

(2006) 12 KAR CK 0056

Karnataka High Court

Case No: Regular First Appeal No. 97 of 2006

The Branch Manager
L.I.C. of India

APPELLANT

Vs

Smt. Gayathri

RESPONDENT

Date of Decision: Dec. 6, 2006

Acts Referred:

- Insurance Act, 1938 - Section 45

Citation: (2007) ACJ 2276 : (2007) 2 CivCC 794 : (2007) 2 KarLJ 142 : (2007) 1 KCCR 478 :
(2007) 5 RCR(Civil) 394

Hon'ble Judges: R. Gururajan, J; C.R. Kumaraswamy, J

Bench: Division Bench

Advocate: S. Nagaraja, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. Life Insurance Corporation of India is before us challenging the Judgment and Decree passed by the learned Civil Judge (Sr.Dn), T. Narasipura in O.S.No. 59/2004.

2. The deceased T.S. Dasaratha took an insurance Policy bearing No. 720978441 under Plan-Term 14-20 with half-yearly mode. The date of commencement was 15.3.2000. Sum assured was Rs. 3,00,000/-. The life assured paid the premium for 2 years and subsequently he expired on 3.11.2002 due to vital Centre failure and paralytic stroke. An investigation was conducted. Thereafter, according to the appellant, the deceased life assured was treated as an inpatient in Sitaranga Hospital, Mysore on 19.1.1999 and was discharged on 22.1.1999. During the treatment Echo-cardiograph was taken and confirmed that he was an hypertension patient. It further reveals that he was a chain smoker and alcoholic. The appellant-Corporation therefore, repudiated the claim made by the respondent on the plea that the deceased life assured had suppressed the material facts about the previous hospitalisation and treatment for hypertension while submitting the

proposed form for the Insurance Policy in question by invoicing Section 45 of the Insurance Act. In the light of denial, by the Insurance Corporation, a suit came to be filed by the respondent-plaintiff. Notice was issued. Appellant-defendant entered appearance. Statement was filed. Evidence was recorded. Thereafter, learned Trial Judge has decreed the suit in terms of the impugned order. This Judgment and Decree is challenged in this appeal by the Corporation.

3. Learned Counsel for the Corporation says that the material facts would show a case of suppression of material facts in the case on hand. Learned Counsel took us through the order to contend that the learned Trial Judge is wrong in decreeing the suit in the given circumstances, particularly in the light of the suppression of material facts in terms of the plea taken by the appellant-defendant. Learned Counsel therefore says that an interference is necessary by this Court in this appeal.

4. After hearing, we have carefully gone through the material placed on record. Admitted facts would reveal of a suit having been filed by the respondent seeking the insurance amount in addition to interest in the light of a policy taken by the asset in the case on hand. The same was not accepted by the Insurance Company on the ground that the plaintiff-respondent has suppressed the material facts in the matter. Learned Trial Judge has framed the following issues:

1) Whether the plaintiff proves that the husband of the plaintiff has not suppressed any material facts while getting the medical report from competent Doctor nominated by the defendant?

2) Whether the plaintiff is entitled for the suit claim as prayed for?

3) What order or decree?

5. Evidence was recorded. One Gayathri, PW1 was examined. She filed on record, 13 documents. Appellant examined 2 witnesses and 9 documents were marked. Learned Trial Judge has decreed the suit in terms of the impugned order. In the light of the arguments, we have carefully perused the order of the learned Trial Judge. Learned Trial Judge has considered issues 1 and 2 in para 9 of the impugned order. Learned Trial Judge notices the evidence on record for the purpose of decreeing the suit in terms of its findings. He notices that DW-1 has filed an affidavit and he admitted in unmistakable terms in cross-examination that the policy was issued to the deceased-plaintiff after completing the medical check up conducted by the doctor of LIC and after producing the Certificate from the Doctor of LIC. Learned Judge also notices Ex.D2 for the purpose of relief in the case on hand. He further notices that in Ex.D2, it is mentioned that the health of the deceased-husband was well by all means. After noticing Ex.D2 learned Judge has chosen to accept the case of the respondent-plaintiff. Learned Trial Judge has also notices the subsequent material obtained by the LIC in the case on hand. He also refers to the various documents filed by the defendant. Exs.D5 and D6 were issued by the Doctor who was not examined by the Insurance Company for the reasons best known to the

Insurance Company. He also notices that Exs.D-7 and D-8 could not be accepted in the light of the originals (sic) having been filed and in the light of the (sic) examination by the Doctor in the case on hand. Learned Trial Judge has ruled that non examination of the Doctors on Ex.D.7 and D.8 and non-production of the originals of Ex.D.7 and D.8 is fatal to the case of the defendant. He also notices that the medical evidence would show that all is well in terms of its findings in the subsequent paragraph. He also notices various case laws in support of his findings. Learned Judge, after appreciating the material on record and in the absence of acceptable proof with regard to suppression of material case, rightly in our view, has chosen to dismiss the suit. A Public Sector undertaking like L.I.C. cannot cone with this un-sustainable plea without (sic) in a Court of law. L.I.C has also not shown that in terms of the policy, they can deny the benefit to the deceased.

6. Taking into consideration all accepts of the matter, we are of the view that no case as such is made out in the case on hand. The order of the learned Trial Judge is based on acceptable evidence in the case on hand. In these circumstances, we deem it proper to accept the order by dismissing the appeal. Admittedly, the plaintiff is a widow and she has lost her husband in the year 2002. Suit was filed in the year 2004. We are in the year 2006. Taking into consideration, the pitiable situation of the widow, we deem it proper to direct the Insurance Company to either deposit before the Trial Judge or make over the decretal amount within one month from today without waiting for any execution proceedings in the case on hand.

Ordered accordingly. No costs.