Life Insurance Corporation Of India & ... vs Smt.Asha Goel & Anr on 13 December, 2000

Equivalent citations: AIR 2001 SUPREME COURT 549, 2001 (2) SCC 160, 2001 AIR SCW 161, 2001 (1) SRJ 310, (2001) 1 ALLMR 838 (SC), (2012) 3 CPJ 5, 2001 (1) LRI 260, 2001 (1) UJ (SC) 456, 2000 (8) SCALE 320, 2001 (1) ALL CJ 349, (2001) 1 JT 10 (SC), 2001 (1) ALL MR 838, (2000) 8 SCALE 320, (2001) 3 GUJ LR 1990, (2001) 1 SCJ 291, (2001) 3 TAC 241, (2000) 8 SUPREME 521, (2001) 1 RECCIVR 347, (2001) 1 ACJ 806, (2001) 42 ALL LR 485, (2001) 104 COMCAS 79, (2001) 2 BOM CR 791

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Bench: D.P.Mohapatra

CASE NO.:
Appeal (civil) 4186-87 1988

PETITIONER:
LIFE INSURANCE CORPORATION OF INDIA & ORS.

Vs.

RESPONDENT:
SMT.ASHA GOEL & ANR.

DATE OF JUDGMENT: 13/12/2000

BENCH:
B.N.Kripal, D.P.Mohapatro

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J D.P.MOHAPATRA, J.

These appeals, filed by the Life Insurance Corporation of India (hereinafter referred to as the Corporation), are directed against the judgment of a Division Bench of the Bombay High Court in writ appeal no.843/85 allowing the appeal on the ground that the appellant should have had an opportunity of leading evidence relevant to their contention that the insurance policy was obtained by misrepresentation, and therefore, avoidable at the instance of the Corporation, and remitting the writ petition to the writ court for fresh decision, after allowing the Corporation to lead evidence. The

Division Bench did not accept the objection raised by the Corporation against maintainability of the writ petition on the ground that the case involves enforcement of contractual rights for adjudication of which a proceeding under Article 226 of the Constitution is not the proper forum. The contention on behalf of the Corporation was that the writ petition should be dismissed as not maintainable leaving it to the writ petitioner, respondent no.1 herein, to file a civil suit for enforcement of her claim. The factual backdrop of the case relevant for the purpose of the present proceeding may be stated thus : Late Naval Kishore Goel, husband of Smt. Asha Goel - respondent No.1, was an employee of M/s Digvijay Woollen Mills Limited at Jamnagar as a Labour Officer. He submitted a proposal for a life insurance policy at Meerut in the State of U.P. on 29th May, 1979 which was accepted and the policy bearing No.48264637 for a sum of Rs.1,00,000 (Rs. One lakh) was issued by the Corporation in his favour. The insured passed away on 12th December, 1980 at the age of 46 leaving behind his wife, a daughter and a son. The cause of death was certified as acute Myocardial Infarction and Cardiac arrest. The respondent No.1 being nominee of the deceased under the policy informed the Divisional Manager, Meerut City, about the death of her husband, submitted the claim along with other papers as instructed by the Divisional Manager and requested for consideration of her claim and for making payment. The Divisional Manager by his letter dated 8th June, 1981 repudiated any liability under the policy and refused to make any payment on the ground that the deceased had withheld correct information regarding his health at the time of effecting the insurance with the Corporation. The Divisional Manager drew the attention of the claimant that at the time of submitting the proposal for insurance on May 29, 1979, the deceased had stated his usual state of health as good; that he had not consulted a medical practitioner within the last five years for any ailment requiring treatment for more than a week; and had answered the question if remained absent from place of your work on ground of health during the last five years in the negative. According to the Divisional Manager, the answers given by the deceased as aforementioned were false. Since the respondent no.1 failed to get any relief from the authorities of the Corporation despite best efforts she filed the writ petition seeking a writ of mandamus directing the Corporation and its officers to pay the sum assured and other accruing benefits with interest. The writ petition was opposed by the Corporation on the ground of maintainability as noted earlier. Alternatively the contention was raised that in case the High Court is inclined to entertain the writ petition then opportunity should be given to the Corporation to lead evidence in support of its plea of repudiation of the claim. The learned single Judge after examining the question of maintainability of the writ petition from different angles, held that in view of the provisions of the Life Insurance Corporation Act, 1956 and the relevant provisions of the Insurance Act, 1928 which are applicable to the Corporation liability of the Corporation under a policy of life insurance is a statutory liability and hence a writ petition can lie under Article 226 of the Constitution. The learned Judge also considering the question on the assumption that the liability of the Corporation under the policy is not a statutory liability but a contractual liability, held that even then a writ petition under Article 226 of the Constitution can lie against the Corporation for enforcement of such liability. On these findings the learned single Judge rejected the objection of the Corporation against maintainability of the writ petition. Then the learned judge further considered the objection raised on behalf of the Corporation that the case involves disputed questions of fact for determination of which it will be necessary to record evidence and writ jurisdiction of the High Court under Article 226 of the Constitution should not be exercised in such a case. He was not inclined to hold that the matter involves disputed questions of fact just because the Corporation produced a document which is

inconsistent with those produced by the writ petitioner. The learned Judge did not feel satisfied that this is a fit case in which the Corporation should be granted liberty to lead evidence before the High Court. Examining the matter on merits the learned single Judge referred to the provisions of section 45 of the Insurance Act, 1938 which imposes certain restrictions on the scope of repudiation of a claim by the insurer and held that the Corporation has not brought on record satisfactory evidence to establish any of the conditions envisaged in the second part of section 45. The learned Judge refused to draw a conclusion that the deceased was having heart ailment in 1976 for which he had taken 13 days sick leave and held that much importance cannot be attached to the leave records in the matter. On such findings, the learned Single Judge rejected the case of the Corporation on merit. The operative portion of the judgment reads as follows: In the result, the Life Insurance Corporation of India and the Respondent No.3 are hereby directed to pay to the petitioner an amount of Rs.1,00,000/- (One Lakh) arising out of Life Insurance Policy of her husband deceased Naval Kishore Goel, bearing No.48264637, together with all the benefits accruing therefrom with interest at the rate of 15% from the date of the death of the petitioners husband within a month. The LIC is also directed to pay cost of Rs.2,000/- to the petitioner. Rule is accordingly made absolute.

The Corporation carried the matter in a writ appeal wherein the Division Bench of the High Court considered the contention raised on behalf of the Corporation that in the facts and circumstances of the case the learned single Judge should not have granted relief to the writ petitioner in exercise of jurisdiction under Article 226 of the Constitution. The Division Bench was of the opinion that it is not possible to accept the submission that relief against the Corporation can never be granted to a policy holder or a person entitled to benefit of the policy under the writ jurisdiction of the High Court though the Bench accepted the submission that it should only rarely be granted. The Division Bench found justification in the grievance raised on behalf of the Corporation that if the writ court felt that it had the jurisdiction to grant relief to the petitioner then it committed error in rejecting the application made by the Corporation for leading evidence and denial of such opportunity would vitiate the judgment. Then the Division Bench scrutinised the materials produced by the parties before the Court, perused the original documents, particularly the medical certificates produced by both the parties the Court was of the opinion that the original records of the hospital will have to be seen to come to a definite conclusion if there was any previous diagnosis of Myocardial infarction of the insured. The Bench refused to look to the medical report of December, 1980 since it came into existence after the policy was issued. The Division Bench recorded its conclusion on the point in these words:

> In these circumstances we are of opinion that even if we are inclined to reject Mr. Paranjapes submission that such relief could not be granted in exercise of the writ jurisdiction there was some substance in the complaint that the appellants should have been given the opportunity to lead evidence to discharge the onus of justifying the rejection of the claim which is on them.
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> Dealing with the contention that the case pleaded by the Corporation comes within the scope of section 45 of the Insurance Act, the Division Bench took the view that the matter will have to go back to writ court to enable the Corporation to prove that there was misrepresentation which will permit the appellants to reject the claim arising

from the death of Naval Kishore Goel. While leaving the matter to the discretion of the writ judge the Division Bench observed that this is a fit matter in which the original records must be seen by the Court and also witnesses proving them and their contents. The Bench allowed the appeal on the following terms :

Accordingly in this view of the matter we will be compelled to allow the appeal on the ground that the appellant should have had an opportunity of leading evidence relevant to their contention that the policy was obtained by misrepresentation and therefore avoidable by LIC. We therefore set aside the impugned judgment and order and direct that the writ petition will come up for a fresh trial before the Writ Court at which stage the Writ Court will decide the matters in issue after allowing the LIC to lead evidence in accordnce with the observations made by us.

From the ultimate paragraph of the Judgment of the Division Bench it appears that the writ petitioner had been permitted to withdraw the amount awarded on her furnishing a bank guarantee and whether she will keep the bank guarantee operative after disposal of the appeal was left for decision of the writ judge. In course of his arguments Shri Harish Salve, learned senior counsel appearing for the Corporation fairly stated that the Corporation will pay the sum awarded by the learned single Judge in favour of the respondent no.1. He submitted that the position of law regarding the jurisdiction of the High Court to entertain writ petition filed under Article 226 of the Constitution for realisation of a sum assured under a life insurance policy and the scope of inquiry by the High Court in case the insurer repudiates the claim on any ground may be considered by this Court. Article 226 of the Constitution confers extra-ordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extra-ordinary jurisdiction. It is left to the discretion of the High Court. Therefore it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, Courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The Courts have consistently taken the view that in a case where for determination of the dispute raised it is

> necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to by-pass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Courts have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; Mohammed Hanif vs. The State of Assam (1969) 2 SCC 782; Banchhanidhi Rath vs. The State of Orissa and ors. (1972) 4 SCC 781; Smt. Rukmanibai Gupta vs. Collector, Jabalpur and others (1980 (4) SCC 556;

Food Corporation of India and others vs. Jagannath Dutta and others (1993 (Suppl.) (3) SCC 635; and State of H.P. vs. Raja Mahendra Pal and others (1999) 4 SCC 43. The position that emerges from the discussins in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a s bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy.

Coming to the question of scope of repudiation of claim of the insured or nominee by the Corporation, the provisions of section 45 of the Insurance Act is of relevance in the matter. The section provides, inter alia, that 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 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, 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 is suppressed facts which it was material to disclose. The proviso which deals with proof of age of the insured is not relevant for the purpose of the present proceeding. On a fair reading of the section it is clear that it is restrictive in nature. It lays down three conditions for applicability of the second part of the section namely : -

(a) the statement must be on a material matter or must suppress facts which it was material to disclose ; (b) the supression must be fraudulently made by the policy holder; and (c) the policy holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. Mere inaccuracy of falsity in respect of some recitals or items in the proposal is not sufficient. The burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so there is no question of the policy being avoided on ground of misstatement of facts. The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material 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 in 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. In this connection we may notice the decision of this Court in Mithoolal Nayak Vs. Life Insurance Corporation of India (AIR 1962 SC 814), in which the position of law was stated thus: The three conditions for the application of the second part of s. 45 are:

> (a) the statement must be on a material matter or must suppress facts which it was material to disclose ;
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> (b) the supression must be fraudulently made by the policy holder; and
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> (c) the policy holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

Where the policy holder, who had been treated, a few months before he submitted a proposal for the insurance of his life with the insurance company by a physician of repute for certain serious ailments as anaemia, shortness of breath and asthma, not only failed to disclose in his answers to the questions put to him by the insurance company that he suffered from those ailments but he made a false statement to the effect that he had not been treated by any doctor for any such serious ailment, Held (i) that, judged by the standard laid down in s. 17, Contract Act, the policy holder was clearly guilty of a fraudulent suppression of material facts when he made his statements, which he must have known were deliberately false and hence, the policy issued to him relying on those statements was vitiated.

(ii) The principle underlying the Explanation to s.19 of the Contract Act is that a false representation, whether fraudulent or innocent, is irrelevant if it has not induced the party to whom it is made to act upon it by entering into a contract. That principle did not apply in the instant case. The terms of the policy made it clear that the averments made as to the state of health of the insured in the proposal form and the personal statement were the basis of the contract between the parties and the circumstance between the parties and the circumstance that the policy holder had taken pains to falsify or conceal that he had been treated for a serious ailment by a physician only a few months before the policy was taken showed that the falsification or concealment had an important bearing in obtaining the other partys consent. A man who has so acted cannot afterwards turn round and say It could have made no difference if you had known the truth. In the circumstances no advantage could be taken of the Explanation to s.19 of the Contract Act.

This decision was relied upon in Life Insurance Corporation of India vs. Smt.G.M.Channabasamma (1991) (1) SCC 357, in which the following observations were made:

> 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 vs. Life Insurance Corporation of India must be held to have been satisfied. We must, therefore, proceed to examine the evidence led by the parties in the case.
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> The Life Insurance Corporation was created by the Life Insurance Corporation Act, 1956 with a view to provide for nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. The said Act contains various provisions regarding establishment of the Life Insurance Corporation of India; the functions of the Corporation, the transfer of existing life insurance business to the Corporation, the management of the establishment of the Corporation, the finance, accounts and audit of the Corporation and certain other related matters. Section 30 of the Act provides that except to the extent otherwise expressly provided in this Act, on and from the appointed day the Corporation shall have the exclusive privilege of carrying on life insurance business in India; and on and from the said day any certificate of registration under the Insurance Act held by any insurer immediately before the said day shall cease to have effect in so far as it authorises him to carry on

life insurance business in India. In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policy-holders in particular look forward to prompt and efficient service from the Corporation. Therefore the authorities in-charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner. With the above discussions and observations regarding the questions raised before us, we dispose of the appeals with the direction that the sum, as directed by the learned Single Judge in favour of the claimant, will be paid by the Corporation expeditiously, if it has not already been paid. In view of the above order/direction, it is not necessary to proceed with the case pending before the High Court any further. No costs.