

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19th DAY OF SEPTEMBER 2019

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

REGULAR FIRST APPEAL No.2041 OF 2010

Union of India

v/s.

Smt. B.M. Uma

JUDGMENT

This is defendants' appeal. The present respondent as a plaintiff had instituted a suit against the present appellants in the Court of 42nd Additional City Civil and Sessions Judge at Bengaluru City(CCH.No.43)(henceforth for brevity referred to as 'trial Court') in O.S.No.4391/2005 for recovery of a sum of Rs.60,000/- with respect of the Postal Life Insurance policy along with interest thereon. The said suit came to be decreed against the defendants by the judgment and decree of the trial Court dated 9.7.2010. It is against the said judgment and decree, the defendants have preferred this appeal.

2. The summary of the case of the plaintiff in

the trial Court is that the plaintiff's husband by name Sri. Siddaraju (late) while working as a First Division Assistant in the office of the Regional Transport Officer, Jayanagar, Bengaluru, had obtained a postal Life Insurance for his life for a sum of Rs.60,000/- on 7.7.1999 bearing Policy No.KT-137067-CS. The policy was scheduled to mature on 14.11.2009. However, on 26.12.2001 due to massive heart attack the insured R. Siddaraju died. When claim was made by the plaintiff in her capacity as the wife and also nominee under the said insurance policy, the defendants(appellants herein) did not honour her claim and gave an endorsement that the deceased had suppressed the fact of his illness at the time of taking the policy which came to their notice at a later stage and as such the said insurance policy was treated as lapsed under Rule 7 of the Postal Life Insurance Rules. Challenging the same and claiming the policy amount, the plaintiff instituted a suit in the trial Court.

3. In response to the summons, it is only defendant No.2 who appeared in the trial Court and

filed the written statement. Defendant No.1 did not choose to appear. Defendant No.2 in the written statement though had admitted that the husband of the plaintiff i.e. late R. Siddaraju while working as FDA in the office of the Regional Transport Office, Jayanagar, Bengaluru, had obtained a Life Insurance Policy coverage of his life for a sum of Rs.60,000/- on 7.7.1999 and that he died on 26.12.2001, but, it stated that there was suppression of material fact of his illness in his proposal while taking the policy. As such the defendants-insurance authority are not liable to pay any claim amount to the plaintiff who is nominee under the policy. Based on the pleadings of the parties, the trial Court framed the following issues:

"(1)Whether the defendant No.2 proves that deceased R. Siddaraju suppressed the fact of his illness while submitting the proposal for taking Policy Number KT-137067-CS?

(2)Whether the defendant No.2 proves that plaintiff is not entitled for claiming the policy amount?

(3)Whether the plaintiff is entitled for

recovery of the suit amount?

(4) What decree or order?"

In support of her suit, the plaintiff got herself examined as P.W.1 and got marked documents from Ex.P1 to P20. On behalf of defendant No.2 one Y.E.Honkan, the Assistant Divisional Manager was examined as D.W.1 and documents from Exs. D1 to D3 were marked. After hearing arguments from both sides, the trial Court in its impugned judgment and decree dated 9.7.2010 answered issue Nos.1 and 2 in the negative and issue No.3 in the affirmative and decreed the suit of the plaintiff holding that the plaintiff is entitled for recovery of a sum of Rs.60,000/- from defendants No.1 and 2 along with interest at the rate of 6% per annum from the date of refusal i.e. 10.6.2002 till realization. It is against the said judgment and decree the defendants in the trial Court have preferred this appeal.

4. Lower Court records were called for and the same are placed before this Court.

5. Heard the arguments of the learned counsel from both side and perused the materials placed before this Court, including the memorandum of appeal and the impugned judgment.

6. For the sake of convenience, the parties would be referred to as per their ranks before the trial Court.

7. In the light of the above, the points that arise for consideration are:

"1)Whether defendant No.2 has proved that deceased R. Siddaraju had suppressed the material fact while obtaining the policy from Defendant No.2? and

2)Whether the judgment and decree under appeal deserves an interference at the hands of this Court?"

8. It is an admitted fact that deceased Siddaraju while working as a First Division Assistant in the office of the Regional Transport Office, Jayanagar, Bengaluru, had obtained A Postal Life Insurance from the second defendant therein for a sum of Rs.60,000/- The policy was dated 7.7.1999 with its maturity date

being 14.11.2009. It is also an admitted fact that the plaintiff being his wife was also a nominee under the said policy. Further, it is also an admitted fact that said R. Siddaraju/insured died on 26.12.2001 while the policy was in force. Admittedly, the second defendant has rejected the claim made by the plaintiff after the death of her husband wherein she had claimed the insurance policy amount in her favour. It is also not in dispute that the said claim came to be rejected by the second defendant i.e. the Insurance Authority vide its letter dated 10.6.2002 which is marked as Ex.P12. The said Ex.P12 in its material portion reads as below:-

"We regret to inform you that your claim is not honoured for the reason mentioned below:

From the report of Regional Transport Officer, Bangalore South, it is transpired that the insurant was suffering from heart disease before taking the policy and the fact was not mentioned in the proposal form while taking policy in the prescribed place.

The policy is therefore, treated as lapsed under Rule 7, since the later

insurant has suppressed the fact of his illness at the time of taking the policy”

The correctness of the above letter is seriously in dispute now.

9. P.W.1 in her examination-in-chief in the form of affidavit evidence has reiterated the contentions taken up by her in the plaint, however, after producing Ex.P12 she has stated that the said endorsement does not hold good in the eye of law. Incidentally, the very same witness apart from producing the claim rejection letter at Ex.P12 has also produced the original proposal submitted to the Postal Life Insurance Authority at Ex.P19.

10. D.W.1 in his affidavit evidence has reiterated the contention taken up by second defendant in the written statement. He has also produced the letter dated 26.3.2002 said to have been received by them from the Regional Transport Office, Jayanagar and got it marked as Ex.D1. He has produced one more document, said to be the details of the medical leave availed by deceased Siddaraju,

issued by the Regional Transport Office, Jayanagar, Bengaluru at Ex.D2. He has also produced a copy of the certificate of death of Sri.R. Siddaraju issued by Wockhardt Hospital and Heart Institute, Cunningham Road, Bengaluru at Ex.D3.

11. Learned counsel for the appellants in his arguments while drawing the attention of this Court to the proposal form wherein at point No.16, the proposer/insured had to give details about his health condition and more particularly whether he was suffering with various diseases including any disease of heart and lungs, diabetes and has answered stating that he is in sound health and not suffering from any such ailment. He has also declared that he is in good health, free from disease and that he had no serious illness or major operation for the last three years. However, the details collected by the Insurance Authority specifically has revealed that he was suffering from acute inferior wall myocardial infraction, which was a heart disease and also with diabetes mellitus. Thus suppressing those serious ailments since he has obtained the policy the same

was forfeited as per the Rules of the Insurance Authority. Relying upon the reported judgment of the Hon'ble Apex Court in (2009) 8 Supreme Court Cases 316 (*Santwant Kaur Sandhu .vs. New India Assurance Company Limited*) the learned counsel submitted that in a similar case, the Hon'ble Apex Court has held that the insurer is justified in refusing the claim.

12. Per contra, learned counsel for the respondent in his arguments submitted that in the very same proposal for insurance which is at Ex.P19, the higher officer of the insured i.e. the Regional Transport Officer, Bengaluru South, has certified that the information furnished by the proposer at questions No.2 to 8 and 10 are verified and found to be correct. Thus, it cannot be said that there was any suppression of the fact. He further submitted that apart from the same, the very same proposal form at Ex.P19 also shows that the deceased was also examined by Medical Surgeon at Bowring and Lady Curzon Hospital, Bengaluru, who has issued the certificate about his

fitness to obtain the insurance policy. As such merely because the insured is said to have undergone some treatment and availed medical leave which was about 3 years prior to the date of policy, it cannot be held that there was any suppression of material fact.

13. The contract of insurance is a contract *uberrimae fidei* that means it is the contract of utmost good faith. Thus, while entering into a contract of insurance, the insured who gives his proposal to the proposer seeking insurance policy of coverage of his life has to reveal all material facts which would be relevant for the insurer either to extend the insurance policy or not or to fix the premium. Any suppression of those material facts may give a right to the insurer to reject the policy or forfeit the amount as per the Rules prevailing and governing the insurance contract between them. In the instant case, admittedly, the insurance policy to Sidda Raju(late) was issued under the Post Office Insurance Fund Rules. Rule 7 of the Postal Life Insurance Rules reads as below:

*"Rule 7: Inaccurate information
furnished by a person admitted to the*

benefits of the Post Office Insurance Fund will –

*(a) at the option of the *Postmaster General render voidable the contract concluded with that person and lead to forfeiture of all payment made by him;*

(b) render that person liable to dismissal from service, if he is in Government service and has furnished such information knowingly.”

As per the above Rule 7, any inaccurate information furnished by a person admitted to the benefit of Post Office Insurance Fund becomes voidable on the option of the Post Master General and it would also lead to forfeiture of all payments made by him. In the instant case, according to the defendants there was suppression of material facts about the health condition of the insured-late Siddaraju which came to the notice of the insurance authority when the claim was made by the insured's wife i.e. the plaintiff. As such, the second defendant by exercising its power under the above said Rule 7 has rejected the claim of the plaintiff.

14. The very basis for the insurer to extend the insurance policy primarily is the proposal for postal life insurance, which is at Ex.P19. The said document has to be filled and submitted by the insured to the insurer. The insurer requires number of details to be furnished by the proposer including his name, occupation, address, age etc. which are at Sl.Nos.1 to 10. In addition to that, the same proposal at Sl.No.16 under the head of 'personal history' requires the proposer to state whether he is of sound health and asks him as to whether he has suffered from any of the diseases like (i)Tuberculosis (ii)Cancer (iii)Paralysis (iv) Insanity (v) Any disease of the heart and lungs (vi)Kidney disease (vii) Any disease of brain (viii)Diabetes (ix)Hypertension (x) Any other serious disease(xi) Any physical deformity of handicap.

Admittedly, in the instant case the proposer i.e. late Siddaraju has stated that he is of sound health and with respect of details about he suffering from any of the above diseases he has mentioned "NO", that means, he has declared that he is not suffering

from any of those diseases. In the very same proposal, at the end, the proposer is required to execute a declaration which reads as below:-

"I hereby declare that I am in good health and free from disease, that I have not had any serious illness or major operation for the last three years and that no proposal of insurance on my life has ever been adversely treated."

15. The proposer late Siddaraju has executed the said declaration also. The very same proposal form in its subsequent part includes the certificate to be issued by the immediate superior of the insured. In the instant case, the Regional Transport Officer of the Bengaluru South has executed the said certificate certifying that the information furnished at Exs.2 to 8 and 10 are verified and found to be correct by him/her. The learned counsel for the respondent in his arguments while drawing attention of this Court to the said certificate of the immediate superior of the proposer stated that the said certificate go to show that there was no material suppression and the immediate superior/employer has certified that the

contents are true and as such the deceased was not suffering from any ailment. The said argument is not acceptable for the reason that the said certificate confines itself about the correctness of the answers given to question Nos.2 to 8 and 10 whereas the questionnaire pertaining to the health condition of the proposer including the history of his health about he suffering from various diseases is a separate question at Sl.No.16. As such the said certificate is in no way concerned with the personal history at sl.no.16 given by the proposer in the proposal form.

16. The second point that was canvassed in the matter from the plaintiff's/respondent's side is about the medical certificate issued by the Medical Surgeon in the same proposal form at its bottom. The said medical certificate which is undisputedly issued by the Medial Surgeon of the Government Hospital reads as below:

"I have carefully examined Shri R. Siddaraju the Proposer, whose signature is given below, today the 30.6.99. The Proposer Shri R. Siddaraju is medically

fit. I recommend acceptance of the proposal for a Postal Life Insurance Policy by the Postmaster-General."

A careful reading of the above said certificate go to show that no where the doctor has certified that the proposer is not suffering from any of the diseases mentioned at sl.no.16 in the proposal form. He has recommended that the proposer is medically fit and that his proposal may be accepted. The said certificate on medical fitness is to the effect that there is no reason for rejection of the medical policy. But it is in no way to be read as it certifies that the proposer is free of any of the ailments or diseases which are listed at sl.no.16 in the very same form.

The said understanding of the medical certificate in that context can also be corroborated with the reason that it is not the fact that a diabetic or a person suffering from heart ailment is precluded from or debarred from any insurance coverage of his life. However, in such situation where the insured has revealed about the health condition of the proposer including the health disorder or serious ailments, if

any, with the insurer, then the insurer may either think of not extending the benefit of insurance policy on his life or may consider refixing of the premium payable by the proposer/insured. It is required because the contract of insurance is a contract of indemnity whereunder the insurer takes the risk which the insured may face in his future time or in a venture. Therefore, to assess and ascertain the degree and quantum of the risk, the insured is expected to disclose all material facts which are very much essential and required for the insurer either to extend the insurance coverage or to fix the premium. Therefore, merely because the doctor is said to have recommended that the insurance policy can be extended, by that itself it cannot be inferred that the insured/deceased Siddaraju was free from any ailment like diabetes or heart disease about which he is said to have suppressed the facts in its proposal form.

17. The next point that remains for consideration is whether the proposer Siddaraju was suffering from any ailments like diabetes and heart disease and whether he has suppressed the same

from bringing it to the notice of the insurer.

18. Admittedly, in the insurance policy covering the life of a person, the details of information regarding the health condition of the person would be very important and vital and as such those facts would be material facts which the insured is required to disclose to the insurer at the time of obtaining policy. In the instant case, according to the defendants, the deceased was suffering from diabetes and heart disease even at the time of obtaining the policy and that he had suppressed the same.

As already observed above, diabetes and any disease of the heart and lungs were required to be disclosed by the proposer/insured in the very proposal itself, which is at Ex.P19. Admittedly, the insured has answered the said column in the negative stating that he is not suffering from any such ailments. In that regard P.W.1-the claimant has stated in her examination-in-chief that her husband was hale and healthy even prior and after the insurance coverage upon his life. However in her cross-examination to

the specific suggestion that her husband was having diabetes before taking the policy, she has admitted as 'true'. Thus, she has admitted that even before taking the insurance policy her husband was a diabetic.

Further D.W.1 apart from stating in his evidence that the insured was suffering from heart disease and diabetes also has stated that the cause of death of insured was due to acute 'acute inferior wall myocardial infraction, cardiac arrest and diabetes mellitus. In support of the same, he has produced three documents which are at Ex.D1 to D3. In Ex.D1 which is a reply letter to the second defendant by the Regional Transport Authority, Bengaluru South, dated 26.3.2002, the Regional Transport Officer, in which office and under whom the deceased was working, has stated that the deceased Sri.Siddaraju(insured) had availed 62 days commuted leave for the period from 22.7.1996 to 21.9.1996 and during the said period he was also admitted for treatment at Jayadeva Cardiology Institute. The said Regional Transport Officer has also enclosed a copy of the details of the medical leave availed by late Siddaraju. The said document which is at Ex.D2 goes to show that from 22.7.1996 to

21.9.1996 for a period of 62 days' leave he has given the reason as "acute inferior wall myocardial infarct with cardiogenic and varying heart block. "Diabetes mellitus". The said Siddaraju had availed commuted leave of that duration. No doubt, it is submitted to the Court from the respondent's side that the said availment of leave was about three years prior to the insurance and as such as on the date of the policy the proposer/insured was with no ailment. However, the said contention also is not acceptable for the reason that as already observed above, the declaration made by the proposer in Ex.P19 which the proposer/insured is required to declare, and that late Siddaraju has declared that he was in good health and free from diseases and that he had no serious illness for the last three years. The said proposal was submitted by him which is dated 28.6.1999. His date of availment of commuted leave of 62 days is within the period of three years prior to the said date of proposal at Ex.P19. As such it is within the screening period of three years prior to the proposal. The document at Ex.D2 goes to show that the deceased had availed long leave of 62 days for both the ailments i.e. heart

disease and diabetes.

Ex.D3 which is the certificate of death issued by Wockhardt Hospital and Heart Institute, Cunningham Road, Bengaluru, also goes to show that said Siddaraju who was a patient in the said hospital and who died on 26.12.2001 met his death primarily due to ischemic heart disease – acute inferior wall myocardial infraction and secondarily due to cardiac arrest and diabetes mellitus. This clearly goes to show that heart problem and diabetes for which the deceased/insured had availed leave of 62 days in the year 1996 was prevailing and continued till his death on 26.12.2001. As such as on the date of submitting his proposal also the proposer/Siddaraju was not free from his heart disease and diabetes mellitus. Since he did not disclose the ailments which he was suffering as on the date of his proposal and on the contrary since he has answered point no.16 in the proposal form in the negative stating that he is of sound health and is not suffering from any of the illness including any decease pertaining to heart and diabetes, it is a clear case that while obtaining the policy and

submitting his proposal in that regard he suppressed the material facts from bringing the same to the notice of the insurer(Defendant No.2).

19. Since there is material suppression of fact, the defendant No.2 has invoked his power under Rule 7 which empowers the authority to treat the contract as voidable and also to forfeit all payments made by the insured in that regard.

20. In a similar situation, in Satwant Kaur Sandhu (*supra*) the Hon'ble Apex Court while considering the challenge made by the insured about rejection of his medical claim has in detail explained as to what is the insurance contract and what is suppression of material fact. The relevant portions in the said judgments have been extracted here below:-

"18. A mediclaim policy is a non-life insurance policy meant to assure the policy-holder in respect of certain expenses pertaining to injury, accidents or hospitalizations. Nonetheless, it is a contract of insurance falling in the category of contract uberrimae fidei, meaning a contract of utmost good faith on the part of the assured. Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a

solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, the obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment.

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22. The term "material fact" is not defined in the Act and, therefore, it has been understood and explained by the Courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of Insurance and has a bearing on the risk involved would be "material".

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25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged

to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of Insurance.”

The above judgment of the Hon'ble Apex Court squarely applies to the case on hand. In the instant case as already observed above even though the fact that he was suffering from heart ailment and diabetes, the proposer Siddaraju who was expressly required to disclose about any such ailments has not disclosed the same in his proposal and as such he has suppressed the material fact coming to the knowledge and notice of the insured. As such as held by the Supreme Court in Satwant Kaur Sandhu (*supra*), even in the case on hand, no fault can be found in the second defendant rejecting the insurance claim lodged by the plaintiff before it. However, the trial Court without appreciating this evidence and materials in their proper perspective has on its own considered that the alleged heart problem was of three years old and as

such the same cannot be considered as the prevailing heart disease as on the date of the proposal. It further erred by observing that the doctor who is said to have treated the deceased in Jayadeva Hospital and who has issued the death certificate has not been examined. The said observations does not sound good for the reason that none of the exhibits at Exs.D1 to D3 have been disputed or contested by the plaintiff in the Court below. They have not whispered that the contents of Exs.D1 to D3 are incorrect. On the other hand, as already observed above P.W.1 who is non else than the wife of deceased herself has admitted that her husband Siddaraju was suffering from diabetes even prior to the obtaining of insurance policy. Non-consideration of the said material aspect by the trial Court has led to the decreeing of the suit. Since now the said finding is proved to be erroneous finding, the same requires to be set aside.

21. Accordingly, I proceed to pass the following:

ORDER

The appeal is allowed. The judgment and decree dated 9.7.2010 passed by the 42nd Additional City Civil and Sessions Judge in O.S.No.4391/2005 is set aside. The suit of the plaintiff in O.S.No.4391/2005 is dismissed.

Registry to transmit a copy of this judgment to the trial Court along with lower Court records without delay.

In view of the disposal of the main appeal, pending I.As., if any, do not survive for consideration.