance policies held by the proposer including the sum assured. A disclosure was also required of the status of pending proposals. These were answered with a □not applicable response, following the statement that the proposer did not hold any other insurance cover. The fact that two months prior to the policy which was obtained from the appellant on 16 September 2009, the insured had obtained a policy from Max New York Life Insurance Co Ltd in the amount of Rs 11 lakhs has now been admitted. There was evidently a non- disclosure of the earlier cover for life insurance held by the insured. The second aspect of the case which merits to be noticed is that the repudiation of the claim on 30 August 2011 was on the ground that there was a non-disclosure of a material fact on the part of the insured in not disclosing that he held a prior insurance cover. The insurer stated that if this was to be disclosed in the proposal form, it would have called for and evaluated financial income documents together with the terms for the acceptance of the cover. Though the insurer has

subsequently, during the pendency of the proceedings made an effort to sustain its repudiation on the ground that the insured had a pre-existing illness which was not disclosed, it is necessary to record that this was not pressed in aid during the hearing before this Court. 12 The repudiation in the present case was within a period of two years from the commencement of the insurance cover. This assumes significance because of the provisions of Section 45 of the Insurance Act 1932, as they stood at the material time:

"45 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 effected 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 that it suppressed facts which it was material to disclose.

Provided that nothing in this section shall prevent the insurer from calling for 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 the life insured was incorrectly stated in the proposal .

13 Section 45 stipulates restrictions upon the insurer calling into question a policy of life insurance after the expiry of two years from the date on which it was effected 11. After two years have elapsed the insurer cannot call it into question on the ground that: (i) a statement made in the proposal; or (ii) a statement made in any report of a medical officer, referee or friend of the insured; or (iii) a statement made in any other document leading to the issuance of the policy was inaccurate or false, unless certain conditions are fulfilled. Those conditions are that : (a) such a statement was on a material matter; or (b) the statement suppressed facts which were material to disclose and that (i) they were fraudulently made by the policy holder; and (ii) the policy holder knew at the time of making it that the statements were false or suppressed facts which There is a similar restriction in the case of policies effected before the commencement of the Insurance Act 1932 after the expiry of two years from the date of the commencement of the Act, which is not material for the present case. were material to disclose. The cumulative effect of Section 45 is to restrict the right of the insurer to repudiate a policy of life insurance after a period of two years of the date on which the policy was effected. Beyond two years, the burden lies on the insurer to establish the inaccuracy or falsity of a statement on a material matter or the suppression of material facts. Moreover, in addition to this requirement, the insurer has to establish that this non-disclosure or, as the case may be, the submission of inaccurate or false information was fraudulently made and that the policy holder while making it knew of the falsity of the statement or of the suppression of facts which were material to disclose.

14 Section 45 curtails the common law rights of the insurer after two years have elapsed since the cover for life insurance was effected. In the present case, the Court is called upon to determine the

nature of the authority of the insurer where a policy of life insurance or a claim under it is sought to be repudiated within two years. The insurer submits that within a period of two years, its right to repudiate the respondent's claim is untrammelled and is not subject to the conditions which apply beyond two years. On the other hand, the submission of the respondent is that even within a period of two years, a non-disclosure or suppression must be of a material fact to justify a repudiation. In other words, before a non-disclosure can be utilized as a ground to repudiate, it must pertain to a realm where it can be found that the non- disclosure was of a circumstance or fact which would have affected the decision of the insurer regarding whether or not to grant a cover.

15 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 Law12 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.

16 In Condogianis (supra), the Privy Council dealt with an appeal by Special Leave from a judgment of the High Court of Australia. The appellant had claimed a declaration under a policy of insurance that the insurer was liable to pay him for a loss sustained as a consequence of a fire. In response to the requirement of disclosing whether the proponent had ever been a claimant of a fire insurance company in respect of the property proposed or any other property, the insurer had disclosed one claim which had been made in the past but omitted to disclose another, in respect of the burning of a motor car. The terms of the declaration were as follows:

> "5. This proposal is the basis of the contract and is to be taken as part of the policy and (if accepted) the particulars are to be deemed express and continuing warranties furnished by or on behalf of the proponent; and any questions remaining unanswered will be deemed to be replied to in the negative. The proposal is made subject to the Company's conditions as printed any/or written in the policy to be issued hereon, and which are hereby accepted by the proponent. Lord Justice Shaw, speaking for the Privy Council held:

> Twelfth Edition, Sweet and Maxwell (2012) "6. The case accordingly is one of express warranty: If in point of fact the answer is untrue, the warranty still holds, notwithstanding that the untruth might have arisen inadvertently and without any kind of fraud. Secondly, the materiality of the untruth is not in issue; the parties having settled for themselves—by making the fact the basis of the contract, and giving a warranty—that as between them their agreement on that subject precluded all

> inquiry into the issue of materiality. In the language of Lord Eldon in Newcastle Fire Insurance Co. v. Macmorran [(1815) 3 Dow. 255.] .
>
> ☐It is a first principle in the law of insurance, on all occasions, that where a representation is material it must be complied with—if immaterial, that immateriality may be inquired into and shown; but that if there is a warranty it is part of the contract that the matter is such as it is represented to be. Therefore the materiality or immateriality signifies nothing.

17 This principle was followed by the Bombay High Court in Lakshmishankar v Gresham Life Assurance Society13 where it was held:

> ☐.. where the representations, statement and agreements made by an assured in his application for a policy of life assurance are made a basic condition of the contract by the policy of life assurance, the truth of the statements contained in the proposal are, apart from the question of their materiality, the condition of the liability of the assurance company. It would therefore follow that the defendant company was entitled to repudiate its liability on account of the untrue statement contained in the proposal form and in the examination by the medical examiner...

18 In Sheoshankar (supra), a Division Bench of the Bombay High Court noted:

> ☐The law with respect to insurance previously was that any mis-statement on the part of the assured while making the proposal or at any stage thereafter avoided the contract of policy and the insurer was not liable for the claim on such policy. In Condogianis v. G. Assurance Co., Ltd. [[1921] A.I.R. P.C. 195.], their Lordships pointed out that if in point of fact the answer is untrue, the warranty still holds, notwithstanding that the untruth might have arisen inadvertently and without any kind of fraud. Secondly, the materiality of the untruth is not in issue; the parties having settled for themselves—by making the fact the basis of contract and giving warranty— that as between them their agreement on that subject precluded all inquiry into the issue of materiality... AIR 1932 Bom 582. Also see Great Eastern Life Assurance Company Limited v Bai Hira - 1930 ILR Vol.LV The High Court observed that the law of insurance had, however, undergone a material change by the enactment of Section 45 of the Insurance Act 1938. Explaining the provisions of Section 45 the High Court held:
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> ☐.. The section is divided into two parts. Under the first part, if the insurer calls in question the policy within a period of two years from the date on which it was effected, then the insurer company has only to show that a statement made in the proposal for insurance, 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. Even an incorrect statement which may not be on a material fact and suppression of fact which may not be on a material point, would be enough for

> the insurer company to avoid the contract of policy under this part. Under the second part, where a period of two years expired after the date of policy was effected without any challenge to it by the insurer, the insurer could call it in question only on showing that such statement by the insured 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 that it suppressed facts which it was material to disclose. The question as to the date on which the policy could be said to be effected and the date on which the proposal can be said to have been accepted assumes importance in this case as on the determination of this question will depend whether the repudiation by the insurer has been within two years or after a period of two years from the date on which the policy was effected.

19 In Mithoolal (supra), a Bench of three learned Judges of this Court dealt with a case where a policy had been issued on 13 March 1945. The policy came into effect from 15 January 1945. The amount insured was payable after 15 January 1968 or at the death of the insured, if earlier. The insurer repudiated its claim on 10 October 1947. Hence the provisions of Section 45 were applicable. The three Judge Bench rejected the submission that a period of two years had not expired from the date of the revival of the policy, holding that from Section 45 it was evident that the period of two years can only mean the date on which the policy was effected. From that date a period of two years had clearly elapsed when the insurer repudiated the claim. The significance of the decision in Mithoolal (supra) for this case lies in the fact that the Court specifically kept open the issue about what would govern a case where Section 45 did not apply:

> ☐.. As we think that Section 45 of the Insurance Act applied in the present case, we are relieved of the task of examining the legal position that would follow as a result of inaccurate statements made by the insured in the proposal form or the personal statement etc. in a case where Section 45 does not apply and where the averments made in the proposal form and in the proposal statement are made the basis of the contract. Mithoolal (supra) was a case involving a repudiation beyond two years, where Section 45 was applicable. The present case involves a repudiation within two years.
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> The question which was left open in Mithoolal has squarely arisen.
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> 20 In Life Insurance Corporation of India v Smt GM Channabasamma14, a two Judge Bench of this Court held:
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> ☐7. ... It is well settled that a contract of insurance is contract uberrima fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted. Section 45 of the Act has made

> special provisions for a life insurance policy if it is called in question by the insurer after the expiry of two years from the date on which it was effected. Having regard to the facts of the present case, learned counsel for the parties have rightly stated that this distinction is not material in the present appeal. If the allegations of fact made on behalf of the appellant Company are found to be correct, all the three conditions mentioned in the section and discussed in Mithoolal Nayak v. Life Insurance Corporation of India [1962 Supp 2 SCR 571 : AIR 1962 SC 814 : (1962) 32 Comp Cas 177] must be held to have been satisfied... (1991) 1 SCC 357 21 The decision of this Court in Life Insurance Corpn of India v Asha Goel (Smt)15 considered a situation in which a claim under a life insurance policy was repudiated on the ground that the insured suppressed facts pertaining to the condition of health. The Single Judge of the High Court held that a writ petition under Article 226 could be maintained against the Life Insurance Corporation and that the insurer had failed to discharge its burden under Section 45 of the Insurance Act 1932. A Division Bench of the High Court held in appeal that there was some substance in the complaint that the insurer ought to have been given an opportunity to lead evidence to discharge the onus of justifying the rejection. The matter was accordingly remanded.

The insurer then moved to this Court challenging the maintainability of a writ petition under Article 226 of the Constitution before the High Court. This Court held that where a dispute in regard to a repudiation of a claim raises a serious matter requiring oral and documentary evidence, the appropriate remedy would be a civil suit and not a writ petition. After elaborating the requirements of Section 45, 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 the risk which may take place between the proposal and its acceptance. If there are 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. 22 In Satwant Kaur (supra) this Court considered a case which arose from a decision of the NCDRC. The insurer had repudiated a claim under a health insurance (2001) 2 SCC 160 policy on the ground that the policy holder was suffering from chronic diabetes and renal failure. This, according to the insurer, was a material fact a non-disclosure of which in the proposal form justified repudiation of the claim. Section 45, which applies to policies of life insurance, was not applicable since the case related to a mediclaim policy. Justice DK Jain, speaking for the Bench of two learned Judges, held:

□18. A mediclaim policy is a non-life insurance policy meant to assure the policy-holder in respect of certain expenses pertaining to injury, accidents or hospitalisations. Nonetheless, it is a contract of insurance falling in the category of contract uberrima fidei, meaning a contract of utmost good faith on the part of the assured. Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, 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. (See Joel v. Law Union & Crown Insurance Co. [(1908) 2 KB 863 (CA)]) (Emphasis supplied) In taking this view, the Court relied upon the earlier decisions in United India Insurance Co Ltd v MKJ Corporation16 and Modern Insulators Ltd v Oriental Insurance Co Ltd17. Adverting to the expression □material fact this Court explained it as:

□22. ... 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 a situation which was not governed by Section 45, this Court applied the fundamental tenet of insurance law namely, utmost good faith.

(1996) 6 SCC 428 (2000) 2 SCC 734 23 The Insurance Regulatory and Development Authority of India, by a notification dated 16 October 2002 issued the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations 2002. The expression □proposal form is defined in Regulation 2(d) 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. Regulation 4, deals with proposals for insurance and is in the following terms:

> □4. Proposal for insurance (1) Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.
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> (2) Forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognised under the Constitution of India.
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> (3) In filling the form of proposal, the prospect is to be guided by the provisions of Section 45 of the Act. Any proposal form seeking information for grant of life cover may prominently state therein the requirements of Section 45 of the Act. (4) Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover. 24 Regulation 2(d) specifically defines the expression □proposal form as a form which is filled by a proposer for insurance to furnish all material information required by the insurer in respect of a risk. The purpose of the disclosure is to enable the insurer to decide whether to accept or decline to undertake a risk. The disclosures are also intended to enable the insurer, in the event that the risk is accepted, to determine the rates, terms and conditions on which a cover is to be granted. The explanation defines the expression □material to mean and include □all important essential and relevant information for underwriting the risk to be covered by the insurer. Regulation 4(3) stipulates that while filling up the proposal, the proposer is to be guided by the provisions of Section 45. Where a proposal form is not used, the insurer under Regulation 4(4) is to record the information, confirming it within a stipulated period with the proposer and ought to incorporate the information in the cover note or policy.

In respect of information which is not so recorded, the onus of proof lies on the insurer who claims that there was a suppression of material information or that the insured provided misleading or false information on any matter that was material to the grant of the cover.

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 Law18 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 ... Twelfth Edition, Sweet and Maxwell (2012). See Pg. 493 for cases relied upon.
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> 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.
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> As this Court held in Satwant Kaur (supra):
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> □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 a fact also depends on the surrounding circumstances and the nature of information sought by the insurer. It covers a failure to disclose vital information which the insurer requires 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 so.
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> The insurer is better equipped to determine the limits of risk-taking as it deals with the exercise of assessments on a day-to-day basis. In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not accept the risk is a material fact. If the proposer has knowledge of such fact, she or he is obliged to disclose it particularly while answering questions in the proposal form. An inaccurate answer will entitle the insurer to repudiate because there is a presumption that information sought in the proposal form is material for the purpose of entering into a contract of insurance.

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 Boehm19, 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 under- writer 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. 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.
>
> 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) (1766) 3 Burr 1905 □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.

27 In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.

28 Learned counsel appearing on behalf of the insurer submitted that where a warranty has been furnished by the proposer in terms of a declaration in the proposal form, the requirement of the information being material should not be insisted upon and the insurer would be at liberty to avoid its liability irrespective of whether the information which is sought is material or otherwise. For the purposes of the present case, it is sufficient for this Court to hold in the present facts that the information which was sought by the insurer was indeed material to its decision as to whether or not to undertake a risk. The proposer was aware of the fact, while making a declaration, that if any statements were untrue or inaccurate or if any matter material to the proposal was not disclosed, the insurer may cancel the contract and forfeit the premium. MacGillivray on Insurance Law20 formulates the principle thus:

> □.. In more recent cases it has been held that all-important element in such a declaration is the phrase which makes the declaration the □basis of contract . These words alone show that the proposer is warranting the truth of his statements, so that in the event of a breach this warranty, the insurer can repudiate the liability on the

policy irrespective of issues of materiality

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. Barely two months before the contract of insurance was entered into with the appellant, the insured had obtained another insurance cover for his life in the sum of Rs 11 lakhs. We are of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

30 We may note at this stage, that the view which was taken by the NCDRC in the present case was contrary to its earlier decision in Vidya Devi (supra). In that case, the NCDRC upheld the repudiation of an insurance claim under a life insurance cover by the LIC on the ground of a non-disclosure of previous insurance policies. In taking this view, the NCDRC relied on its earlier decision in Chandarana (supra). Subsequently in Sahara India (supra), the NCDRC took a contrary view. Having noticed its earlier decisions, the NCDRC did not even attempt to distinguish them.

Twelfth Edition, Sweet and Maxwell (2012). See Pg. 257 for cases relied upon. Indeed, the earlier decisions were binding on the NCDRC. This line of approach on the part of the NCDRC must be disapproved.

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 Ltd21 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. That 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.

32 For the reasons which we have adduced, we are of the view that the SCDRC was in error in reversing the judgment of the District Forum. The NCDRC has similarly erred in affirming the view of the SCDRC. We, accordingly, allow the appeal and set aside the impugned judgment and order of the NCDRC dated 20 February 2015. The consumer complaint filed by the respondent shall stand dismissed.

AIR 1958 Mys 53 33 By the interim order of this Court dated 14 May 2015, the respondent was permitted to withdraw 50 per cent of the decretal amount, unconditionally. Since the respondent has done so, we are of the view that the ends of justice would require a direction by this Court under Article 142 of the Constitution that the amount which has been withdrawn by the respondent shall not be recovered. We order accordingly. Subject to the aforesaid direction, the appeal shall stand allowed. There will be no order as to costs.

.....J. [Dr Dhananjaya Y Chandrachud] .....J. [Hemant Gupta] New Delhi;

April 24, 2019