

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2145 OF 2019

(Against the Order dated 07/08/2019 in Complaint No. 217/2013 of the State Commission
Maharashtra)

1. LIFE INSURANCE CORPORATION OF INDIA
THROUGH SECRETARY (LEGAL) LIC , LEGAL CELL
DELHI, H 39, (1FLOOR0 NEW ASIATIC BUILDING
CONNAUGHT CIRCUS
NEW DELHI 110001

.....Appellant(s)

Versus

1. SHUBHALAXMI SHANKAR SHETTY & 2 ORS.
A/801, WILLOWS TWIN TOWER VASANT GARDEN NEAR
SWAPANA NAGAR MULUND (WEST)
MUMBAI
MAHARASHTRA 400 080

2. MS THEERTHA SHANKAR SHETTY
A/801, WILLOWS TWIN TOWER VASANT GARDEN NEAR
SWAPANA NAGAR MULUND (WEST)
MUMBAI
MAHARASHTRA 400 080

3. MR PRASAD SHANKAR SHEETY
A/801, WILLOWS TWIN TOWER VASANT GARDEN NEAR
SWAPANA NAGAR MULUND (WEST)
MUMBAI
MAHARASHTRA 400 080

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 08 May 2024

ORDER

For the Appellant

Mr Rao Ranjit, Advocate

For the Respondent

Mr Alok Shankar, Advocate

ORDER

1. This appeal under section 19 of the Consumer Protection Act, 1986 (in short, the 'Act') is directed against order dated 07.08.2019 of the State Consumer Dispute Redressal Commission, Maharashtra, Mumbai (in short, the 'State Commission') in complaint case no. CC/13/217 allowing the complaint in part and directing the opposite party/appellant herein to pay

(i) Rs 14,81,250/-, i.e. 75% of sum assured of Rs 19,75,000/- along with interest on that amount @9% p.a. from the date of death of deceased till realization of amount by the complainant;

(ii) Rs 10,000/- to complainants towards costs of litigation within a period of one month from the passing of this order, otherwise opponent will have to pay interest @ 9% p.a. from the date of this order till realization.

This order is impugned before us with the prayer to allow the appeal and set aside the order and to pass such other order deemed fit in the facts of the case.

2. The brief facts of the case are that the deceased husband of the respondent bought two life insurance cover policies from the appellant viz., Jeevan Tarang Policy No. 991011452 commencing from 14.07.2010 till 14.07.2025 for Rs 19,75,000/- with a half yearly premium of Rs 74,923/- and Samriddhi Plus Policy No. 991326389 from 24.05.2011 till 24.05.2021 for Rs 2,75,000/- with a one-time premium of Rs 2,00,000/-. On 29.09.2011 the life assured was detected with cancer of the right lung and was under treatment at Tata Memorial Hospital, Mumbai till 11.11.2011. On 18.02.2012 he was admitted in Fortis Hospital where the carcinoma was again diagnosed. On 29.02.2012 the life assured expired and a claim was preferred by the respondent. Appellant repudiated the claim on 19.08.2012 for Jeevan Tarang Policy for Rs 19,75,000/- on the grounds that the Deceased Life Assured (DLA) had withheld correct information regarding his health at the time of obtaining the policy and that there was evidence that the DLA was suffering from diabetes and had undergone Cholecystectomy in 2007. However, the *ex gratia* payment of Rs 2,75,000/- under the Samriddhi Plus policy was made. The repudiation was challenged in CC/13/217 before the State Commission which was decided on contest and has now travelled to this Commission in appeal on the grounds that (i) despite being a doctor by profession the DLA did not disclose the material fact of history of diabetes in the proposal and cholecystectomy operation; (ii) section 45 of the Insurance Act clearly absolves the appellant of liability in case of concealment of material facts pertaining to the assured's health and (iii) a contract of insurance being one of utmost good faith, non-disclosure of facts constitutes fraud.

3. I have heard the learned counsel for the parties and given careful consideration to the material on the record. In the interest of justice, the delay of 49 days in preferring FA no.2145 of 2019 is condoned.

4. Learned counsel for the appellant submitted that the DLA did not disclose that he had previous insurance policies of which 3 were relinquished. Reliance was placed on judgments of the Hon'ble Supreme Court in **P.C. Chacko & Anr. Vs. Chairman, Life Insurance Corporation of India & Ors.**, (2008) 1 SCC 321; **Reliance Life Insurance Company Ltd. & Anr. Vs. Rekhaben Nareshbhai Rathod**, (2019) 6 SCC 175; **Branch Manager, Bajaj Allianz Life Insurance Co. Ltd. & Ors. Vs. Dalbir Kaur**, 2020 SCC Online SC 848 and **LIC Vs. Manish Gupta**, (2019) 11 SCC 371. Primarily, the appellant relied on **Rekhaben** (supra) to argue that the concealment of the facts of prior illness and the existence of previous policies constituted valid grounds for repudiation of the policy and that the State Commission erred in concluding otherwise.

5. *Per contra*, learned counsel for the respondent argued that although the DLA was diagnosed with diabetes, he was not on any medication for it and that the disease was being managed through diet and exercise. It was submitted that the DLA was treated in 2008 for Calculous Cholecystitis and not Cholecystectomy as alleged by the appellant, as was evident from the records produced before the State Commission. Appellant has also not filed the blood test report for diabetes dated 24.09.2011 which reflects HbA1c levels to be under "fair control" and has instead alleged that the DLA was a diabetic. Reliance was placed on the Hon'ble Supreme Court's judgment in **LIC India vs. Smt. G. M. Channabasamma** (1991) 1 SCC 357 wherein it was held that the onus to establish fraud or fraudulent suppression/misrepresentation of material facts lay with the appellant which it had failed to discharged. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Sulbha Prakash Motegaonkar & Ors. Vs. Life Insurance Corporation of India**, Civil Appeal No. 8245 of 2015 decided on 05.10.2015 that non-disclosure of certain diseases which were neither life threatening diseases nor which could or did cause the death of the insured would disentitle the deceased from getting his life insured and therefore repudiation of the claim was incorrect and not justified. Reliance was also placed on this Commission's order in **Reliance Nippon Life Insurance Co. Ltd. Vs. Savita Gajanan Patil** in Revision Petition No. 2418 of 2018 dated 18.07.2019 which relied on **Sulbha Prakash Motegaonkar** (supra).

6. The finding of the State Commission is as below:

"12. It appears that it is the contention of complainants that although both these facts were not informed to opponent before taking policy, there was no fraudulent intention about the same and hence, only on that ground claim of complainants should not be repudiated. The contention of complainants cannot be accepted that contents of proposal form were written only by agent of deceased and deceased had only signed the same and he had no knowledge of the same. Hence, at the most it can be considered that although the fact of diabetes and previous operation is known to deceased he has not mentioned the same in the proposal form. Now, we have to consider whether deceased had not disclosed these facts with any fraudulent intention. However, in this case there is nothing on record to show that deceased had suppressed these facts from opponent for any fraudulent intention. Admittedly as death of deceased had taken place due to lung cancer, the fact of diabetes or previous operation of deceased had no concern with the cause of death of deceased. In view of the ruling on which Learned Advocate appearing for complainants relied it has become clear that if in concealment of any fact there is no fraudulent intention of deceased and it has no direct nexus with the cause of death

of the deceased then only on that ground claim in respect of insurance policy of deceased should not be repudiated. However, Learned Advocate appearing for opponent has relied on the order passed by Hon'ble Supreme Court in the matter of PC Chacko and Anr. versus LIC (mentioned supra). However, we are of the opinion that that observation had been made by the Hon'ble Supreme Court while deciding Civil Appeal. In that case, civil suit was filed under the provisions of Specific Relief Act in respect of getting insurance claim from the Corporation. Such is not the fact present in this case. Complainants have filed this complaint under the provisions of Consumer Protection Act, 1986. It is a beneficial legislation to protect the rights of customers. Admittedly in this case deceased had taken insurance policy from the opponent and hence he was consumer of opponent and after his death complainants being his legal heirs and beneficiaries, they have become consumers of opponent. In this case admittedly death of deceased had taken place due to lung cancer. Deceased had no fraudulent intention in suppressing the fact that once upon a time diabetes was detected in him and in the year 2007 he had undergone operation of cholecystectomy. As both these facts had no relation with the cause of death of deceased, we are of the opinion that only on that ground claim of complainants should not be repudiated by the opponent. At the most, for the fault of deceased in not mentioning these facts in the proposal form at the time of taking insurance policy, the claim of the complainants can be allowed on non-standard basis to the extent of 75% of the claim amount. In view of the same, we are of the opinion that opponent has given deficiency in service to complainants by repudiating their claim. Hence, complainants are entitled to get amount claimed from the opponent on non-standard basis along with costs of litigation.

The finding is that the cause of death not being related to the concealment of fact, the claim cannot be repudiated on the ground of non-disclosure of good health at the time of the policy proposal.

7. It is apposite that the grounds of repudiation be considered at this stage. The letter of the appellant dated 19.08.2012 reads as under:

With reference to your claim under the above Policy on the life of your deceased husband we have to inform you that **we have decided to repudiate all liability under the policy on account of the deceased having withheld correct information regarding his health at the time of effecting the assurance with us.**

In this connection we have to inform you that in the Proposal for Assurance dt. 13.05.2010 and 25.05.2011, he had answered the following questions as under-noted:-

Questions	Answers
Q no 11 (a) During the last 5 years did you consult a medical practioner for any ailment requiring treatment for more than a week?	No
(b) Have you ever been admitted to any hospital	

or nursing home for general check up,

observation, treatment or operation? No

(e) Are you suffering from or have you ever suffered

From Diabetes, Tuberculosis, High Blood Pressure,

Low Blood Pressure, Cancer, Epilepsy, Hernia,

Hydrocele, Leprosy or any other disease? No

(f) What has been your usual state of health? Good

We may, however, state that the above answers were false as **we have evidence and reason to believe that the deceased Life Assured was suffering from diabetes and had undergone Cholecystectomy in 2007. He did not however disclose these facts in his proposal. Instead he gave false answers therein as stated above.**

(Emphasis added)

Thus, the grounds of repudiation are (i) withholding of correct information regarding his health by the DLA and (ii) evidence that the DLA was suffering from diabetes and had undergone cholecystectomy operation in 2007. The settled principle of law is that the insurer cannot go beyond the grounds of repudiation. The ground taken by the appellant that the DLA concealed the existence of previously taken policies can not be therefore considered at this stage.

8. Appellant's reliance on the Hon'ble Supreme Court's judgement in ***Rekhaben*** (supra) has been considered. It is apposite to note that in the present case repudiation is based upon non-disclosure of good health and not the existence of previous policies. As per the facts of this case, the life assured expired within 2 years of the policy and there was disclosure of the fact of previous policies held, critical illnesses or accident benefit in the negative by the insured. While in ***Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.***, (2009) 8 SCC 318 it had been held that it was for the insured to establish that the suppression of facts was not material, especially in a case where a claim arises within two years of the policy, in ***Rekhaben*** (supra) insurer had sought information with respect to previous insurance policies obtained by the assured. It was held that the disclosure of the earlier cover was material to an assessment of the risk being undertaken by the insurer and therefore it was concluded that

"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."

Hence, the ratio of ***Rekhaben*** (supra) cannot apply to this case.

8. From the record it is manifest that the DLA expired due to “septic shock with pneumonia in KICIO” the antecedent cause of which was “Carcinoma of lung”. In *Sulbha Prakash Motegaonkar* (supra) the Hon’ble Supreme Court held that:

“5. It is not the case of the Insurance company that the ailment that the deceased was suffering from was a life threatening disease which could or did cause the death of the insured. In fact, the clear case is that the deceased died due to ischaemic heart disease and also because of myocardial infarction. The concealment of lumbar spondylitis with PID with sciatica persuaded the respondent not to grant the insurance claim.

6. We are of the opinion that the National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischaemic heart disease and myocardial infarction had nothing to do with his lumbar spondylitis with PID with sciatica. **In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified.**

7. Accordingly, we set aside the order passed by the National Commission and allow the appeal. The respondent will accept the claim made by the appellants within a period of four weeks from today and make the due payment.”

(Emphasis added)

9. From the foregoing, it is manifest that the DLA expired within two years of the policy due to complications arising from cancer of the lung. The repudiation of the policy was on grounds that the insured failed to disclose diabetes and an earlier operation for removal of gall bladder (cholecystectomy) in 2007. The DLA was diagnosed with cancer in November 2011 whereas the policy was obtained in July 2010, i.e. after the policy was approved. As held by the Hon’ble Supreme Court in *Sulbha Motegaonkar* (supra) the DLA cannot be disentitled from the claim.

10. In the light of the discussion above, I am not persuaded by the arguments of the appellant. The appeal is therefore disallowed and the order of the State Commission affirmed with the following modification:

(i) Appellant shall pay the respondent Rs 19,75,000/-the sum assured under the Policy along with interest @ 9% p.a. from the date of repudiation of the claim within 8 weeks of this order failing which the amount shall be paid with interest @ 12% p.a;

(ii) Appellant shall also pay litigation costs of Rs 10,000/- to the respondent along with the payment as directed at (i) above.

Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**