

W.P. No.7608/2015**27.4.2017**

Shri Vikalp Soni, learned counsel for petitioner.

Ms.Amrit Ruprah, learned counsel for respondents.

This petition under Article 226 of the Constitution of India is directed against the order dated 06.09.2014 and 30.03.2015; whereby, the appointment of the petitioner as Agent under Regulation 4 of the Life Insurance Corporation of India (Agents) Regulations, 1972 has been cancelled and the renewal commissions has been forfeited. And an Appeal has been dismissed.

Case of the petitioner is that having been appointed as Agent under Regulations in the year 2001 petitioner has been discharging his duty diligently and in accordance with the norms settled by the Life Insurance Corporation of India. That on 19.05.2012, the petitioner insured one Shri Ravishankar Dubey. The insured was known to the petitioner for over eight years and was hail and hearty with no report of his being ill or suffering from any life threatening disease. Later on, petitioner received notice on 24.10.2013 from the respondent; whereby, he was informed that the insured Shri Ravishanker Dubey expired on 1.06.2012 i.e. 12 days from his insurance. It was informed that on enquiry it was found that he died of heart attack.

The petitioner submits that vide said intimation petitioner was charged of dereliction of his duty as an agent, however, he has not

been provided the documents on the basis whereof the respondent had arrived at a conclusion that the petitioner derelict in his duty. It is urged that the petitioner denied the charges of suppressing facts as to the illness of the insured. It is urged that without causing any further inquiry and without having supplied information said to have been collected in fact finding inquiry, the respondent by order dated 06.09.2014 terminated the agency of the petitioner and directed for forfeiture of renewal of commissions. It is urged that an Appeal preferred by the petitioner was also dismissed by the Appellate Authority without appreciating the fact that it was the information which was given by the insurer being relied upon by the petitioner and without appreciating that no effective opportunity of hearing was given to the petitioner, the Appellate Authority dismissed the Appeal by order dated 30.03.2015. It is further urged that since there was no concealment of fact by the petitioner who on his past experience and after knowing the insurer for last eight years and after collecting information from him and other sources that he was not suffering from any life threatening disease, the petitioner had proposed the insurer Ravi Shankar Dubey. Because he died within twelve days from the date of insurance, respondents have construed the same to be concealment of fact on the part of the petitioner. It is urged that while insuring a person the agent has to rely on the statement given by the insurer and it is only after assured statement coupled with other facts and having knowing person for last eight

years, the proposal was made; therefore, the presumption drawn by the respondent of concealing the fact is without any basis. It is urged that since conclusion arrived at is on the basis of surmises and conjectures, the impugned order deserves to be set-aside.

The respondents though have embedded to their stand that the petitioner has derelicted by not collecting correct information of the assured, however, no cogent material is brought on record to substantiate the contention. The respondents have even not filed those reports prepared during investigation to justify the stand taken.

Be that as it may. Evidently the petitioner was appointed as per the terms of Regulations, 1972. These Regulations are framed by the Central Government in exercise of powers conferred under Section 49 of the Life Insurance Corporation Act, 1956.

That, Section 43 of 1956 makes provisions as to applicability of the Insurance Act, 1938. As per sub-Section (1) of Section 43 of 1956 Act besides other Section which find mention therein, Section 45 of 1938 act is made mutatis mutandis applicable.

Section 45 of 1938 act envisages that :

“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.

This provision came up for consideration in **Mithoolal Nayak v. Life Insurance Corporation of India: AIR 1962 SC 814** wherein their Lordships were pleased to hold:

“8- The three conditions for the application of the second part of Section 45 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.”

Thus the contract of insurance could be avoided only on proof of fraud as enumerated under Section 45 of 1938 Act.

A coordinate Bench of our High Court dwelling on the issue as in the present case was pleased to observe in **Life Insurance Corporation of India v. Ambika Prasad Pandey : AIR 1999 MP 13:**

“11. It would thus be clear that the contract of insurance could be avoided only on proof of fraud as enumerated in the second part of Section 45 of the Insurance Act, 1938, as noticed above. A charge of fraud would obviously be required to be proved strictly and shall require high degree of probability. In

Lakshmi Insurance Co. Ltd. v. Bibi Padma Wati, AIR 1961 Punj 253 it has been laid down that (at page 267):

"According to the provisions of Section 45, the insurance contract can be avoided on fraud, and a charge of fraud, naturally, requires a high degree of probability. It is well known that fraud is odious and cannot be 'presumed; fraus est odiosa et non est praesumenda. The Courts will not be satisfied with proof, which falls short of showing that intentional misrepresentation was made with the knowledge of perpetrating fraud."

12. Moreover, since it is the Insurance Company who alleges fraud, it shall be its burden to prove that the insured had made false representations and suppressed material facts. Reference in this connection may be made to the case of Smt. G. M.Channabasemma(supra) and to Smt. Shanta Trivedi v. Life Insurance Corporation of India, AIR 1988 Delhi 39 and Smt. Saraswati Devi v. Life Insurance Corporation of India, AIR 1996 Delhi 68. However, it may also be noticed that, in view of the special nature of contract, obligation of true disclosure has been cast on the assured to disclose all the relevant facts, to enable the insurer to decide as to whether to accept the proposal for insurance or not. In this context in the case of G. M. Channabasemma (supra) it has been observed :

"It is well settled that a contract of insurance is contract uberrima fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding, whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted."

The upshot of above analysis is that if the contract of insurance is a contract Uberrima fides the assured is under a solemn obligation to make full disclosure of material facts and the insurance contract can be avoided on fraud which unless proved cannot be presumed.

Regulation 8 of the Regulations, 1972 sets out the function of Agents Regulation 8(2)(b) provides for that the Agent while procuring new life Insurance business shall make all reasonable enquires in regard to the lives to be insured before recommending proposals for acceptance, and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten.

In the case at hand, evident it is from material on record that responding to notice given by respondents, the petitioner had given the details about his acquaintance with assured for last eight years and that he was a healthy man with no report of any terminal disease. It was also stated that on gathering information from other sources also it was informed that assured is a healthy man. The respondent has committed a grave error in presuming that the fraud is committed because the assured died within 12 days from the date of insurance. Be it noted and as rightly pointed out by learned counsel for the petitioner, and not disputed by learned counsel for respondents that there is no certainty as to when the death comes. It is uncertain. And if due care required to be taken as per Regulations having being taken by the petitioner, he cannot be held guilty of

suppression of fact or suggestio falsi.

The respondent, however, did not dwell upon the explanation given by the petitioner nor any inquiry is conducted to arrive at a conclusion that fraud was played by the insurer in giving a wrong information yet it went on to terminate the agency merely because the insured has expired within 12 days.

The impugned order when is tested on the anvil of above analysis cannot be given the stamp of approval. Consequently, the same is set-aside. The petitioner shall be entitled for all consequential benefits which enure to him with setting aside of the impugned order.

Petition is allowed to the extent above.

There shall be no costs.

(SANJAY YADAV)
JUDGE

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