

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22273 of 2017

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Pradeep Savadia

....

Petitioner(s)

-versus-

***Insurance Ombudsman, Odisha,
Bhubaneswar and Ors.***

....

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s)

:

Mr. Avijit Pal, Adv.

For Opposite Party (s)

:

Mr. Prakash Ranjan Barik, Adv.

(for O.P.1)

Mr. R. Acharya, Adv.

(for O.Ps.2 & 3)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-13.02.2024

DATE OF JUDGMENT: -28.03.2024

Dr. S.K. Panigrahi, J.

1. The Petitioner, in this Writ Petition, has made a prayer to quash the order dated 07.08.2015 passed by the Opposite Party No.1/ Insurance Ombudsman, Odisha, Bhubaneswar dismissing his Complaint No.BHU-L-025-1415-341 and the letter dated 23.07.2014 issued by the Opposite Party No.3/ Manager, HDFC Life Insurance Company Limited, Madhupatna, Cuttack repudiating all liability under the Policy i.e. Policy No.02550667. He further seeks a direction from this Court to

Signature Not Verified

Digitally Signed
Signed by: BHABAGRAHI JHANKAR
Designation: Assistant Registrar-cum-Senior Secretary
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 18-Apr-2024 20:52:38

the Opposite Party Nos.2 and 3/ Insurance Company to pay the sum assured under the Policy for an amount of Rs.3,63,760/- as death benefit along with market rate of interest @ 19% per annum.

I. FACTUAL MATRIX OF THE CASE:

2. The brief fact of the case is that:

- (i) the wife of the Petitioner named Jyoti Savadia purchased a life insurance policy with the Opposite Party No.2/ HDFC Life Insurance Company Limited, Mumbai by way of submitting proposal form dated 25.10.2012 under the product name "ING STAR LIFE" bearing policy No.02550667 being paid the premium in time for a sum assured of Rs.1,72,833/- and guaranteed death benefit of Rs.3,63,760/- keeping the Petitioner as her nominee.
- (ii) The wife of the Petitioner had paid the premium of Rs.75,000/- on 20.10.2012 and Rs.73,876/- on 16.11.2013 for the aforesaid policy for which the Opposite Party No.3, Manager, HDFC Life Insurance Company Limited, Cuttack issued the premium paid certificates to that effect. However, during the subsistence of the policy, she died due to heart attack/cardiac arrest on 28.03.2014.
- (iii) As the nominee to the aforesaid policy, after completion of all the death related ceremonies of his wife, the Petitioner submitted the Death Intimation-cum-Claim Form before the Opposite Party No.2 along with all requisite documents on 22.04.2014 which was duly received by them.
- (iv) The Opposite Party Nos.2 and 3/ insurer sat over the matter for three months. Thereafter, the Opposite Party No.3 in its letter dated

23.07.2014 which was received by the Petitioner on 31.07.2014 repudiated the claim of the Petitioner on the account of non-disclosure of previous insurance covers taken by Life Assured from different companies at proposal stage.

- (v) Being aggrieved by the repudiation of his claim by the Opposite Party No.3, the Petitioner approached the Opposite Party No.1/ Insurance Ombudsman, Odisha, Bhubaneswar. The Opposite Party No.1/ Insurance Ombudsman, Odisha, Bhubaneswar vide order dated 07.08.2015 dismissed the Complaint No.BHU-L-025-1415-341 of the Petitioner. Therefore, the Petitioner is constrained to approach this Court.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions.
- (i) The ground of repudiation and rejection of the Petitioner's claim was for non-disclosure of previous insurance covers taken by Life Assured from different companies at proposal stage relying on the Clause 5.4 of the Terms and Conditions of the basic policy wherein it was mentioned that subject to the provisions of Section 45 of the Insurance Act, 1938. But at the same time the Opposite Parties completely dealt with the matter in a very mechanical and routine manner and construction of the terms and conditions on a literal and strained.

- (ii) The Opposite Parties declined the claim of the Petitioner based on the interpretation of Section 45 of the Insurance Act, 1938 which reads as under:

*“Policy not to be called in question on ground of misstatement 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 & 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 & that it was fraudulently made by the policy-holder & 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.
Xx xx xx xx xx xx”.*

- (iii) From a plain reading of the aforesaid provision it can be conclude that there are three conditions for application of the second part of Section 45 of the Insurance Act, which are:

- 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.

- (iv) Applying the above principle of law in the case in hand non-disclosure of previous insurance covers taken by Life Assured from different companies at proposal stage has no bearing on the risk undertaken by the insurer i.e. the Opposite Party Nos.2 and 3. As per Section 45 of the Insurance Act, it does not qualify the materiality or material facts and it cannot be construed as fraudulent suppression to repudiate the contract of insurance.
- (v) It is well settled principle of law that the insurance claim cannot be repudiated on the ground of suppression, false or non-disclosure of facts in the proposal form which does qualify as a material facts or having no bearing on the risk of the insurer as per Section 45 of the Insurance Act.
- (vi) In the case of *Rohini Nandan Goswami v. Ocean Accident & Guarantee Corporation*¹, while considering the duty of a insured to disclose material facts and the right of the insurer to avoid the insurance policy in case of such non-disclosure, the Court observed that as to whether a particular fact is material depends upon the circumstances of a particular case. Evidence of materiality is not always necessary. Materiality of a particular fact may be obvious from its very nature. The test to determine materiality is whether the fact has any

bearing on the risk undertaken by the insurer. If the fact has any bearing on the risk, it is a material fact; if not it is immaterial

(vii) A Division Bench of Madras High Court in the case of *Life Insurance Corporation of India V. Janaki Ammal*²; has observed as follows:

"Thus, there is ample authority for the proposition that, an insurer could avoid a contract of insurance after the expiry of period of two years mentioned in the first part of Section 45 of the Insurance Act only on the ground of suppression of illness, which affects the expectation of life of the insured & not mere temporary or trivial illness & that unless the disease he was suffering from is clearly established & it is also established that disease would have a material bearing on the insurability of the policy holder, the policy cannot be invalidated. We are, therefore, clear that in the circumstances of this case, the mere fact that the deceased had been taking medicines & injections without proof of anything more would not be sufficient to invalidate the policy."

(viii) The Apex Court in the case of *Life Insurance Corporation of India and Ors. v. Smt. Asha Goel and Anr*³, has observed as follows:

"In course of time the Corporation has grown in size & at present it is one of the largest public sector financial undertakings. The public in general & crores of policy-holders in particulars look forward to prompt & efficient service from the Corporation. Therefore the authorities in-charge of Management of the affairs of the Corporation should bear in mind that its credibility & reputation depend on its prompt & efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it should

² AIR 1968 Mad 324

³ Verdict 161

be one of extreme care & caution. It should not be dealt with any mechanical & routine manner."

- (ix) A division Bench of this Court has dealt with a similar case i.e. in the case of ***Smt. Gouri Sethi v. Divisional Manager of L.I.C. and Ors.*** AIR 2007 (Orissa) 19, wherein a similar situation the LIC had repudiated the claim on the ground that the deceased insured had furnished false statement to the questionnaire contained in the proposal form and had suppressed his age and physical deformity. Referring to the aforementioned decision of the Madras High Court in ***Life Insurance Corporation of India V. Janaki Ammal*** (supra) this Court hold that the deceased insured had not stated in the proposal form that he was suffering from Acid Peptic disease and Allergic and has been treated for Hypertension prior to taking of the insurance policy. Admittedly, the deceased insured died of Cardiac Vascular Arrest and Hemiplegia. The suppression of prior ailment not affecting the expectation of life cannot be a ground to repudiate the policy. Accordingly, this Court directed the LIC to release the claim of the Petitioner therein. Similarly, in the case of ***Kuni Lata Sahoo -vs- Senior Manager, L.I.C. of India & Anr.***⁴ it has been settled:

"The Insurance policy, apart from its special feature, is a contract between a person seeking to be insured & the insurer. In interpreting the terms of contract of insurance, they should receive fair, reasonable & sensible construction in consonance with the purpose of the contract as intended by the parties. Emphasis in such cases is laid more upon a practical & reasonable, rather

than on a literal & strained construction. In interpreting the contract of insurance neither the coverage under a policy should be unnecessarily broadened, nor should the policy be rendered ineffective in consequence of unnatural or unreasonable construction. An attempt should be to construe a contract in liberal manner so as to accomplish the purpose or the object for which it is made. In the absence of ambiguity, neither party can be favoured but where the construction is doubtful, the Courts lean strongly against the party who prepared the contract. Where there is a susceptibility of 2 interpretations, the one favourable to the insured is to be preferred."

- (x) The wife of the Petitioner the insured was aware that the Opposite Party Nos.2 and 3 never failed to honour their commitments and obligations under an insured policy. So also the insurance company very well knows that someone's life cannot be compensated in terms of money. Whatever is compensated becomes a drop in an ocean of loss to the bereaved family. To provide protection in the family of insured is the key role behind insurance, death should have been occurred.
- (xi) It is common thing that ordinarily any of the agents never put such questions and in the case in hand, agents have failed to put such question at the proposal stage. That being so, there was no question of any non-disclosure on the part of the assured. For this an assured cannot be blamed. The assured could not have known all the terms and conditions of the printed proposal form, particularly when the assured was a lady and never knew that such a policy with the Opposite Party Nos.2 and 3 would bring her end. The assured was not asked to say of

her previous covers. On the other hand, the agents and officers explained that an assured could avail as many as policies and there was no bar for the same. The repudiation on the part of Opposite Party Nos.2 and 3 cannot be construed as fair, reasonable and rational since such repudiation was against the commitments and obligations. As it appears when a death claim was made, it was discovered that there was non-disclosure of material facts and although from the death of assured several months passed and so also successive deposits of premiums were accepted. The irregularity now pointed out so belatedly by the Opposite Party No.2 and 3 could not be known.

(xii) Non-disclosure of the fact of other life insurance policies is not in any manner prejudicial to the insurer Opposite Party Nos.2 and 3. The same did not affect the life expectancy of the deceased insured as the cause of death of the insured was admitted by the Opposite Party Nos.2 and 3. As such, repudiation of the claim of the Petitioner by the insurer Opposite Party Nos.2 and 3 and the rejection of the claim of the Petitioner by the Opposite Party No.1 were not proper and justified.

(xiii) The petitioner made several representations to the Opposite Party Nos.2 and 3 time and again with a hope to get some positive result and waited for it. In view of such expectation and due to some mental depression and imbalance state of mind in the aftermath of the sad demises of his wife he could not come forward to agitate this issue before this Court for some time.

(xiv) In such premises, he submitted that the prayer of the Petitioner may be

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO.1:

4. In reply, learned counsel for the Opposite Party No.1 earnestly made the following submissions in support of his contentions.

- (i) The Insurance Ombudsman, is a statutory authority established under Rule-7 of the Insurance Ombudsman Rules, 2017, and used to discharge its duties as per the provisions of the said Rules. Therefore, the Insurance Ombudsman is neither a necessary nor a property party for adjudication of the Writ Petition. Hence, the Petitioner should not have impleaded the Insurance Ombudsman as Opposite Party No.1.

IV. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NOS.2 AND 3:

5. In reply, learned counsel for the Opposite Party Nos.2 and 3/ Insurance Company earnestly made the following submissions in support of his contentions.

- (a) The death of Life Assured (LA) has taken place within a period of 17 months from the date of commencement of the Policy i.e. from 25.10.2012. On inquiry, it was revealed that the LA has suppressed/withheld/not disclosed that she had existing/simultaneous multiple insurance covers/Insurance Policies (about 17) with other Insurance Companies.
- (b) The LA had got maximum number of insurance policies about 17 with high maturity value in addition to the above total sum assured value of Rs.21 Lakhs from different Insurance Companies. In addition, she had also obtained Insurance Policy from the Opposite Party Nos.2 and 3/

Insurance Company with maturity value of sum assured of Rs.1,72,833/- and guaranteed death benefit of Rs.3,63,760/- by suppressing the above truth. Thus, the Life Assured had intentionally misguided the Opposite Party Nos.2 and 3/ Insurance Company to get more death benefit by way of sum assured to the Nominee viz. her spouse (petitioner herein).

- (c) If the Life Assured had not suppressed the above true material information in the proposal form then the Opposite Party Nos.2 and 3 insurer by factoring all the details of the previous policies availed with different insurers and comparing the same with annual income of the Life Assured would have taken a decision as to whether to expose itself to the risk of accepting the proposal and issued the policy in favour of the wife of the Petitioner.
- (d) The very fact of death of the wife of the Petitioner i.e. Life Assured within 7 months of the policy corroborates that the Life Assured had intentionally taken multiple policies to get the maximum insurance death benefit from multiple Insurance Companies.
- (e) In accordance with Clause 5.4 of the present policy in the aforesaid matter, the insurer can repudiate or forfeit the policy on the ground of inaccuracy of declarations. In this regard, the Clause 5.4 of the policy is reproduced verbatim as follows:

“Clause 5.4- Forfeiture in certain events:

In issuing this policy, the Company has relied on, and may rely on accuracy and completeness of the information provided by the Proposer/Life Assured and any other declarations and statements made or as may be

made hereafter, by the Policy holder/Life assured. Subject to the provisions of the applicable Regulations including Section 45 of the Insurance Act 1938, in the event of any such information declaration or statement is found to be false or incorrect or any material information is found to be withheld or misrepresented, the Policy shall become null and void from the commencement and shall forthwith terminate, and company shall cease to be liable for the benefits under this Policy. In such case, the Company may forfeit the amounts received under this Policy."

- (f) Thus, the death benefits as per the policy terms stand forfeited and, therefore, the nominee / the petitioner herein is not entitled legally to claim the sum assured under the policy. Further, in terms of amended Section 45 of the Insurance Act, 1938, Life Insurance Policy can be called in question within 3 years on the ground that any material information has been suppressed or withheld or fraudulently made by the Policy holder and that the policy holder knew at the time of making that statement it was false. In the instant case, the Insurance Company based on the false information has taken a decision to issue the Policy. It is evident from the proposal Form under point Nos.52, 53 and 54 that the LA has suppressed existence of insurance policies with other companies and, thus, Section 45 of the aforesaid Act is applicable. Further, if LA had not suppressed the above factual material information in the proposal form then the Opposite Party Nos.2 and 3/ Company by factoring all the details of the policies proposed by him with different insurance companies and comparing them would have taken a call whether to expose to the risk of accepting the proposal and

issue the policy. Thus, the information is very material as per Section 45 of the Act which would culminate into the forfeiture of the claim benefit under the Policy.

- (g) The present Petitioner has also accepted on record the suppression of material fact with regard to the non-disclosure of previous insurance policies before the Opposite Party No.1 i.e. the Insurance Ombudsman which has been reflected in the impugned order.
- (h) Therefore, there is no illegality in the impugned order passed by the Opposite Party No.1/ Insurance Ombudsman. So, the present Writ Petition is devoid of any merits and liable to be dismissed.

V. COURT'S REASONING AND ANALYSIS:

- 6. In the present case, the issue for consideration is "whether the Petitioner/nominee is entitled to get the benefit under life insurance policy in the event of death of the life insured if she while submitting the insurance proposal form had suppressed the fact that she had availed previous insurance policies from different insurance companies?
- 7. Admittedly, the Petitioner being the husband is the nominee of the insurance policy. The wife of the Petitioner named Jyoti Savadia purchased a life insurance policy with the Opposite Party No.2/ HDFC Life Insurance Company Limited, Mumbai by way of submitting proposal form dated 25.10.2012 under the product name "ING STAR LIFE" bearing policy No.02550667 being paid the premium in time for a

sum assured of Rs.1,72,833/- and guaranteed death benefit of Rs.3,63,760/- keeping the Petitioner as her nominee.

8. The wife of the Petitioner had paid the premium of Rs.75,000/- on 20.10.2012 and Rs.73,876/- on 16.11.2013 for the aforesaid policy for which the Opposite Party No.3, Manager, HDFC Life Insurance Company Limited, Cuttack issued the premium paid certificates to that effect. However, during the subsistence of the policy, she died due to heart attack/cardiac arrest on 28.03.2014.
9. As the nominee to the aforesaid policy, after completion of all the death ceremonies of his wife, the Petitioner submitted the Death Intimation-cum-Claim Form before the Opposite Party No.2 along with all requisite documents on 22.04.2014 which was duly received by them. The Opposite Party Nos.2 and 3/ insurer sat over the matter for three months. Thereafter, the Opposite Party No.3 in its letter dated 23.07.2014 which was received by the Petitioner on 31.07.2014 repudiated the claim of the Petitioner on account of non-disclosure of previous insurance covers taken by Life Assured from different companies at proposal stage.
10. Being aggrieved by the repudiation of his claim by the Opposite Party No.3, the Petitioner approached the Opposite Party No.1/ Insurance Ombudsman, Odisha, Bhubaneswar. The Opposite Party No.1/ Insurance Ombudsman vide order dated 07.08.2015 dismissed the Complaint No.BHU-L-025-1415-341 of the Petitioner. Therefore, the Petitioner is constrained to approach this Court.

11. It is not disputed that there was non-disclosure of previous insurance covers taken by Life Assured from different companies at proposal stage.
12. However, it was strenuously argued by the learned counsel for the Petitioner that non-disclosure of the fact of other life insurance policies does not in any manner prejudice the insurer Opposite Party Nos.2 and 3. The same did not affect the life expectancy of the deceased insured as the cause of death of the insured was admitted by the Opposite Party Nos.2 and 3. As such, repudiation of the claim of the Petitioner by the insurer Opposite Party Nos.2 and 3 and the rejection of the claim of the Petitioner by the Opposite Party No.1 were not proper and justified.
13. In reply, learned counsel for the Opposite Party Nos.2 and 3 contended that the Insurance Company based on the false information has taken a decision to issue the Policy. It is evident from the proposal form under point Nos.52, 53 and 54 that the LA has suppressed existence insurance policies with other companies and, thus, Section 45 of the Act is applicable. Further, if LA had not suppressed the above factual material information in the proposal form then the Opposite Party Nos.2 and 3/ Company by factoring all the details of the policies proposed by him with different insurance companies and comparing them would have taken a call whether to expose to the risk of accepting the proposal and issue the policy. Thus, the information is very material as per Section 45 of the Act which would culminate forfeiture of the claim benefit under the Policy.

14. The apex Court in *Reliance Life Insurance Co. Ltd. & Anr. –vrs.- REkhaben Nareshbhai Rathod*⁵ in paragraph 29 has held as follows:

“We are not impressed with the submission that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and the grant of the insurance cover was on the basis of the statements contained in the proposal form. Barely two months before the contract of insurance was entered into with the appellant, the insured had obtained another insurance cover for his life in the sum of Rs 11 lakhs. We are of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.”

15. Therefore, in light of the discussion above, keeping the settled principles of law in mind and considering the rival contentions made by both the learned counsel for the Parties, this Court is of the view that admittedly, the insured in this case has failed to disclose the previous insurance covers taken by her from different companies at proposal stage. Therefore, failure on the part of the insured (wife of the Petitioner) of the same in the proposal form entitled the insurer i.e. the Opposite Party No.2 and 3 to repudiate the claim under the Policy.
16. In such view of the matter, there is no error apparent in the order dated 07.08.2015 passed by the Opposite Party No.1/ Insurance Ombudsman,

⁵ (decided on 24th April, 2019 passed in Civil Appeal No.4261 of 2019 arising out of SLP(C) No.14312 of 2015)

Odisha, Bhubaneswar dismissing his Complaint No.BHU-L-025-1415-341 and the letter dated 23.07.2014 issued by the Opposite Party No.3/ Manager, HDFC Life Insurance Company Limited, Madhupatna, Cuttack repudiating all liability under the Policy i.e. Policy No.02550667.

17. Accordingly, this Writ Petition is dismissed.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 28th March, 2024/ B. Jhankar



Signature Not Verified

Digitally Signed
Signed by: BHABAGRAHI JHANKAR
Designation: Assistant Registrar-cum-Senior Secretary
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 18-Apr-2024 20:52:38