

A LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER

v.

SUNITA

(Civil Appeal No. 6537 of 2021)

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OCTOBER 29, 2021

[SANJIV KHANNA AND BELA M. TRIVEDI, JJ.]

- Insurance: Insurance policy – Construction of – Held: Terms of insurance policy have to be strictly construed – It is not permissible to rewrite the contract while interpreting the terms of the Policy – In a contract of insurance there was a requirement of Uberrima fides-good faith on the part of the assured – On facts, condition of the Policy clearly stipulated that the policy has to be in force when the accident takes place – Policy was lying in a lapsed condition and was not in force on the date of accident – It was sought to be revived after the accident and that too without disclosing the fact of accident which took place three days before – Thus, the complainant did not come with clean hands to claim the extra Accident benefit of the policy – The said Accident benefit could have been claimed and availed of only if the accident had taken place subsequent to the renewal of the policy – Claim for Accident benefit was not payable to the respondent as per the conditions of the contract of insurance – Thus, the claim for extra Accident benefit rightly rejected by the Corporation – Consumer Protection Act, 1986.*

F **Allowing the appeal, the Court**

- HELD:** 1.1 At the time of making payment of premium on 09.03.2012, it was not disclosed by the complainant or her husband to the appellant-Corporation about the accident which had taken place on 06.03.2012. The said conduct on the part of the complainant and her husband in not disclosing about the accident to the corporation not only amounted to suppression of material fact and lacked *bona fides* but smacked of their *mala fide* intention, and therefore, the Accident benefit claim of the complainant was liable to be rejected on the said ground alone. In a contract of insurance there is a requirement of *Uberrima fides* i.e. good faith on the part of the assured. [Para 8][185-G-H; 186-A-B]

1.2 It is clear that the terms of insurance policy have to be strictly construed, and it is not permissible to rewrite the contract while interpreting the terms of the Policy. In the instant case, condition no. 11 of the Policy clearly stipulated that the policy has to be in force when the accident takes place. The policy had lapsed on 14.10.2011 and was not in force on the date of accident i.e. on 06.03.2012. It was sought to be revived on 09.03.2012 after the accident in question, and that too without disclosing the fact of accident which had taken place on 06.03.2012. Thus, apart from the fact that the respondent-complainant had not come with clean hands to claim the add on/extra Accident benefit of the policy, the policy in question being not in force on the date of accident as per the condition no. 11 of the policy, the claim for extra Accident benefit was rightly rejected by the appellant-Corporation. Since, clause 3 of the said terms and conditions of the policy permitted the renewal of discontinued policy, the appellant-Corporation had revived the policy of the respondent-complainant by accepting the payment of premium after the due date and paid Rs. 3,75,000/- as assured under the policy, nonetheless for the Accident benefit, the policy had to be in force for the full sum assured on the date of accident as per the said condition no. 11. The said Accident benefit could have been claimed and availed of only if the accident had taken place subsequent to the renewal of the policy. The policy was lying in a lapsed condition since 14th October, 2011 and, thus, was not in force as on 06.03.2012, resultantly, the claim over Accident benefit was not payable to the respondent as per the conditions of the contract of insurance. Thus, the impugned order passed by the NCDRC setting aside the order passed by the State Commission and reviving the order passed by the District Forum was highly erroneous and is set aside. The claim of the respondent towards Accident benefit stands rejected. [Para 9-11][186-H; 187-A-F]

Vikram Greentech (I) Ltd. & Anr vs New India Assurance Co. Ltd (2009) 5 SCC 599 : [2009] 5 SCR 437; Life Insurance Corporation of India Vs. Jaya Chandel (2008) 3 SCC 382: [2008] 2 SCR 559; General Assurance Society Ltd. v. Chandmull Jain (1966) 3 SCR

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- A **500; Oriental Insurance Co. Ltd. v. Sony Cherian AIR 1999 SC 3252 : [1999] 1 Suppl. SCR 622; United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal (2004) 8 SCC 644 : [2004] 4 Suppl. SCR 662 – referred to.**

Case Law Reference

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| B | [2009] 5 SCR 437 | referred to | Para 5 |
| | [2008] 2 SCR 559 | referred to | Para 5 |
| | (1966) 3 SCR 500 | referred to | Para 8 |
| C | [1999] 1 Suppl. SCR 622 | referred to | Para 8 |
| | [2004] 4 Suppl. SCR 662 | referred to | Para 8 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6537 of 2021.

- D From the Judgment and Order dated 24.04.2019 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No.897 of 2018.

Kailash Vasdev, Sr. Adv., Rao Ranjit, Advs. for the Appellants.

Pushkar Anand, S. R. Setia, Advs. for the Respondent.

- E The Judgment of the Court was delivered by

BELA M. TRIVEDI, J.

1. Leave is granted.

2. The present appeal is directed against the judgment and order

- F dated 24th April, 2019 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the NCDRC) in Revision Petition No. 897 of 2018, whereby the NCDRC while allowing the said Revision Petition, has set aside the order passed by the State Commission and has confirmed the order passed by the District Forum.

- G 3. The short facts giving rise to the present appeal are that Mr. Pradeep Kumar, the husband of the respondent herein (original complainant) had taken/purchased a life insurance policy under the Jeevan Suraksha Yojana on 14.04.2021 from the appellant-Life Insurance Corporation, under which a sum of Rs. 3,75,000/- was assured by the

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corporation, and in case of death by accident an additional sum of Rs. 3,75,000/- was also assured. The insurance premium of the said policy was to be paid six monthly. The next premium was due to be paid by the said insured Pradeep Kumar on 14th October, 2011. However, he committed a default. On 06.03.2012, the said Pradeep Kumar i.e. the husband of the complainant met with an accident and succumbed to the injuries on 21.03.2012. In the meantime, he deposited the due premium of October, 2011 on, 09.03.2012 for reviving the policy. The complainant after the death of her husband filed a claim before the appellant-Corporation. The appellant paid a sum of Rs. 3,75,000/- to the complainant, however, did not pay the additional amount of Rs. 3,75,000/- towards the Accident claim benefit. The complainant, therefore, approached the District Forum by filing a complaint seeking the said amount towards the Accident claim benefit. The said complaint was resisted by the Life Insurance Corporation contending, *inter alia*, that the day when the husband of the complainant met with an accident, the said policy had already lapsed on account of non-payment of the due premium.

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4. The District Forum placing reliance upon the Ready reckoner issued by the appellant-Corporation, allowed the said claim of the respondent vide its judgment and order dated 14.10.2013. The appellant-Corporation being aggrieved by the same preferred an appeal before the State Consumer Disputes Redressal Commission. The State Commission allowed the said appeal and set aside the said order passed by the District Forum. The aggrieved complainant preferred a Revision Petition being no. 897 of 2008 under Section 21(B) of the Consumer Protection Act (hereinafter referred to as the said Act), before the NCDRC challenging the order passed by the State Commission. The NCDRC vide the impugned judgment dated 24.04.2019 allowed the said Revision Petition of the respondent and set aside the order passed by the State Commission. Hence, the present Appeal has been filed by the appellant-Corporation.

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5. The learned counsel appearing for the appellant-Corporation placing heavy reliance on the condition no. 11 of the policy submitted that the Accident claim benefit was payable only if the policy was in force on the date of accident, however, in the instant case, the policy had already lapsed in October, 2011 and the husband of the respondent-complainant had sought to pay the premium on 09.03.2012, i.e. three days after the occurrence of accident on 06.03.2012. According to him,

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- A even the appellant-Corporation was not informed about the said accident when the policy was sought to be revived on 09.03.2012. He has placed reliance on the judgments of this court in case of *Vikram Greentech (I) Ltd. & Anr vs New India Assurance Co. Ltd (2009) 5 SCC 599* and in case of *Life Insurance Corporation of India Vs. Jaya Chandel (2008) 3 SCC 382* to submit that there is a requirement of good faith on the part of the insured in the contract of insurance.
 - 6. However, the learned counsel appearing for the respondent-complainant submitted that the said terms and conditions of the policy were not brought to the notice of the insured i.e. the husband of the complainant, and that the complainant was entitled to the Accident claim benefit as per the Ready reckoner. He further submitted that the husband of the complainant had made payment of premium on 09.03.2012 along with the late fee charges and, therefore, the policy had stood revived before the death of the complainant's husband. He also placed reliance on *LIC vs. Jaya Chandel* (supra) to submit that since the insurance company had issued the renewal premium receipt on 09.03.2012, it was required to be construed that the policy which had already lapsed due to non-payment of premium on time, had stood revived.
 - 7. In order to appreciate the rival contentions raised by the learned counsels for the parties, apt would be to reproduce the relevant conditions of the policy in question. Relevant condition nos. 3, 4, and 11 read as under:
 - “3. Revival of Discontinued Policies: If the policy has lapsed, it may be revived during the life time of the Life Assured, but within a period of five years, from the due date of the first unpaid premium and before the date of Maturity, on submission of proof of continued incurability to the satisfaction of the corporation and the payment of all the arrears of premium together with interest compounding half yearly at such rates as may be fixed by the Corporation from time to time. The Corporation, reserves the rights to accept or accept with modified terms or decline the revival of Discontinued Policy. The revival of a Discontinued Policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the proposer/Life Assured.
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- 4 Non-forfeiture Regulations:
- (a) If, after at least 3 full years premiums have been paid in respect of this Policy, any subsequent premiums be not duly paid, this

Policy shall not be wholly void, but shall subsist as a Paid-up Value which shall be payable in case of death/Matyrly and shall depend on the number of years for which premiums have been paid and shall be greater of a sum that bears the same ratio to the Maturity Sum Assured as the number of premiums actually paid shall bear to the total number of premiums originally stipulated in the Policy.

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The surrender value as per para 7 below assuming that the policy has been surrendered on the date of death/Matyruty, as the case may be.

11. Accident Benefit (If opted for): If at any time when this policy is in force for the full sum assured or reduced sum assured in case of partial surrender of the policy, the life assured, before the expiry of the policy term or the policy anniversary on which the age nearer birthday of the Life Assured is 70 years, whichever is earlier, is involved in an accident resulting in either permanent disability as hereinafter defined or death and the same is proved to the satisfaction of the Corporation, the Corporation agrees in the case of :-

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(a).....

(b) Death of the Life Assured: to pay an additional sum equal to the Accident Benefit Sum Assured under this Policy, if the life assured shall sustain and bodily injury resulting solely and directly from the accident caused by outward, violent and visible means and such injury shall within 180 days of its occurrence solely, directly and independently of all other causes result in the death of the life assured.”

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8. Now, so far as the facts of this case are concerned, it is not disputed that the husband of the complainant had taken the life insurance policy on 14.04.2011, that the next premium had fallen due on 14.10.2011 but was not paid by him, that the husband of the complainant met with an accident on 06.03.2012, that thereafter the premium was paid on 09.03.2012 and that he expired on 21.03.2012. It is also not disputed that at the time of making payment of premium on 09.03.2012, it was not disclosed by the complainant or her husband to the appellant-Corporation about the accident which had taken placed on 06.03.2012. The said conduct on the part of the complainant and her husband in not disclosing

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- A about the accident to the corporation not only amounted to suppression of material fact and lacked *bona fides* but smacked of their *mala fide* intention, and therefore, the Accident benefit claim of the complainant was liable to be rejected on the said ground alone. It is well settled legal position that in a contract of insurance there is a requirement of *Uberrima fides* i.e. good faith on the part of the assured. The Supreme Court in case of ***Vikram Greentech (I) Ltd. V/s New India Assurance Co. Ltd. (2009) 5 SCC 599***, while dealing with the contract of insurance held as under:-
- C “16. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of *uberrima fides* i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract.
- D 17. The four essentials of a contract of insurance are: (I) the definition of the risk, (ii) the duration of the risk, (iii) the premium, and (iv) the amount of insurance. Since upon issuance of the insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of the risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer.
- E 18. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract of substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. (***General Assurance Society Ltd. v. Chandmull Jain (1966) 3 SCR 500, Oriental Insurance Co. Ltd. v. Sony Cheriyam AIR 1999 SC 3252 and United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal (2004) 8 SCC 644.***)”
- H 9. From the afore-stated legal position, it is clear that the terms of insurance policy have to be strictly construed, and it is not permissible to rewrite the contract while interpreting the terms of the Policy. In the instant case, condition no. 11 of the Policy clearly stipulated that the policy has to be in force when the accident takes place. In the instant

case, the policy had lapsed on 14.10.2011 and was not in force on the date of accident i.e. on 06.03.2012. It was sought to be revived on 09.03.2012 after the accident in question, and that too without disclosing the fact of accident which had taken place on 06.03.2012. Thus, apart from the fact that the respondent-complainant had not come with clean hands to claim the add on/extra Accident benefit of the policy, the policy in question being not in force on the date of accident as per the condition no. 11 of the policy, the claim for extra Accident benefit was rightly rejected by the appellant-Corporation. Since, clause 3 of the said terms and conditions of the policy permitted the renewal of discontinued policy, the appellant-Corporation had revived the policy of the respondent-complainant by accepting the payment of premium after the due date and paid Rs. 3,75,000/- as assured under the policy, nonetheless for the Accident benefit, the policy had to be in force for the full sum assured on the date of accident as per the said condition no. 11. The said Accident benefit could have been claimed and availed of only if the accident had taken place subsequent to the renewal of the policy. The policy in the instant case was lying in a lapsed condition since 14th October, 2011 and, therefore, was not in force as on 06.03.2012, resultantly, the claim over Accident benefit was not payable to the respondent as per the conditions of the contract of insurance.

10. The Court, therefore, is of the opinion that the impugned order passed by the NCDRC setting aside the order passed by the Commission and reviving the order passed by the District Forum was highly erroneous and liable to be set aside.

11. In the aforesaid premises, the present appeal is allowed and the impugned order passed by the NCDRC is set aside. The claim of the respondent towards Accident benefit stands rejected accordingly. Pending applications, if any, are disposed of.

Nidhi Jain

Appeal allowed.