Life Insurance Corporation Of India vs Smt. G.M. Channabasemma on 6 December, 1990

Equivalent citations: 1991ACJ303, AIR1991SC392, [1991]70COMPCAS634(SC), JT1991(5)SC73, 1990(2)SCALE1191, (1991)1SCC357, 1991(1)UJ218(SC), AIR 1991 SUPREME COURT 392, 1991 (1) SCC 357, 1991 AIR SCW 26, 1991 (1) UJ (SC) 218, 1991 UJ(SC) 1 218, (1991) 5 JT 73 (SC), (1991) CIVILCOURTC 166, (1991) 1 TAC 725, (1991) 1 ACC 411, (1991) 1 ACJ 303, (1991) 17 ALL LR 118, (1991) 70 COMCAS 635, (1991) 1 CURCC 133, (1991) 2 CURLJ(CCR) 374

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Bench: L.M. Sharma, M. Fathima Beevi

ORDER

Lalit Mohan Sharma, J.

1. This appeal by special leave arises out of a suit filed by the plaintiff-respondent for a money decree for a sum of Rs. 77,805.85 being the amount due for four insurance policies held by her deceased husband. The defendant-appellant Life Insurance Corporation denied the claim on the plea that the deceased, while filling up the proposal forms for the policies, was guilty of fraudulent misrepresentations and suppression of material facts with regard to his health. The trial court accepted the defence and dismissed the suit. On appeal by the plaintiff, the High Court reversed the decision and passed a decree.

2. The deceased husband of the plaintiff was described in the policies as T.R. Gurupadaiah but in the plaint his name has been mentioned as Gurupadappa. However, since in our view the correct spelling of the name is not material for purposes of the present case, it is not necessary to give further details in regard to the difference in the two names. We agree with the Corporation that the correct name was Gurupadaiah and since the policies under which the claim in the suit has been made bear the said name, it is immaterial if he was also known by a slightly different name. After the receipt of the claim from the plaintiff, the Corporation, feeling suspicious, made an inquiry through its Administrative Officer Sri V.V. Narasimhan (D.W. 11) who according to the defence colleted sufficient material to establish fraudulent misrepresentation and suppression of material facts by the insured at the. time of taking out the policies. The insured died on 14.10.1961 in a hospital for tubercular patients. According to the case of the Corporation the deceased was suffering from acute

diabetes and diseases of the lungs of which he was fully aware at the time of taking out the policies in question, and fraudulently denied the same in the proposal forms.

3. The four policies were respectively taken out for Rs. 20,000/- on 30.7.1959, for Rs. 20,000/- on 16.7.1960, for Rs. 10,000/- on 16.7.1960 and for Rs. 25,000/- on 23.8.1961. It has been contended by the learned Counsel for the appellant that since last policy was of a date only about two months before the death of the insured it cannot be believed that he did not know about his illness. Even the earlier three policies had been taken out only a short time earlier, and having regard to the nature of the diseases it must be assumed that the insured was fraudulently suppressing the relevant fact. The questions on the proposal forms which the insured had to fill up have been placed before us and it has been argued that several answers submitted by the insured were definitely false to his own knowledge. It was claimed that the Administrative Officer of the Corporation was, on inquiry, informed by several doctors about the chronic illness of the insured and this information was corroborated by documentary evidence.

4. The learned Counsel of the respondent has contended that it is true that her husband died of tuberculosis but he or any member of the family had no knowledge of his illness at the time taking out the policies. He was keeping good health and actively taking part in his business and the discovery of the disease which accounted for his early demise was made very late. The allegations of fraudulent misrepresentation and suppression of material facts made in the written statement were emphatically denied on behalf of the plaintiff at the trial. The trial court, however, accepted the defence and dismissed the suit.

5. On appeal the High Court, on a consideration of the evidence led by the parties and the arguments addressed on their behalf, held that the defendant had failed tc prove that the insured was suffering from diabetes or tuberculosis at the time of filling of the proposals for the insurance policies or that he had given any false answer in his statements or suppressed any material fact which he was under a duty to disclose. The finding of the trial court that the assured had committed fraud on the defendant Corporation in taking out the policies was reversed. In the result, the appeal was allowed and the suit was decreed. This decision is under challenge in the present appeal by special leave.

6. Mr. Vasudev, appearing in support of the appeal, has strenuously contended that in view of the evidence on the record and the circumstances, the findings of the High Court are erroneous and fit to be set aside. He has emphasised the fact that the policies in question were taken within a short span of time and that the insured died only about two months from the last policy. The argument is that the evidence of the witnesses examined on behalf of the defendant is fit to be accepted as reliable and is adequate to prove the defence case. We have gone through the entire evidence in this case with the learned Counsel for the parties, and do not find ourselves in a position to take a view different from that of the High Court. Since we concur with the impugned judgment, it is not necessary to deal with the evidence at great length. We, however, proceed to briefly indicate our reasons.

7. The principle as to when an insurer can validly repudiate a contract of insurance on the ground of misrepresentation or suppression of material facts is not in controversy in the present appeal. Mr.

Vasudev, the learned Counsel for the appellant has, however, placed a number of decisions both English and Indian dealing with this aspect., but we do not consider it necessary to discuss them here. It is well settled that a contract of insurance is contract uberrim 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 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 oh 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, must be held to have been satisfied. We must, therefore, proceed to examine the evidence led by the parties in the case.

8. The burden of proving that the insured had made false representations and suppressed material facts is undoubtedly on the Corporation. According to Mr. Vasudev the defence has discharged its duty by examining a number of doctors to establish that the insured was, at the time of taking out the policies, suffering from diabetes and other diseases. The appellant has heavily relied upon the evidence of D.W. 4, Dr. M.S. Kumar, who bas deposed that he was giving Gunupadaiah injections of Insulin, Anacobia and Vetabion and was. also examining his urine daily which contained sugar. The witness has been disbelieved by the High Court on the ground of his enmity with Gurupadaiah's father- in-law G.3. Mallikarjunaih. In his statement before the court in September 1966 he claimed to have treated Gurupadaiah from 1953 to 1957. He was charging fee for his services but on a concessional rate as he was a tenant in the house belonging to Mallikarjunaih. According to the plaintiff's case, certain dispute had arisen between the two which ultimately led to Dr. Kumar's vacating the house in 1959. The witness has denied the dispute but has admitted the tenancy and the fact that he left the house in 1959. In support of his claim to have treated the insured, he produced a chit Ext. D-33, containing an account of the payments from patients. The document is a single loose sheet of paper containing the accounts of 8 patients out of whom only Gurupadaiah's name finds place therein. No other patient's name is mentioned in the slip. The witness has not offered any explanation for this exceptional treatment given to Gurupadaiah in mentioning his name in Ext. D-33. There is also an obvious discrepancy in the sheet with respect to the dates which the witness has explained by saying that it was a mistake. According to his further evidence Gurupadaiah again contacted him in 1960, but he has not produced any document similar to Ext. D-33. In answer to a question as to why he had struck off some other name at the top of Ext. D-33 and had written the name of Mallikarjunaih, Dr. Kumar stated that he did so as at that time he might not have any other paper with him. Having regard to all the circumstances pointed out by the High Court, we agree with its conclusion that the evidence of D.W.4 cannot be relied upon for holding that Gurupadaiah was under his treatment in 1957, 1960 or at any point of time.

9. Another medical practitioner Dr. H.N. Gangadhar was examined as defence witness 2. He was the family doctor of Mallikarjuniah and denied that Gurupadaiah was his patient. He, however, stated that he had given to Gurupadaiah two injections of Anacobin in October, 1958 and another in

November, 1958. According to his evidence Anacobin injections are harmless and can be given even to healthy men as tonic; and generally they are given for general weakness, anaemia, sprain and a number of other diseases including diabetes. There is no reason to disbelieve Dr. Gangadhar. But his evidence does not take us beyond showing that the insured had taken in 1958 three injections of anacobin which, according to the doctor's evidence, does not lead to any conclusion about the disease. The next witness Dr. Siddalingaih D.W.3 was working in the T.B. Hospital, Tumkur, where Gurupaddaiah was admitted as an indoor patient with severe cough trouble and chest pain. The doct6r was an L.M.P., but did not hold any special diploma for treatment of tuberculosis. According to the witness, Gurupadaiah had lost weight and was weak and died there on 14.10.1961. Having regard to the condition of the patient, the doctor opined that he might have been ill for more than six months before his admission in the hospital. He, however, accepted in cross-examination that if a man is weak and not in a position to resist infection from outside, galloping tuberculosis may attack him, and in such a case the duration for the symptoms to come out may be from a month to three months. His evidence also does not necessarily lead to the conclusion that Gurupadaiah was inflicted by a serious disease for a long time.

10. According to the evidence of three other doctors D.W. 5, D.W. 6 and D.W. 10, they had examined and treated a person bearing the name Gurupadayya or Guruadiah or Gurupadappa. But none of them is in a position to say that it was the same person as the deceased husband of the present plaintiff. They are not in a position to indicate anything whereby the identity of the patient can be proved or inferred. There is no mention of the father's name or residence of the patient and their depositions can be of evidentiary value only if the statement of Dr. Kumar D.W. 4 is accepted. If the evidence of D.W. 4 is rejected, as we have already done, the evidence of the other three doctors by themselves is not of any help. As against this, the evidence of the Corporation's doctors who had certified the good health of the insured at the time of taking out the insurance policies and who have been examined as defence witnesses, disproves the case of illness. It has not been suggested that these doctors were either won over by the insured or were negligent in performing their duty. They had submitted confidential reports about the health of the insured and were of the opinion that he was in good health. We, therefore, agree with the High Court that the defendant Corporation has failed to discharge the burden of proving the defence story about the serious illness of the insured at the time of taking out the insurance policies and knowingly suppressing the material information.

11. Before concluding we would like to say a few words about the role of V.V. Narsimhan, D.W. 11, who was the Administrative Officer of the Corporation and was incharge of the investigation of the death claims. The learned Counsel for the appellant has contended that certain observations in the judgment of the High Court amount to a criticism of the Administrative Officer. We do not think that the observations can be described as strictures, but, in any event, we would like to clarify the position that in our view no exception can be taken against the conduct of the Officer in the matter of investigation of the present case. He was under a duty to have made a thorough inquiry in the circumstances, which certainly on the face appeared to be suspicious, and he was performing his duty with all seriousness as he ought to have done.

12. For the reasons mentioned above, the appeal is dismissed, but, in the circumstances, without costs.