Life Insurance Corporation Of India vs Bibi Padmawati on 31 January, 1967

Equivalent citations: [1967]37COMPCAS667(SC), AIRONLINE 1967 SC 16

Bench: K.N. Wanchoo, R.S. Bachawat, J.M. Shelat

JUDGMENT

Wanchoo, J.

1. This is an appeal on a certificate granted by the Punjab High Court and arises in the following circumstances. The respondent is the widow of Diwan Balkishan who died in April, 1949. Before his death he took out two life insurance policies, one on September 8, 1944, for Rs. 14,000 and the other on November 12, 1944, for Rs. 20,000. It is not in dispute that at the time when these policies were taken out Diwan Balkishan was medically examined and nothing wrong was found with him. It appears that the first policy lapsed in March, 1947, and the second in May, 1947. Diwan Balkishan applied for revival of the two policies in November, 1948, and they were revived some time thereafter. It may be noted that at the time of revival the Lakshmi Insurance Company Limited, with which the policies were taken, did not think it necessary to have Diwan Balkishan re-examined medically and it revived the policies without such re-examination. Diwan Balkishan died in April, 1949, and thereafter the respondent asked the Lakshmi Insurance Company Limited to pay her the money due on the policies. The company however did not pay the amount to the respondent. Eventually, the respondent had to bring a suit for recovery of Rs. 34,000, the amount due on the two policies, plus interest. In the alternative, the respondent claimed the premia that had been paid on the two policies.

2. The suit was resisted by the company and its case was that Diwan Balkishan had been suffering from tuberculosis even before the two policies were taken out in September and November, 1944, and had committed fraud by suppressing this fact in the applications for the policies made by him and therefore the contracts were void and the respondent was not entitled to any money. In the alternative, the contention of the company was that in any case when Diwan Balkishan applied for revival in November, 1948, he had been suffering from tuberculosis and had suppressed that fact in the revival applications. Therefore the revival was void in the circumstances and the respondent was not entitled to any amount on the two policies.

3. Thus the main question for decision in this case was whether there was any fraud or misrepresentation by Diwan Balkishan with respect to the state of his health when he got himself insured through the two policies in dispute or, in the alternative, at the time of the revival of the two policies. The trial court held on an examination of the evidence that there was no evidence whatsoever that there was any fraud or misrepresentation by Diwan Balkishan in 1944 when he got

the two policies. The trial court further held that there was no proof that Diwan Balkishan suffered from any serious ailment whatsoever after November, 1944, and before November, 1948, and, therefore, there was no question of any misrepresentation regarding his health in the revival applications relating to these policies. The trial court, therefore, decreed the suit for Rs. 40,000.

4. The Lakshmi Insurance Company then went in appeal to the High Court. While the appeal was pending the Life Insurance Corporation of India took over the life insurance business of the company and that is how we find that the appellant in the appeal before us is the Life Insurance Corporation of India. It was conceded before the High Court--and, in our opinion, rightly--that there was no evidence whatever to suggest that there was any fraud or misrepresentation as to the state of his health by Diwan Balkishan in 1944 before he took out the two policies in September and November, 1944. The only question that the High Court had to consider therefore was whether there was any fraud or misrepresentation when Diwan Balkishan applied for revival in November, 1948. In that connection the High Court accepted the evidence of Dr. Amir-ud-Din to the effect that Diwan Balkishan had consulted him a number of times, though he could not remember the exact dates, and that he had found him suffering from pulmonary tuberculosis. But the High Court held that it had not been proved that Diwan Balkishan knew at the time he made the applications for revival in November, 1948, that he was suffering from pulmonary tuberculosis. In reaching this conclusion the High Court emphasised the fact that there was no evidence of outward symptoms of the disease. It further emphasised that if Diwan Balkishan really knew that he was suffering from tuberculosis, he would never have allowed the policies to lapse, for that might have entailed further medical examination, which he would certainly wish to avoid. It finally emphasised the fact that when the policies were revived by the insurance company it dispensed with medical examination, showing that there could be nothing outwardly wrong with Diwan Balkishan. In consequence, the High Court upheld the decision of the trial court with respect to the amount of the two policies, namely, Rs. 34,000. The High Court, however, set aside that part of the decree of the trial court which gave interest, and thus the decretal amount was reduced to Rs. 34,000. As the decree was of variance and the amount involved was over Rs. 20,000, the High Court granted the certificate prayed for, and that is how the matter has come before us.

5. The only question that calls for consideration, therefore, is whether at the time of revival there was any fraud or misrepresentation by Diwan Balkishan as to the state of his health. In this connection we may note that, though the High Court accepted the evidence of Dr. Amir-ud-Din, the trial court was not prepared to rely upon it because that evidence was given more than six years after the time Dr. Amir-ud-Din might have examined Diwan Balkishan. It was given without the assistance of any record from Amritsar hospital where Dr. Amir-ud-Din was employed up to 1947. Dr. Amir-ud-Din has certainly said that Diwan Balkishan had been suffering from pulmonary tuberculosis. He also said that he had performed some kind of operation on Diwan Balkishan but was unable to give the nature of that operation without looking at the hospital records. He admitted that he must have examined thousands of patients and performed thousands of operations and it was not possible to remember about the condition of each patient. He also admitted that his relations with Diwan Balkishan were merely those between a doctor and a patient. It seems to us that, in these circumstances, the High Court need not have differed from the trial court's estimate of the value of Dr. Amir-ud-Din's evidence. However, even accepting the evidence of Dr. Amir-ud-Din,

as the High Court did, there is nothing in his evidence to show that he ever told Diwan Balkishan about his illness and, as one knows, many a time patients suffering from pulmonary tuberculosis are told nothing about it.

6. The only other evidence on which stress has been laid is the entries in the admission register of patients. It appears that Diwan Balkishan was admitted to the hospital twice in 1945, once on February 21, 1945, and second time on April 17, 1945. The High Court has held that these entries are inadmissible. They certainly show the disease from which Diwan Balkishan was suffering as tuberculosis of lungs. It may be added that on the first occasion Diwan Balkishan remained in the hospital for seven days and on the second for five days. Even if these entries are admissible, we doubt if they are of any value in establishing that Diwan Balkishan was suffering from tuberculosis. The procedure for making these entries in the admission register has not been proved and no doctor who might have attended on Diwan Balkishan during his stay in the hospital has been produced. Besides the very fact that Diwan Balkishan was in the hospital for such a short time indicates that he could hardly have been suffering from any such serious ailment as tuberculosis of lungs. Further, Diwan Balkishan would not have access to this register and, therefore, these entries would not prove that he knew what he was suffering from in the absence of evidence that somebody told him during these two occasions when he was in the hospital what he was suffering from. Therefore, even assuming that Dr. Amir-ud-Din's evidence can be accepted (though, as already indicated, we think that the trial court's estimate of that evidence was more correct), we agree with the High Court that it has not been proved that Diwan Balkishan knew that he had been suffering from pulmonary tuberculosis when he made the revival applications in 1948. As the High Court has rightly pointed out, there was no evidence of outward symptoms which would have shown that Diwan Balkishan knew that he was suffering from tuberculosis. Further, we agree with the High Court that if Diwan Balkishan was really suffering from tuberculosis and knew about it he would never have allowed the policies to lapse, for, then, he might be subjected to further medical examination. Lastly, the fact that there was no medical examination again when the policies were revived show that there was nothing outwardly wrong with Diwan Balkishan as otherwise the company would never have revived the policies without re-examination. We, therefore, agree with the High Court that, on the facts of this case, it cannot be said that Diwan Balkishan was suffering from tuberculosis of the lungs or any other serious disease when he applied for revival in 1948 or knew that he was.

7. Reliance in this connection has been placed on the application for revival in which Diwan Balkishan declared that he had had no "sickness, ailment or injury " after the policies were issued to him and that he was of sound constitution and temperate habits and in good health. The form also provided that if any of the statements or representations contained therein proved to be incomplete or untrue then the revival would be ipso facto null and void. It is said that Diwan Balkishan was admitted to the hospital twice in 1945 and, therefore, his statement that he had no " sickness, ailment or injury " after the policies were issued to him was untrue, and so the revival would be void. This argument is met by the respondent by Clause 4 of the policy relating to indisputability. That clause provided that " a policy after the expiry of two years from the date on which it is effected becomes indisputable except when the company shows that a statement made in the proposal for assurance or in any statement made before a medical examiner or a referee or a friend of the assured or in any other document leading to the issue or revival of the policy, on a material matter, was

fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false. " Now this clause clearly shows that the policy becomes indisputable after the expiry of two years from the date on which it is effected, i.e., the date on which it was originally issued. In the present case the two-year period from the date the policies were originally issued had expired before' the death. This clause also covers the case of revival, for it covers any statement made in any document relating to revival of the policy. But it is argued on behalf of the appellant that the clause would only apply if two years pass after the revival for revival amounts to novation of the contract of insurance. Now the revival receipt has not been produced and it is not possible to say whether the revival of the policies (even though it may amount to novation for certain purposes) was not from the dates on which the policies were originally effected. If they were revived from the date the policies were originally effected and, in the absence of the revival receipts, we must hold it to be so, the fourth clause would apply to the revived policies from the date they were effected and not from the date of revival, and in that case two years have to be counted from the date the policies were effected. We have already held that there was no fraud on the part of Diwan Balkishan and two years having passed from the date the policies were effected, the indisputability clause will apply and it is not open to the appellant to dispute the policies when fraud or misrepresentation has not been proved.

8. Besides we agree with the High Court that merely because the revival application did not mention that Diwan Balkishan was admitted to the hospital twice in 1945 is of no effect for the evidence in this case fails to prove that there was anything seriously wrong with Diwan Balkishan when he was admitted to the hospital on those occasions. When the revival form speaks of " sickness, ailment or injury ", these words must be interpreted to include only more serious disorders leaving a permanent mark upon the insured's health ; passing ailments or disorders are not considered by the court to be material to the risk. Unless, therefore, it could be proved that Diwan Balkishan was afflicted with a serious ailment or disease during the period after the insurance policies had been issued and before the revival applications were made, the mere fact that he did not mention any passing ailment or disorder which might have necessitated his going to the hospital twice for short periods would not show that his statement in the revival applications was false to the extent of making the revival void. We are, therefore, of opinion that the High Court was right in the view it took, and dismiss the appeal with costs.