

(2009) 11 MAD CK 0202

Madras High Court

Case No: W.A. No. 1622 of 2009 and M.P. No. 1 of 2009

Life Insurance
Corporation of India

APPELLANT

Vs

The Insurance
Ombudsman and C.
Hemalatha

RESPONDENT

Date of Decision: Nov. 11, 2009

Acts Referred:

- Insurance Act, 1938 - Section 45

Citation: (2010) 3 LW 97

Hon'ble Judges: H.L. Gokhale, C.J; N. Paul Vasanthakumar, J

Bench: Division Bench

Advocate: Manoj Sreevalsan, for the Appellant; R. Gandhi, S.C. for R.G. Narendhiran, for R2, for the Respondent

Final Decision: Dismissed

Judgement

H.L. Gokhale, C.J.

Heard Mr. Manoj Sreevalsan, learned Counsel in support of this appeal. Mr. R. Gandhi, learned Senior Counsel appears with Mr. R.G. Narendhiran for the second Respondent.

2. The Appellant - Life Insurance Company seeks to challenge the judgment and order passed by a learned Single Judge, whereby the learned Single Judge dismissed the petition filed by the Appellant Corporation as well as the one filed by the second Respondent herein (Reported in 2010 Writ L.R. 456).

3. The short facts leading to this appeal are this-wise:

The second Respondent is the widow of one J. Chezhan, who had taken a Life Insurance Policy for Rs. 10 lakhs. The proposal for coverage was submitted on 21st

December 2002. The Policy was issued on 10th February 2003 commencing from 28th January 2003 and the husband of the second Respondent died due to massive heart attack on 21st February 2003.

4. The second Respondent claimed this amount of Rs. 10 lakhs, which was provided under the particular Anmol Jeevan Policy. The Appellant repudiated the claim. The matter went to the first Respondent - Insurance Ombudsman. It was contended by the Appellant that this was a case of material suppression. The Ombudsman accepted that this was a case of suppression, but not the one of material suppression, which is a ground available for repudiation u/s 45 of the Insurance Act, 1938, where the claim is made after the expiry of two years. The Ombudsman, however, accepted the plea of the Appellant Corporation that the second Respondent should not be awarded the amount of Rs. 10 lakhs and he reduced the amount payable under the Policy to Rs. 5 lakhs in full and final settlement of the claim.

5. Being aggrieved by that Award, one petition was filed by the Appellant Corporation and another petition was filed by the second Respondent, the widow of the deceased. Both the petitions were dismissed by the learned Single Judge. Now being aggrieved by the judgment and order passed by the learned Single Judge, dated 08th June 2009, this appeal is filed by the Appellant Corporation.

6. The learned Counsel for the Appellant points out three factors to contend that this was a case of material suppression. Firstly, he points out that there was an accident, which the deceased had suffered on 24th June 2001, which is some one year and six months prior to applying for the coverage. The accident papers are brought to our notice. From those papers, it is seen that at the time of the accident, the husband of the second Respondent was travelling on a two-wheeler. The vehicle skidded and the person concerned had fallen down. He suffered a lacerated injury on his forehead. But it is also seen that he was not required to be hospitalised and he was allowed to go home on the same day.

7. The second factor, which is pressed into service, is that from this report, it appears that at the relevant time, he was under the influence of alcohol. It was submitted that he used to drink alcohol. But, apart from this medical report, there is no other document to submit that the deceased was an habitual drunkard.

8. The third factor, which is pressed into service, is that the deceased was a Diabetic and this factor is not recorded when the proposal for insurance was submitted by him. As far as this aspect is concerned, the Certificate given by one Dr. D. Kannappan, Senior Civil Surgeon and Medical Officer of the Government Hospital, Hosur, dated 27th October 2003 is relied upon. The Certificate states that the deceased was suffering from Diabetes and he was a known smoker. It was further stated that he had died of massive heart attack on 24th February 2003 on his way to the clinic of the concerned Physician. Thereafter, it is stated that the doctor knew

him for the past three months only as a patient, who was taking treatment for Diabetes.

9. The learned Counsel appearing for the Appellant Mr. Manoj Sreevalsan, therefore, submits that the Certificate shows that the deceased was suffering from Diabetes. All these factors had to be mentioned in the proposal for insurance. He has drawn our attention to Column 11 of this proposal form, which is on personal history. Clause (a) of the said Column 11 requires the person concerned to state as to whether he consulted a Medical Practitioner for any ailment requiring treatment for more than a week. The answer given is "No". Clause (e) requires the person concerned to state whether he was suffering from Diabetes, Tuberculosis, High Blood Pressure, Low Blood Pressure, Cancer, Epilepsy, Hernia, Hydrocele, Leprosy or any other disease. The answer given is "No". Clause (g) requires the person to mention whether he ever had any accident or injury. The answer given is "No". Clause (h) requires the person concerned to state as to whether he uses or ever used alcoholic drinks, narcotics, any other drugs or tobacco in any form. The answer given is "No". Lastly, Clause (i) requires the person to state as to whether what has been his usual state of health and the applicant has mentioned thereon that it was "Good". The learned Counsel, therefore, submits that this is a case of material suppression and, therefore, the Insurance Corporation was entitled to repudiate the Policy.

10. In this context, the learned Counsel for the Appellant placed reliance upon a judgment of the Apex Court in *Satwant Kaur Sandhu v. New India Assurance Co. Ltd.* reported in IV (2009) CPJ 8 (SC). In that case, the Mediclaim for an amount of Rs. 23217.80 was turned down in a situation where the person concerned was on dialysis and which factor was not placed while seeking the coverage. It is submitted that the present case should also be considered on the same footing and that the learned Single Judge has erred in taking the view that he has.

11. The learned Counsel for the Appellant criticized the observations of the learned Single Judge in paragraph 27 of his judgment, wherein the learned Judge has stated that while the person concerned died eight months back, how did the doctor give a letter stating that he was treating the Life Assured for the past three months. Even if we take that this Certificate is to be read as "for the period of three months prior to the day on which the person concerned died", it would mean that the deceased was under treatment from the concerned Physician. The material as to how serious was the ailment of Diabetes suffered by the deceased is not placed on record. It is possible that that was not available to the Appellant Corporation. But from this Certificate, it would only mean that the person concerned required treatment for Diabetes for the period of three months prior to the date on which he died. The Certificate mentioned that he was a known-smoker. As far as the alcohol part is concerned, the only material is that at the time of accident, which occurred one and half years earlier, the person concerned was under the influence of alcohol.

12. We have noted the submissions of the learned Counsel for the Appellant. There is good merit in his submission. At the same time, though it is a case of suppression, it is difficult to say that it is a case of material suppression. The accident that occurred an year and half earlier does not appear to be a serious accident inasmuch as the deceased was discharged on the same day. As far as the ailment of Diabetes is concerned, it also appears that the deceased was under treatment for a period of three months prior to the date on which he died. The deceased was an young person of 32 years. He was an Engineer and also a businessman. Surely, nobody anticipated the person at that age to suffer a massive heart attack. Undoubtedly, he had some difficulty and that was the reason why it was necessary to have his life covered. It is therefore only that he had gone for life insurance as many others would go at that age with the kind of ailment that he was suffering. This would not come in the category of material suppression, though as rightly held by the Ombudsman and accepted by the learned Single Judge, this will be a case of suppression. The Ombudsman has reduced the amount payable from Rs. 10 lakhs to Rs. 5 lakhs. The premium payable was Rs. 3,3467-per year and the premium was to be paid for a period of 20 years. It is rather unfortunate that the person concerned had died within a few months after the proposal was submitted. We do not think that this is a case where we can fault the judgment of the Ombudsman or that of the learned Single Judge. The deceased has left behind the second Respondent and a child. The Appellant will see to it that the amount is disbursed to the second Respondent within a period of two months from the date of receipt of a copy of this order.

13. The writ appeal is accordingly dismissed. Consequently, the connected miscellaneous petition is also dismissed. However, there will be no order as to costs.