Life Insurance Corporation Of India Per ... vs Shakuntala Bai on 17 July, 1973

Equivalent citations: AIR1975AP68, AIR 1975 ANDHRA PRADESH 68

JUDGMENT

Chinnappa Reddy, J.

1. Keshavadas Jamanadas died of jaundice on 4-11-1966. The Life Insurance Corporation of India seeks to repudiate a policy of insurance which Keshavdas Jamanadas had taken out about one and a half years earlier on the ground that in his 'personal statement' he had stated that he had not suffered from any illness and had not consulted any medical practitioner within the last five years when in fact he had once suffered from indigestion for a few days and had taken a 'cihoornam' from an Ayurvedic practitioner, The jaundice of which Keshavdas Jamanadas died had not the remotest connection with the indigestion from which he suffered for a few days several months earlier. But the Life Insurance Corporation wants to profit by the inaccuracy and seeks to deprive the assured s dependents of the amount of insurance. I consider the attitude of the Life Insurance Corporation highly improper and grotesquely unfair. But the learned counsel for the Life Insurance Corporation urges that such is the rigour of the law and that the Corporation is within its rights in repudiating the policy. Let me examine whether the law is indeed so harsh and the dependents of Keshavadas Jamanadas so helpless.

2. Keshavadas Jamanadas submitted a proposal for insurance of his life on 13-1-1965 for a sum of Rs. 5,000/-. He signed a declaration in a printed form to the effect that the statements of answers given in the proposal were true in every particular and that those statements and the declaration together with the further statements to be made before the Medical Examiner and the declaration relative thereto shall be the basis of the contract of assurance and that if there was any untrue averment, the contract shall be absolutely null and void. On 18-2-1966 he made a personal statement' before the Medical Examiner appointed by the Life Insurance Corporation of India and was then examined by the Medical Examiner. The personal statement was in the form of printed questions and written answers. The answers were not written by the assured but were written by one Sawarikar, the Development Officer of the Life Insurance Corporation of India employed in its Secunderabad Branch. Keshavadas Jamanadas, however, signed a printed declaration at the foot of the personal statement that the answers were given by him after fully understanding the questions, that they were true in every particular, that he had not withheld any information and that he agreed that the declaration together with the proposal for assurance shall be the basis of the contract of assurance. The Medical Examiner has also signed the personal statement certifying that the proposer had signed in his presence after admitting that all the answers had been correctly recorded. The certificate is in a printed form. Sri Sawarikar has also signed a declaration in a printed form at the foot of the personal statement that he bad explained the questions to the proposer who had signed after satisfying himself that the answers had been correctly recorded. The alleged false

particulars in the personal statement are these. To question 4 (d) "Have you consulted a medical practitioner within the last five years?" the answer was "No". To question 6 (d) "Have you ever suffered from any of the following ailments, Sprue, Jaundice, anaemia, piles, dysentery, cholera abdominal pain, appendicitis, or any other disease of the stomach, liver, spleen, or intestines?" the answer was 'No'. To question 6 (k) "Any other illness within the last five years requiring treatment for more than a week?" the answer was 'No'. According to the evidence it transpires that Keshavdas Jamnadas suffered from indigestion between 14-10-1965 t and 28-10-1965 and had taken a 'choomam' from Dr. A. Ananthaswamy, an Ayurvedic practitoiner. The Medical Examiner who examined Keshavdas Jamnadas after the personal statement was recorded submitted a confidential report to the Life Insurance Corporation of India, again in a printed form, wherein to question No. 12 (c) "Do you consider the life to he first Class?" he gave the answer "First Class". In answer to questions 7 (a), 7 (b) and 7 (c) whether he noticed anything abnormal in any part of the abdomen or the digestive tract he said 'no'. Thereafter the Lire Insurance Corporation issued the policy which it now seeks to repudiate. Keshavdas Jamanadas, as I stated earlier, died of Jaundice in the Gandhi Hospital on 4-11-1966.

3. The learned counsel for the Life Insurance Corporation urges that Under- Section 45 of the Insurance Act the insurer has the right to repudiate a policy on the ground that a statement made in the proposal for insurance or in any other document leading to the issue of the policy was inaccurate or false whether such statement was material or not provided such repudiation is made within two years from the date of policy. Section 45 of the Insurance Act is in the following terms:

> "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 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 fake, unless the insurer shows that such statement was on a material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making ft that the statement was false or that ft suppressed facts which it was material to disclose:
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> 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."

4. It may be noticed straightway that Section 45 is a restriction on the exercise by the insurer of any right to repudiate a policy of insurance on the ground of inaccuracy or falsehood of a statement made in the proposal for insurance or in any other document leading to the issue of the policy. In the case of policies of life insurance which have been in Force for two years or more the insurer is prohibited from repudiating the policy on the ground of inaccuracy or falsehood of such statement unless the statement pertained to a material matter or suppressed material facts and that it was

fraudulently made by the policy-holder, the policy-holder being aware of the falsehood of the statement or the materiality of the undisclosed facts. It does not follow that if the policy of life insurance has been in force for a period of less than two years the insurer has the right to repudiate the policy on the ground of falsehood or inaccuracy of a statement irrespective of the materiality of such statement. Section 45 does not confer any such right on the insurer; nor does it enlarge any right possessed by the insurer, previously, to repudiate the policy of insurance. The restriction imposed by Section 45 is a restriction on the right of the insurer under the General Law of Insurance. If an insurer wants to repudiate a policy within a period of two years after the policy has taken effect he must satisfy the requirements of the General Law of Insurance. If the insurer wants to repudiate the policy of Life insurance more than two years after the commencement: of the policy, then he will have to satisfy the requirements of Section 45. In the present case, therefore, we have to look to the General Law of Insurance and not to Section 45 to solve the problem before us.

5. Now it is well settled that a contract of insurance is one uberrima fides, that is to say, a contract of utmost good faith. The insurer is entitled to require the insured to put him in possession of all material information which is likely to influence the insurer's opinion 'as to the risk he is incurring and consequently as to whether he will take it, or what premium he will charge, if he does take it. Brownlie v. Campbell ((1880) 5 App Cas 925). The duty of the insured is, therefore, neither more nor less, than, to disclose to the insurer all that he thinks it is material that the insurer should know. The insured is under an obligation to disclose all that information as a reasonable man would have recognised that it was material to disclose. For example, no reasonable man would think it necessary to disclose that he suffers from occasional headaches or occasional stomach pain due to indigestion to treat on occasional headache or a bout of indigestion as a material fact which an insured was under an obligation to disclose would be extremely unreasonable. In Joel v. Law Union and Crown Insurance Company (1908) 2 KB 863, Fletcher Moulton, L. J. pertinently observed, "I will suppose that a man has as is the case with most of us, occasionally had an headache. It may be that a particular one of those headaches would have told a brain specialist of hidden mischief. But to the man it was an ordinary headache undistinguishable from the rest. Now no reasonable man would deem it material to tell an Insurance company of all the casual headaches he had had in his life, and, if he knew no more as to this particular headache than that it was an ordinary casual headache, there would be no breach of his duty towards the insurance company in not disclosing it."

But the insurance companies, including the Life Insurance Corporation of India, are very clever. They make it a condition of the contract of insurance that the truth of every one of the statements made by the insurer in the proposal, personal statement, etc,, constitutes the basis of the contract, so that there is a warranty by the insured that all statements made by him are true and if they are not true the contract is void. In such cases where the truth of the statements is made the basis of the contract the question of materiality of the contract becomes immaterial. In one of the earliest cases, New Castle fire Insurance Company v. Macmorran, (1815) 3 Dow 255 it was said:

> "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 it 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."

6. In Condogianis v. G. Assurance Co. Ltd., AIR 1921 PC 195 Lord Shaw observed:

> "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 Dawsons v. Bohnin (1922) 2 AC 413 Viscount Cave said:

> "Upon the whole, it appears to me, both on principle and on authority, that the meaning and effect of the 'basis' clause, taken by itself, is that any untrue statement in the proposal, or any breach of its promissory clauses, shall avoid the policy and if that be the contract of the parties, it is fully established, by decisions of your Lordships House, that the question of materiality has not to be considered."

7. Thus the introduction of the "basis' clause into a contract of insurance makes the materiality of the assureds misstatements immaterial for the purpose of avoidance of the contract by the insurer. Thus is the insurer placed in a highly advantageous position. Thus is the insured placed in a vulnerable position. The advantage to the insurer is greater because the questions which the assured answers in his personal statement before the Insurance Company's Medical Officer are questions framed by the insurer. The great advantage the insurer derives from the "basis' clause, in my view, carries with it the plain duty on the part of the insurer to explain the implication of the clause fully to the insured and further to explain each of the questions of which answers are sought in the personal statement. Utmost good faith and candour from the insured can only go hand in hand with fair explanation and honourable dealing from the insurer. If the insurer wants to repudiate a policy on the ground of misstatement by the insured he must establish to the satisfaction of the Court that he acted fairly and honourably to the insured by explaining properly the implication of the declaration to e signed by the insured and the range or amplitude of the questions required to be answered. This is very important because very often an inaccurate and therefore 'strictly' false answer is in another sense a true answer if considered 'fairly'. For example, if an insured is asked whether he has suffered from any illness, say, in the last five years, and whether he has taken any medicine, nine times out of ten, the insured may not remember or bother to mention the headache for which he took an aspirin or the indigestion for which he took some salts. No one, ordinarily, thinks of headache and indigestion as illnesses or aspirin and salts as medicines, The insured's answer to the question in the personal statement may therefore be 'No'. Can it be said that the insured has made an untrue statement? The statement is untrue in a strict sense but true in a fair sense. If the insurer wants to avoid the policy of insurance because of such a statement, I expect the insurer to establish by clear and cogent evidence that the question was properly explained to the insured and that he was told that illness included such casual disturbances to health such as headache or indigestion and medicines included tablets which can be purchased at the nearest

cigarette store or coffee shop. If the insurer does not establish these facts by clear and cogent evidence he cannot be permitted to take advantage of the 'basis' clause in the contract of insurance. And I think Court may well take judicial notice of the fact that insurance agents often nm after prospective customers to persuade them to take out policies of insurance and tell them 'you just sign on the dotted line, Sir, I will take care of the rest'. This is an everyday experience. I am, therefore not prepared to apply the strict rule of construction flowing out of the 'basis' clause in all its rigour unless I am satisfied that the insured was made to understand by proper explanation what the clause meant and what the questions implied.

8. In (1908) 2 KB 863, 886 Fletcher Moulton, L. J. said:

> "To make the accuracy of these answers a condition of the contract is a contractual act, and, if there is the slightest doubt that the insurer have failed to make clear to the man on whom they have exercised their rights of requiring full information and he is consenting thus to contract, we ought to refuse to regard the correctness of the answers given as being a condition of the validity of the policy. In other words, the insurers must prove by clear and express language the animus contrahendi on the part of the applicant; it will not be inferred from the fact that questions were answered, and that the party interrogated declared that his answers were true."

Fletcher Moolton L. J. also expressed his agreement with the words used by Lord St. Leonards in his opinion in the ease of Anderson v. Fitezerald, (1853) 4 HL Cas 484 to the effect that clauses are introduced into policies of insurance which, "unless they are fully explained to the parties will lead a vast number of persons to suppose that they have made a provision for their families by an insurance of their lives, and by payment of perhaps a very considerable proportion of their income, when in point of fact, from the very commencement, the policy was not worth the paper upon which it was written."

In AIR 1921 PC 195 Lord Shaw observed, "In a contract of insurance it is a weighty fact that the questions are framed by the insurer, and that if an answer is obtained to such a question which is upon a fair construction a true answer it is not open to the insuring company to maintain that the question was put in a sense different from or more comprehensive than the proponent's answer covered."

9. Bearing these principles in mind let me examine the facts and circumstances of the present case. The Life Insurance Corporation of India has contented itself by examining the doctor who attended on Keshavdas Jamanadas just before his death, the Ayurvedic practitioner who gave him a 'choornam' for indigestion 18 months before his death, an official of the Divisional Office of the Life Insurance Corporation to produce the documents and an Inspector of the General Post Office to prove a postal acknowledgment. The Life Insurance Corporation did not examine those whom anyone would consider as crucial witnesses in the light of the defence taken by the Corporation that the assured had made untrue statements before the Medical Officer. Sri Vijaya-kumar Ramani the agent who was instrumental in bringing about the contract of insurance, Sri Sawarikar, the Development Officer of the Life Insurance Corporation who recorded the answers given by

Keshavadas Jamanadas in his personal statement and Dr. B. L. Shenoy before whom the personal statement was recorded and who examined the proponent were not examined as witnesses on behalf of the Life Insurance Corporation. No explanation is forthcoming as to why they were not examined. We do not, therefore, know whether Keshavadas Jamna-das was told that he should mention the indigestion as an illness from which he suffered and name the Ayurvedic Practitioner as a medical practitioner consulted by him. Even if Keshavadas Jamanadas had mentioned indigestion, one can very well imagine a doctor or other reasonable man telling him "It is not necessary to mention such trivial or casual ailments like indigestion or headache. Who has not suffered from headache or indigestion at sometime or the other."

One can also imagine a doctor with an M. B. B. S. degree telling the insured "I do not want to know the names of all the persons who gave you medicine sometime or other. Tell me the names of allopathic practitioners only whom you might have consult-ed." Many allopathic practitioners do not recognise Ayurvedic, Unani and Homoeopathic systems of Medicine as scientific system and their practitioners as medical practitioners. We do not know whether Dr. Shenoy belonged to that category. After all the questions and answers in the personal statement are intended to assist the medical examiner to classify the life of the proponent. That is why the personal statement itself is required to be recorded in the presence of the medical examiner. Therefore the medical examiner's attitude about what need be recorded and what need not be recorded may determine or have a bearing on what is actually recorded. We have no evidence whether Keshavadas Jamanadas was told that the answers were intended to be comprehensive and that the slightest misstatement would be fatal to the policy. We do not know what explanations accompanied each question and we do not know whether the single word 'No' recorded in the personal statement really represented the entire answer of the proponent. As already observed by me no reasonable man would consider mentioning indigestion or headache as an illness from which he previously suffered or naming the medical practitioner who gave medicine on that occasion as a medical practitioner consulted by him. In the absence of any evidence on the side of the Life Insurance Corporation regarding the explanations which accompanied the questions and the details which accompanied the answers, a fair construction of the questions and answers can only lead to the inference that the answers were true. If there was no untrue statement by the insured, the Life Insurance Corporation cannot repudiate the policy. I am not prepared to treat the omission to refer to a casual illness and to name the doctor who gave medicine on that occasion as untruthful statements by the insured. The confidential report of Dr. Shenoy shows that he certified Keshavadas Jamanadas as a 'first Class Life. The jaundice of which Keshavadas Jamanadas died had nothing whatever to do with the undisclosed indigestion from which Keshavadas Jamanadas suffered 18 months earlier. The only connection between the two is the advantage which the Life Insurance Corporation seeks to derive from the non-disclosure. I have held that in the circumstances of the case the non-disclosure did not amount to an untrue statement. The Life Insurance Corporation was not justified in repudiating the policy.

10. Sri T. H. B. Chalapathi, learned counsel for the Life Insurance Corporation urges that the lower Court ought not to have awarded interest from 14-11-1966 to 5-11-1969 as the policy of insurance expressly stipulated that interest was not payable. Though a plea was vaguely raised in the written statement that the plaintiff was not entitled to any interest, no reference was made to the terms of the policy and no issue was raised on that question. I do not think I will be Justified in going into the

question in this appeal. The appeal is, therefore, dismissed with costs.