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(2010) 04 CAL CK 0053

Calcutta High Court

Case No: F.A. No. 216 of 2001

Life Insurance Corporation of India and Others	APPELLANT
Vs	
Haridas Dey	RESPONDENT

Date of Decision: April 5, 2010

Acts Referred:

- Insurance Act, 1938 - Section 45

Citation: (2011) ACJ 906 : AIR 2010 Cal 151

Hon'ble Judges: Kalidas Mukherjee, J; K.J. Sengupta, J

Bench: Division Bench

Advocate: Dipak Kundu, Kanchan Roy, S. Sen and C.L. Sinha, for the Appellant;Sabyasachi Bhattacharyya, Soumyen Dutta and P. Roy, for the Respondent

Judgement

K.J. Sengupta, J.
The Life Insurance Corporation of India (hereinafter referred to as the insurance company), with its officials, the Appellants herein, being aggrieved with the judgment and decree passed by the learned Civil Judge (Senior Division), Cooch Behar dated 29th September, 2001, in a suit filed by the Respondent on repudiation to make payment of the assured amount in terms of the life insurance policy, preferred the instant appeal.

2. The substantial portion of the fact of the suit is almost admitted. One Afchar Ali Mia (since deceased) was an accused by life insurance policy bearing No. 450453886 issued by the first Appellant for a sum of Rs. 2,50,000/-. The said Afchar Ali Mia for sometimes had made payment of premium regularly. However, subsequently, in view of non-payment, the policy stood lapsed. Hence, the said Afchar Ali Mia applied for revival of the policy and while doing so, he had to make certain declaration as per prescribed form, issued by the Appellants. On being satisfied with the declaration at that time, the Appellants, on receipt of all requisite payments, revived the policy on 21st February,

1995.

3. Before revival of the said policy, the said Afchar Ali Mia assigned all his right and interest, arising out of the said policy, at a sum of Rs. 30,000/- unto and in favour of the Plaintiff/Respondent. Thereafter, there has been no default in payment of the premium. On 23rd March, 1995, the said Afchar Ali Mia died and on his death, the assignee being the Plaintiff/Respondent herein made a claim for payment of the assured amount of Rs. 2,50,000/-. Thereafter, the insurance company after exchanging correspondences repudiated the claim on the ground that there has been a fraud because of concealment of material information at the time of making application for revival of the policy. Hence, the suit was filed for a decree of the assured amount and incidental reliefs.

4. The suit was contested by the insurance company filing written statement iterating the fact that the said policy was got to be revived practicing fraud, as there has been concealment of the ill state of health of the original policy holder at the time of making application for revival in the prescribed form. It was alleged that said Afchar Ali Mia did not disclose that he had been suffering from such diseases which required treatment for more than seven days and this concealment, according to the Appellants, is so much fatal that it leads to disentitlement of the claim.

5. The learned trial Judge, on reading the pleadings, initially framed six issues, thereafter three additional issues were framed, which are stated hereunder:

1. Is the suit maintainable in its present form and prayer ?

2. Is the suit barred by limitation ?

3. Has the Plaintiff any cause of action to file the suit ?

4. Is the assignment of Life Insurance Policy of original policy holder legal and valid ?

5. Is the Plaintiff entitled to the decree and the reliefs as per prayer made in the plaint ?

6. To what other reliefs, if any, is the Plaintiff entitled ?

7. Is the suit bad for defect of parties?

8. Had the original Policy Holder practiced fraud upon the L.I.C.I. by suppressing false statement regarding his health condition at the time of revival of the policy ?

9. Is the act of repudiation of policy in question by the L.I.C.I. legal, valid and proper ?

6. The issue Nos. 1, 2 and 3 were not pressed by the Defendants. As such, the same were decided in favour of the Plaintiff.

7. Issue No. 4, regarding invalidity of the insurance policy was decided in favour of the Plaintiff as the learned trial Judge found that there has been no evidence to challenge the assignment of the said policy alleging the same being illegal and invalid. The learned trial Judge also found on evidence that there was no merit to accept the plea of the Defendants regarding validity of the assignment.

8. The issue No. 7, with regard to nonjoinder of a party was also decided in favour of the Plaintiff. It was alleged that the daughter of said Afchar Ali Mia, being the nominee of the policy, should have been made a party and in absence of the said daughter of the original policy holder, the suit is bad. This issue was also decided against the Defendants as it was the opinion of the learned trial Judge that the daughter of the original policy holder Afchar Ali Mia had no claim with regard to the policy; so, she was not required to be made a party.

9. The other issues, viz. issue Nos. 5,6, 8 and 9 were dealt with by the learned trial Judge at a time. The learned trial Judge found that there has been no fraud nor suppression of material fact, at the time of revival of the policy. According to the learned trial Judge, on reading of the evidence, there has been no proof to accept the plea of the Defendants that concealment was such, that affect the very object of the insurance scheme. The learned trial Judge found that the case made out by the Defendants that suffering of the original policy holder from dysentery or piles needs treatment for more than seven days, as mentioned in the application for revival. It was also observed by the learned trial Judge that there is no medical document to show that assured suffered from any illness requiring treatment for more than a week.

10. Mr. Kundu, appearing for the insurance company submits that he does not want to press this appeal against all the issues, except the issue Nos. 5, 6, 8 and 9. He submits that when the original policy holder submitted the application for revival of the policy on 21st February, 1995, he made a statement that he had not been suffering from any illness requiring treatment for more than a week. Significantly, the original policy holder died in March, 1995 and more interestingly the said assignment of the insurance policy was made at a paltry sum of Rs. 30,000/- as against the assured amount of Rs. 2,50,000/- on 16th February, 1993. Therefore, the proximity of the date of death and also the date of revival makes it clear that the original policy holder has been suffering from such an incurable disease that he would not survive even for a month from the date of revival of the policy and such fact was within his knowledge Upon enquiry having been made and informations collected, it was found that the original policy holder has concealed this fact.

11. Mr. Kundu submits that from the prescription (Exhibit B/2), it appears that on 9th June, 1994, said Afchar Ali Mia was prescribed for taking different medicines viz. Apishozymer, Iodocycline and Cobadex Forte. It also appears from the prescription (Exhibit B/1) that on 2nd March, 1995, he was advised to take medicines Lysocon V. Ticani Mfs and Becodexamin. From the prescription dated 3rd February, 1994 (Exhibit B/3) it was appear that said Afchar Ali Mia was advised to take different medicines viz.

Pilex - two tablets thrice daily, Pilex Ointment, Terramycin-250. Similarly, in the prescription dated 25th December, 1994 (Exhibit B/4), he was advised to take medicines like Benadryl Expectorant, Distran and Sepmax. The prescription being Exhibit B/5 shows that he was asked to take a number of medicines viz. O.R.S. orally, Metro (200), Brufen (200), Antacid and Calmpose.

12. Therefore, it is plain that the original policy holder was advised to take a good number of medicines which suggest that he has been suffering from such diseases which require more than seven days treatment and, according to him concealment of above fact infringe the requirement as mentioned in clause VII of the policy, and it tantamounts fraud practised by the original policy holder at the time of revival of the said policy. He contends that the fraud vitiates all the transactions and, as such, there cannot be any liability of the insurance company to make any payment. He, therefore, urges that the learned trial Judge did not appreciate the evidence in proper way and this aspect was not dealt with the matter at all.

13. Mr. Sabyasachi Bhattacharyya, appearing for the Respondent/Plaintiff, on the other hand supporting the decree holder submits that there has been no suppression, as the original policy holder was always hale and hearty, to tell precisely his overall health condition was sound and the types of the medicines prescribed by the doctor are for treatment for casual illness. Clause VII of the policy suggests for disclosure of any illness requiring treatment for more than seven days. Even at the time of making the application for revival, there has been no evidence that the original policy holder had to be treated continuously more than seven days for any illness. He submits that under the provisions of Section 45 of the Insurance Act, 1938, after lapse of two years, if there is no discovery of fraud or material suppression, the Appellants cannot repudiate the claim. In this connection, he has also placed reliance on a decision of the Supreme Court, reported in AIR 2001 SC page 549.

14. Considering the submission of the learned Counsels for the parties and reading the pleadings as well as the evidence and the judgment and decree of the learned trial Judge, the only point for consideration is whether the learned trial Judge is justified in passing a decree overruling the plea of the Defendants/Appellants that there has been a suppression at the time of revival of the policy.

15. Mr. Kundu fairly submits that this Court is called upon to decide whether on the given material, there has been a suppression as regards the state of health of the original policy holder at the time of revival of the policy or not. In pursuit of ascertaining correctness of the contention, we are to read evidence adduced by the Defendants.

16. We are of the view, the party who takes up the plea of fraud, has to discharge his burden to produce sufficient material to prove that there has been a fraud, for at the time of acceptance of the revival application, there was an occasion for the insurance company to examine the state of health of the policy holder. If the insurance company

accepts the declaration made by the policy holder without thinking of medical examination, then presumption is that the declaration was correct. However, this statement of law cannot be said to be an inflexible and static one, for sometimes there are fraud which could not be discovered with due diligence at the relevant time and could be discovered later on. No one can exhaustively illustrate the nature of fraud. Here, we are to see which were the materials produced at the time of trial to hold original policy holder being guilty of practising fraud.

17. Revival of the policy was done on 21st February, 1995. So, seven days before the revival, whether the original policy holder had been suffering from any illness, for which seven days continuous treatment, was necessary. Exhibit B-l appears to be one of the prescriptions dated 2nd March, 1995 which is a very proximate date to the date of revival of the policy and before that there are prescriptions dated 3rd February, 1994, 9th June, 1994, 25th December, 1994 and also 15th March, 1994. According to us, the prescriptions dated 9th June, 1994 and 15th December, 1994 are of no relevance and having regard to the nature of medicines prescribed, it does not appear to the Court that the original policy holder was suffering from piles. Application of piles ointment cannot be said to be a material concealment so as to term the same being fraud. Prescription dated 15th March, 1994 appears to be for suffering from stomach trouble. Similarly, prescription dated 22nd March, 1994 appears to be for some weakness.

18. Suffering from dysentery or piles is common feature now a days of any human being in the atmosphere of West Bengal. It cannot be said to be so material to term it to be a problem for which treatment of more than seven days is required. On the other hand, it appears from Exhibit B, being the certificate of Dr. J. N. Roy dated 20th May, 1996 that he examined the original policy holder and diagnosed sudden fall of blood pressure and weakness with vertigo and gastritis. He was advised rest Exhibit A is a letter from Haridas Dey to the Divisional Manager which was a claim letter.

19. Under such circumstances, we think that the Appellant Insurance Company has failed to prove that the original policy holder had been suffering from such illness for which he needed seven days continuous treatment. We have gone through carefully evidence recorded by the learned trial Judge and he has come to correct finding basing on evidence. We feel that no other finding could be reached, given on this evidence and facts.

20. Under such circumstances, we are unable to accept Mr. Kundu''s submission that there is sufficient evidence to suggest that there has been a concealment. Mr. Bhattacharyya has appropriately pointed out the provision of Section 45 of the Insurance Act, 1938 wherein it has been provided as follows:

Section 45 : Policy not to be called in question on ground of mis-statement after two years:

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 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 it suppressed facts which it was material to disclose.

21. We are of the view when there is revival of the policy, the same gets it retrospective operation from the date when it was issued. Admittedly, two years have gone by and the assignment has been accepted to be a lawful one and, as such, by virtue of Section 45, as quoted above, and in view of the findings of the learned trial Judge, so also done by us, the Insurance Company is not entitled to question the validity and legality of the policy on any ground. In this connection, the Supreme Court decision reported in Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another, is also apposite that repudiation of claim by Corporation merely on grounds that insured who died of acute Myocardial infarction and cardiac arrest had not disclosed correct information regarding his health at the time of effecting insurance with Corporation, is not proper. In relatively extreme case, the Supreme Court has not approved of repudiation of the claim, as there was a non-disclosure of heart diseases. Here, suffering from piles or dysentery is much less vulnerable than that of heart disease.

22. We, therefore, feel that the learned trial Judge has not done any injustice; rather injustice would have been rendered had the plea, which according to us, is almost an afterthought, were accepted by the learned trial Judge. There may be varieties of reasons for assignment of the insurance policy and let us not probe into this aspect as the assignment was accepted to be lawful by the insurance company and was also held to be lawful by the learned trial Judge. We do not find that such plea strengthen the defence of the Appellant insurance company.

23. Accordingly, we dismiss the appeal and we affirm the judgment and decree of the learned trial Judge. There will be no order as to costs.

24. The money which is lying with the learned Registrar General in fixed deposit, after encashment of the fixed deposit together with interest accrued thereon, should be returned to the learned Advocate on record of the Respondent, after deducting usual charges, if leviable under the law.

25. Mr. Kundu submits that this judgment and decree passed by this Court should be stayed for a reasonable time. Accordingly, we grant stay of this judgment and decree for

a period of fortnight from date.

Kalidas Mukherjee, J.

26. I agree.