Smt. Kamla Devi Vs Life Insurance Corporation of India

Regular First Appeal No. 402 of 1988

Court: Delhi High Court

Date of Decision: Jan. 21, 2010

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: O.P. Verma, for the Appellant; Kamal Mehta and Deependra Kumar, for the Respondent

Judgement

Hima Kohli, J.
The present appeal is directed against a judgment dated 7.8.1987 passed by the learned Additional District Judge,

dismissing the suit of the appellant(plaintiff in the court below) for recovery of Rs. 59,500/-against the respondent Corporation(defendant in the

court below) on the basis of her claim as nominee of her husband, Sh.Bimal Parshad Jain, who had insured his life with the respondent Corporation

vide policy dated 8.8.1979, for a sum of Rs. 50,000/- and expired on 22.12.1981.

2. The undisputed facts of the case are that the husband of the appellant, Sh.Bimal Parshad Jain submitted a proposal dated 01.05.1979 to the

respondent Corporation for issuance of an insurance policy in the sum of Rs. 50,000/-.He got himself examined from a Panel Doctor of the

respondent Corporation at the time of making the proposal. The respondent Corporation accepted the proposal for insurance and policy No.

24803716 dated 8.8.1979 insuring the life of Sh. Bimal Parshad Jain for Rs. 50,000/-was issued by it. In the said policy, the policy holder

declared the appellant/plaintiff as a nominee u/s 39 of the Insurance Act. The cause of action for filing of the suit by the appellant/plaintiff arose

when Sh. Bimal Parshad Jain suddenly took ill on 21.12.1981 and was admitted to Tirath Ram Shah Shah Hospital, Civil Lines, Delhi on

22.12.1981, on which date itself, he passed away. Immediately thereafter, the appellant/plaintiff submitted her claim for payment of Rs. 50,000/-

under the aforesaid policy, which was rejected by the respondent Corporation vide letter dated 30.4.1983 on the ground that the policy holder

had made deliberate mis-statements and withheld material information regarding his health at the time of effecting the insurance. As a result, the

respondent Corporation repudiated the claim of the appellant/plaintiff and denied its liability to pay any amount to her under the policy. On

repudiation of her claim, the appellant/plaintiff instituted a suit in August 1983, in the District Court for recovery of Rs. 59,500/- along with

pendente lite and future interest and costs against the respondent Corporation.

3. The respondent Corporation resisted the suit of the appellant/plaintiff and took a preliminary objection to the effect that the insurance policy

stood vitiated on account of fraudulent suppression of material facts with regard to the health of the deceased, which were necessarily to be

disclosed by the insurer at the time of making an application. On merits also, the respondent Corporation reiterated the fact that the deceased had

deliberately suppressed material facts from its medical examiner regarding his state of health as he did not reveal that he was suffering from

hypertension and diabetes and had met an accident resulting in multiple abrasions and injuries due to a fall from the train.

4. After pleadings were completed, the trial court framed the following issues vide order dated 27.9.1984:

(i) Whether the Insurance Policy in question stood vitiated and no claim under the same is payable by the defendant on the grounds pleaded in the

written statement? OPD

(ii) Whether the suit is bad for non-joinder of the necessary parties as pleaded in preliminary objection No. 2 of the written statement? OPD

(iii) Whether the plaint is not properly signed, verified, if so to what effect? OPD

(iv) Whether the plaintiff is entitled to interest, if so at what rate and on what amount? OPP

(v) To what amount the plaintiff is entitled? OPP

(vi) Relief.

5. In support of her case, the appellant/plaintiff entered the witness box as PW-1. On its part, the respondent Corporation produced seven

witnesses. After examining the pleadings and the evidence adduced by both the parties, as also the documents placed on record, the trial court,

while answering issues No. (ii) & (iii) in favour of the appellant/plaintiff, decided issues No. (i), (iv) & (v) in favour of the respondent Corporation

and ultimately dismissed the suit of the appellant/plaintiff with costs. Aggrieved by the aforesaid dismissal order, the appellant/plaintiff preferred the

present appeal.

6. learned Counsel for the appellant/plaintiff submitted that the trial court erred in passing the impugned judgment by overlooking the provisions of

Section 45 of the Insurance Act, which mandates that no policy can be challenged on the ground of mis-statement after a period of two years. It

was submitted that in the present case, the risk of policy commenced on 1.5.1979, while Sh. Bimal Parshad Jain died on 22.12.1981, which was

after a lapse of two years.

7. It was further canvassed by the counsel for the appellant/plaintiff that the trial court erred in completely relying on one document which is the

Medical AttendantÃ¯Â¿Â½s Certificate (Ex.D-4) filled up by Dr. G.B. Jain (DW-7) wherein, in column 4(a), in response to a question as to the exact

cause of the death, the primary cause was indicated as respiratory failure and the secondary cause was noted as hypertension CAD and diabetes

mellitus. He stated that considering the fact that the aforesaid witness had treated the deceased only for a period of two days in the hospital, i.e., on

21.12.1981 and 22.12.1981, his observation in the certificate in response to column No. 6 to the effect that the deceased was suffering from

hypertension for three years, is without any basis as the said witness failed to state as to from where he came to know about the said condition and

by which test it was established that the deceased was suffering from hypertension and diabetes mellitus. Counsel for the appellant/plaintiff urged

that as the onus of proving issue No. (i) was placed on the respondent Corporation, it was for the latter to prove the fact that the deceased was

suffering from the aforesaid two diseases. He sought to rely on the deposition of DW-7 to state that the said witness did not state any of the

relevant facts as to the source of his information as furnished in column No. 6 of the Certificate (Ex.D-4) and that as the information was stated to

have been reported to DW-7 by the RMO of the hospital, it was incumbent upon the respondent Corporation to have produced the RMO in the

witness box, which it failed to do.

8. It was further submitted on behalf of the appellant/plaintiff that

in view of deposition of Dr. J.S. Mathur (DW-3), who had stated that he had medically examined the deceased on 1.5.1979 on the request of Mr.

Nainder Gulati, the LIC Agent and had not only counter signed the proposal form(DW-3/A), but had also verified the facts given by the deceased,

the respondent Corporation ought to have examined, Mr. Narinder Gulati which it failed to do. Lastly, it was submitted that the deposition of the

Inquiry Officer, Mr. M.L. Sindhi (DW-1), who was working in the respondent Corporation as a Branch Manager at the relevant time and had

conducted an enquiry into the claim of the appellant/plaintiff, was unreliable as it was completely based on hearsay. He submitted that nothing

prevented the respondent Corporation from summoning Dr. A.K. Gupta and the employee of the deceased who DW-1 claimed had informed him

that Lt. Shri Bimal Prashad Jain was under treatment for hypertension and diabetes. It was thus urged that the respondent Corporation failed to

discharge the onus placed on it in respect of issue No. (i) and hence the trial court ought not to have decided the said issue in its favour and against

the appellant/plaintiff. In support of the aforesaid submissions and his contention that it is not necessary that every fact which was undisclosed

would be material or could be treated as fraudulent withholding of information, counsel for the appellant/plaintiff relied on the following judgments:

(i) Mithoolal Nayak Vs. Life Insurance Corporation of India,

(ii) Life Insurance Corporation of India, Bombay Vs. Parvathavardhini Ammal,

(iii) Daulat Ram Vs. Bharat Insurance Company and Another,

(iv) Life Insurance Corporation of India Vs. Narmada Agarwalla and Others, .

9. Per contra, learned Counsel for the respondent Corporation supported the impugned judgment and submitted that the Medical AttendantÃ¯Â¿Â½s

Certificate (Ex.D-4) was given to the appellant/plaintiff with her claim form. The said certificate was filled up by Dr. G.B. Jain (DW-7) on the

strength of the case sheet prepared by the RMO of the hospital and if the appellant/plaintiff had a grievance with regard to the RMO''s case sheet,

DW7 ought to have been cross-examined in that regard, but no such cross examination was conducted and hence the trial court rightly held that

the respondent Corporation had discharged the onus placed on it, in respect of issue No. (i), which thereafter shifted to the appellant/plaintiff who

failed to discharge the onus by proving other wise. It was contended that the corroborative evidence of the Inquiry Officer, Mr. M.L. Sindhi (DW-

1), shows that in his deposition, he had particularly made a mention of one Dr. A.K. Gupta, who had treated the deceased for hypertension. It was

submitted that the respondent Corporation was not required to summon the said doctor or the employees of the deceased policy holder and if at

all the appellant/plaintiff wanted to shake the evidence of DW-1, it was for her to have demolished his testimony.

10. It was further urged on behalf of the respondent Corporation that the trial court was right in concluding that the policy holder was suffering

from hypertension for a period of three years prior to his demise, which conclusion was based on the Medical AttendantÃ¯Â¿Â½s Certificate (Ex.D-4)

issued by Dr. G.B. Jain (DW-7), Certificate of Hospital treatment (Ex.DW-6/A) and the Case sheet prepared in the hospital (Ex.DW-5/1).It was

thus concluded that the burden was on the policy holder to reveal the material information while filing the proposal form. As he failed to reveal

information which was in his exclusive knowledge, he was in breach of good faith which was the reason for the respondent Corporation to have

repudiated the insurance policy. In support of the aforesaid submissions, learned Counsel for the respondent Corporation relied on a judgment of

the Kerala High Court in the case of P. Sarojam Vs. L.I.C. of India, .

11. I have heard the counsels for the parties and have carefully examined the evidence, both oral and documentary, bearing on the aforesaid aspect

of the matter. Before proceeding to deal with the respective submissions of the parties, it is relevant to understand the context in which Section 45

of the Insurance Act, 1938 was amended. The aforesaid provision is reproduced hereinbelow for ready reference:

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].

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.

The aforesaid provision was amended by Act 13 of 1941 w.e.f. 1.9.1950 by substituting the words underlined hereinabove.

12. In the case of Mithoolal Nayak (supra), while examining the aforesaid provision and the conditions necessary for invoking the said provision on

account of the policy in that case having been repudiated by the respondent therein more than two years after its commencement, the Supreme

Court emphasized that the following three conditions were necessary for the application of Section 45:

(a) the statement must be on a material matter or must suppress facts which it was material to disclose.

(b) the suppression must be fraudulently made by the policy holder and

(c) the policy holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to

disclose.

13. The aforesaid case is an indicator that Section 45 would apply to every case where repudiation is made more than two years from the date on

which the policy is effected, irrespective of whether the insured died before the expiry of the said two years or not.

14. It is trite that a contract of insurance is uberrima fides (the utmost good faith) and a person seeking insurance is duty bound to disclose all

material facts relating to the risk involved in the policy of insurance. The duty of making such a disclosure in a contract of insurance has been

discussed at length in the case of P. Sarojam (supra). But when an insurer seeks to avoid the contract or challenges the same after expiry of two

years of its being effective, he cannot do so except when there is any false statement or suppression of `material matterÃ¯Â¿Â½. A Division Bench of

this Court observed in the case of Daulat Ram (supra) as follows:

Para 14: ...In other words, it is not even false statement or suppression that can ipso facto enable the insurer to avoid the policy when it is

repudiated after the expiry of two years from the date of the insurance contract being effected; after the expiry of two years the three necessary

conditions, as explained by the Supreme Court, must be established....

15. In the case of Parvathavardhini (supra), a Division Bench of the Madras High Court while referring to the observations made by a Division

Bench of the said Court in the case of Kulla Ammal (died) and Others Vs. The Oriental Government Security Life Assurance Co. Ltd., , observed

as below:

Para No. 8. ...It is true that special features are attached to a contract of insurance and these contracts are uberrima fide resting upon a complete

and truthful disclosure of all the facts by the insured. In such contracts, the principle of caveat emptor has absolutely no application. Non-disclosure

of material factor would go to the root of the matter if being regarded as fatal to the validity of the contract. u/s 45 of the Insurance Act, as

amended in 1941, the Legislature has eliminated the nice distinction of English Common law with regard to the doctrine of warranty. The insurer

under the Indian Law, as amended, has no right to avoid the contract by merely making out some inaccuracy or falsity in the respect of some of the

recitals or items in the proposal for insurance, or even in the report of the Medical Officer or any other document connected with the contract of

insurance. Under the section, it is imperative that to avoid the contract the insurer must prove that material facts have been suppressed and that

either the suppression of material facts on the fraudulent representation of material facts occurred with the full knowledge of the assured. Under the

two years rule proof of material and deliberate fraud is necessary and not mere constructive fraud.

(emphasis added)

16. Further, in the case of New India Assurance Co. Ltd. Vs. Tambireddi Subba Raghavareddi, , it was held that all the three conditions stipulated

in Section 45 should be concurrently satisfied by the insurer to invoke the said provision. The measure of burden of proof cast upon the assured as

embodied in Section 45 is therefore onerous and has to be discharged satisfactorily so as to repudiate a contract of insurance.

17. Coming to the case in hand, it is undisputed that the death of the policy holder took place on 22.12.1981, after the expiry of two years from

the date on which policy of life insurance was effected, i.e., 8.8.1979. The trial court was required to satisfy itself whether the period of two years

as stipulated by the Supreme Court in the case of Mithoolal Nayak (supra) were satisfied or not. Neither of the parties disputed the fact that the

disease, diabetes mellitus, mentioned in the case history and the Medical AttendantÃ¯Â¿Â½s Certificate was irrelevant as the duration of the said illness

was said to be for one and a half years. This leaves the question as to whether the deceased policy holder knew at the time of making the

declaration that he was suffering from hypertension and whether the said suppressed fact was not only material for disclosure, but the suppression

was made fraudulently by him, to his knowledge.

18. A perusal of the proposal for insurance signed and submitted by the deceased policy holder shows that it contained 26 columns. In column

17(a) of the proposal form, the policy holder had stated that his usual state of health was good. In column 18(b) pertaining to high or low blood

pressure, rheumatic fever, pain in chest and, breathlessness, palpitation infraction, or any disease of the heart or arteries, he had answered in the

negative. Similarly, in column 19, he denied suffering from diabetes. In column 22, he denied having undergone any operation and having suffered

any accident or injury. This was followed by the declaration made by the policy holder on 15.5.1979 to the effect that he had answered the

questions in the proposal form after fully understanding them and had not withheld any material information. The aforesaid proposal form was

accompanied by the Confidential Report (Ex.DW-3/A) of Dr. J.S. Mathur, the Medical Examiner (Ex.DW-3) wherein, in column 6(d), pertaining

to blood pressure of the proposer, the same was stated to be 120/80. In column 8 pertaining to `Genito-urinary systemÃ¯Â¿Â½, it was observed that

there was no sugar and albumin in the urine. The aforesaid Medical ExaminerÃ¯Â¿Â½s Confidential Report was supported by the LIC agent, Mr.

Narender Gulati, who confirmed the state of health of the assured as good and also confirmed that the medical examiner had duly examined the

proposer.

19. We next proceed to examine the Medical AttendantÃ¯Â¿Â½s Certificate (Ex.D-4) dated 30.8.1982 signed by Dr. G.B. Jain (DW-7) on which

much reliance was placed by the respondent Corporation. In column 4(a) pertaining to the exact cause of death, the primary cause was indicated

as ""Respiratory failure"" and the second cause was mentioned as ""hypertension CAD and diabetes mellitus"". In column 6, while giving the history of

hypertension, it was observed by DW-7 that as reported to him by the RMO on duty, the deceased policy holder was suffering from hypertension

for three years.

20. Considering the fact that the deceased policy holder expired within two days of being admitted in the hospital, the counsel for the

appellant/plaintiff is justified in stating that the history of his ailment with regard to hypertension was obviously not in the personal knowledge of Dr.

G.B. Jain (DW-7). He had in turn relied on the report given to him by the RMO of the Hospital. Interestingly, the respondent Corporation did not

choose to produce the RMO as a witness to corroborate the information filled up by DW-7 in the Medical AttendantÃ¯Â¿Â½s Certificate. Hence the

aforesaid observations made about the history of the deceased can only be stated to be based on hearsay. The contention of the learned Counsel

for the respondent Corporation that failure on the part of the appellant to cross examine DW-7 should be held against her, is not acceptable. Onus

to prove issue No. (i) would continue to rest with the respondent Corporation till it had irrefutably been able to discharge the same.

21. The other clear option available to the respondent Corporation

for establishing the medical history of the deceased policy holder was by summoning Dr. A.K. Gupta, who was mentioned by the Inquiry Officer,

Sh. M.L. Sindhi (DW-1) in his deposition as having treated the deceased for hypertensions and diabetes. In this context, it is material to reproduce

the relevant extract of the deposition of the aforesaid witness as below:

xxxxxx

In the year 1982 I was working as the Branch Manager of the defdt. Corporation. The Divisional Officer of the dedt. appointed me as Enquiry

Officer in regard to the petitionerÃ¯Â¿Â½s claim. I have been holding such inquiries since 1962. The deceased Devi Parshad Jain was running his

business under the name and style of A. Wheller and Co. at Old Delhi Rly. Station. I visited that shop. Again said the name of the deceased was

Vimal Parshad Jain. The employees told me that prior to his death the deceased Vimal Parshad Jain was suffering from Hypertension, and diabetes

and he was under the treatment of one Dr. A.K. Gupta, Dariba Kalan, Delhi. I met Dr. Gupta. He admitted that deceased Vimal Parshad Jain was

under his treatment. Dr. Gupta initially agreed to handover the treatment records to me but later on he declined saying that he was the family Dr. of

the deceased. He refused to give anything in writing also. The deceased was treated at Tirath Ram Hospital also.

22. From the aforesaid deposition of DW-1, it is apparent that the same was again based on hearsay. Considering the fact that DW-1 had

categorically mentioned that the employees of the deceased policy holder had informed him that the deceased was suffering from hypertension and

diabetes and was under the treatment of one Dr. A.K. Gupta, who had his clinic at Dariba Kalan, Delhi and who as per DW-1 admitted that the

deceased was under his treatment, it was incumbent upon the respondent Corporation to have summoned the aforesaid witnesses, namely, the

employees of the deceased policy holder and Dr. A.K. Gupta to clearly establish his medical history. No effort whatsoever was made by the

respondent Corporation to produce the primary evidence in support of its stand, for reasons best known to it.

23. A perusal of the document, DW-1/A, i.e., the Investigation Report prepared by DW-1 shows that in column 7, pertaining to names and

addresses of the persons from whom enquiries were made and information obtained, he mentioned the name of Dr. A.K. Gupta at item No. 1. In

column 10 pertaining to the general state of health of the assured at the time or and/or before the date of his proposal, a mention was made of Dr.

GuptaÃ¯Â¿Â½s letter(dated 7.1.1983) and the Report of Tirath Ram Hospital. The letter dated 7.1.1983 stated to have been enclosed by DW-1 with

his Report, does not find mention in the record. As per the deposition of DW-1, when he met Dr. A.K. Gupta, he admitted that the deceased was

under his treatment. In these circumstances, it was all the more incumbent for the respondent Corporation to have summoned Dr. A.K. Gupta and

examined him. Similarly, in column 6 of the Investigation Report, pertaining to the history of the last illness of the deceased including the cause of

death and other symptoms, a mention was made of the Duty doctor, Dr. R. Mehra, who is stated to have recorded the statement of the deceased

that he had hypertension for three years with diabetes for one and a half years. Even the said doctor was not summoned by the respondent

Corporation and instead, reliance was sought to be placed on the information furnished by said doctor to Dr. G.B. Jain (DW-7) alone. Column 17

of the investigation report of DW-1 is quite relevant and is reproduced hereinbelow:

17 (i) The date on which the last i. 21.12.1981.Severe pain left

medical attendant was first consultedside of chest. Hypertension 3

during last illness. years Diabetes 1-1/2 year.

(ii) the exact history then reported. ii. Sweating momentary difficulty

in breathing.

iii. Dr.A.K.GuptaÃ¯Â¿Â½sletter

(iii) the cause of death. enclosed.

(iv) duration of last illness. iv. 2 days.

(v) the date when the disease of v. On 21.12.1981.

which the life assured died was first

suspected or diagnosed.

(vi) whether the patient had at any vi. No evidence is available.

time before shown the symptoms of

the said ailment. vii. No evidence.

(vii) whether the doctor had treated

the deceased for the same or any

other ailment any time before the

date of commencement of the policy

andifso,when,forwhat ailments/and

how long.

(viii) what was the exact history viii. As recorded in the medical

given (after tactfully persuading the certificate submitted to LICI by

doctor to go through his registers Tirath Ram Hospital.

The and records, certified copies should Medical Supdt. does not supply

be obtained) and by whom? us the copy of the bed head

sheet of their record even on payment.

24. A perusal of the aforesaid remarks shows that the respondent Corporation had no evidence available with it to establish that the deceased was

suffering from hypertension for a period of three years prior to his demise. Further, as noted above, the letter of Dr. A.K. Gupta stated to have

been enclosed with the report, also does not form a part of the record. Hence reliance placed by the trial court on the `Certificate of Hospital

TreatmentÃ¯Â¿Â½ (Ex.DW-6/1) without examining the Medical Superintendent under whose signatures the said certificate was issued, and the case

sheet of the deceased (Ex.DW-5/1) giving his medical status just before he expired, without examining the RMO, who prepared the case sheet,

cannot be considered sufficient by themselves to establish irrefutably that the deceased policy holder was suffering from hypertension for a period

of three years prior to the date of his demise and that he suppressed/withheld material facts while making his declaration in the proposal form which

suppression was fraudulent and to his knowledge that it was material him to disclose the same at the time of making the statement.

25. In view of the fact that invocation of Section 45 by the insurer can only be permitted in such circumstances as enumerated in the said provision,

as elaborated by the Supreme Court in the case of Mithoo Lal Nayak (supra), the standard of proof to be applied for permitting an insurer to

repudiate a contract for life insurance ought to be much more stringent than those applied in ordinary course. It cannot be forgotten that the

business of life insurance having been nationalized, the respondent Corporation owes a greater responsibility to the public at large and whenever a

claim is repudiated by the respondent Corporation and the matter comes to the court of law, it is not expected to act as an ordinary litigator would.

Rather, it owes a duty to the court to truthfully reveal and fully disclose all the material evidence, both oral and documentary, pertaining to the

investigation of a particular claim to enable the court to arrive at a just conclusion. In other words, such a litigation ought not to be treated as

adversarial in nature. Hence careful scrutiny and proper investigation of facts by the respondent Corporation is of prime importance before it

proceeds to repudiate a policy and declines to make payment there under. Similarly, the yardstick to be applied by courts for weighing the

evidence produced by the insurer in such cases, is also very strict as the consequences of repudiation of a contract of insurance are serious. Upon

repudiation, the insurer shall not only be entitled to refuse to pay any amount under the policy, but shall also be entitled to forfeit the entire premium

paid under the said policy.

26. In the present case, tested on the anvil of the aforesaid yardstick, the evidence produced by the respondent Corporation falls short of

establishing its stand that the policy was rightly repudiated by it. This Court is unable to concur with the conclusion of the trial court that the material

available on the record was sufficient to entitle the respondent Corporation to repudiate its contract. Having carefully examined the evidence

placed on the record, it cannot be concluded that the respondent Corporation had satisfactorily discharged the onus placed on it, in respect of

issue No. (i). The correctness of the medical history of the deceased policy holder as recorded by DW-7 in the Medical AttendantÃ¯Â¿Â½s Certificate

could be ascertained directly from the evidence of the RMO. It is not the case of the respondent Corporation that the said doctor was summoned

but he failed/refused to appear in Court. Rather, no effort was made to summon him. Similarly, it is not as if the respondent Corporation could not

have summoned Dr. A.K. Gupta, under whose treatment the deceased policy holder was for the previous three years as stated by the Inquiry

Officer, Mr. Sindhi (DW-1) in his deposition. Further, none of the employees of the deceased policy holder who, DW-1 claimed to have met,

were summoned by the respondent Corporation to establish his health condition. Added to this is the report of Dr. J.S. Mathur (DW-3), who was

a panel Doctor of the respondent Corporation and had examined the deceased at the time of submitting the proposal form. He stated in his report

(DW-3/A) that the deceased was not suffering from hypertension at the relevant time. The same was reiterated by DW-3 in his deposition as well.

In such circumstances, an adverse inference ought to have been drawn against the respondent Corporation for failing to produce the primary

evidence which was readily available, while relying on witnesses who deposed on the basis of hearsay.

27. No doubt, the declaration made by the deceased policy holder in the proposal form with regard to blood pressure and diabetes, is a statement

of `material mattersÃ¯Â¿Â½, but in the facts and circumstances of the present case, it cannot be held that all the three conditions imposed u/s 45 of the

Act were concurrently satisfied by the respondent Corporation. This Court is unable to persuade itself to hold that there was sufficient evidence on

the record to conclude that the deceased policy holder suppressed facts, which it was material to disclose, and even if it is concluded that there

was suppression, there is no material on the record to conclude that the suppression was made fraudulently by the deceased, despite knowing the

true state of affairs.

28. In view of the aforesaid facts and circumstances, the impugned judgment dated 7.8.1987 is set aside and the appeal is allowed. The suit of the

appellant/plaintiff is decreed. The appellant/plaintiff is held entitled to receive from the respondent Corporation, a sum of Rs. 50,000/- on account

of principal, along with simple interest payable @ 6% p.a., from the date of institution of the suit till realization, and costs throughout.

29. The appeal is disposed of. Trial Court record be released forthwith.