NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 183 OF 2022

(Against the Order dated 24/08/2020 in Appeal No. 150/2020 of the State Commission Rajasthan)

1. NARENDRA
INDRA COLONY GRAM HALENA, TEHSIL VER, DISTRICT BHARATPUR RAJASTHAN
BHARATPUR
RAJASTHAN ....Petitioner(s)

Versus

1. LIFE CORPORATION OF INDIA & ORS
JEEVAN BIMA MARG, MUMBAI MAHARASHTRA - 400021
MUMBAI
MAHARASHTRA
2. LIFE CORPORATION OF INDIA THROUGH DIVISIONAL MANAGER
PLOT NO. A-20 NANGI PLAZA, GANDHINAGAR RAILWAY STATION KE SAMNE ANITA COLONY, JAIPUR RAJASTHAN
JAIPUR
RAJASTHAN
3. LIFE CORPORATION OF INDIA THROUGH CHIEF MANGER
SUPER BAZAR, SUPER MARKET BHARATPUR RAJASTHAN
BHARATPUR
RAJASTHAN ....Respondent(s)

<u>BEFORE:</u>

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE PETITIONER : MR. SIDDHARTHA IYAR, ADVOCATE WITH
MR. AYUSH GUPTA, ADVOCATE

FOR THE RESPONDENT : MR. VISHNU SHARMA, ADVOCATE
MS. APOORVA AGARWAL, ADVOCATE
MS. MONICA SHAMAR, ADVOCATE
MR. SONU, ADVOCATE

<u>Dated : 02 April 2024</u>

<u>ORDER</u>

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 58(1)(b) of Consumer Protection Act 2019, against the order dated 24.08.2020 of the State Consumer Disputes Redressal Commission, Rajasthan (hereinafter referred to as the ‘State Commission’), in First Appeal (FA) No.

150/2020 in which order dated 14.01.2020 of District Consumer Disputes Redressal Commission, Bharatpur (hereinafter referred to as District Commission) in Consumer Complaint (CC) 310/2016 was challenged, inter alia praying for setting aside the order dated 20.08.2020 passed by the State Commission and for allowing the Complaint No. 310/2016.

2. While the Revision Petitioner(s) (hereinafter also referred to as Complainant) was Appellant before the State Commission and Complainant before the District Commission and the Respondents (hereinafter also referred to as OPs/Insurance Company) were Respondents before the State commission in FA150/2020 and OPs before the District Commission in the CC No.310/2016.

3. Notice was issued to the Respondents on 11.03.2022. Parties filed Written Arguments/Synopsis on 17.04.2023 (Petitioner) and 04.10.2023 (Respondents) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

> The Petitioner's Uncle took three insurance policies from the Respondents/Insurance Company –(i) on 10.09.2012 Policy No. 199573388 ("First Insurance Policy"), (ii) on 26.09.2013 Policy No.199882104 ("Second Insurance Policy") and (iii) on 28.10.2013 Policy No.199884375 ("Third Insurance Policy"). The Petitioner was the nominee in the Third Insurance Policy. On 29.09.2015, the Petitioner's Uncle died and the claim was filed in all the three insurance policies. The Respondents paid the claim amount in the First Insurance Policy and the Second Insurance Policy. However, the claim filed in the Third Insurance Policy was repudiated by the Respondents on the ground that the insured did not mention about the Second Insurance Policy in the proposal form of the Third Insurance Policy. Hence, the Petitioner filed complaint before the District Forum.

5. Vide Order dated 14.01.2020, the District has Commission dismissed the Complaint No. 310/2016.

6. Aggrieved by the said Order dated 14.01.2020 of District Commission, Petitioner herein appealed in State Commission and the State Commission vide order dated 24.08.2020 has dismissed the Appeal No. 150/2020.

7. Petitioner has challenged the said Order dated 24.08.2020 of the State Commission mainly/inter alia on following grounds:

i. The order passed by the State Commission is unilateral and arbitrary and has been passed without application of judicial mind. The State Commission failed to see that there was deficiency of services on the part of the Respondent by not paying the claim amount in the Third Insurance Policy. The State Commission failed to consider the fact while deciding the First Appeal the claim form was filled by the Respondent's Agent, to whom the Petitioner's uncle clearly informed about all the previous insurance policies. It was the Respondent's representative's mistake that the fact of the Second Insurance Policy was not mentioned in the claim form in spite of the Petitioner's Uncle informing the same to the Respondents agent.

ii. The State Commission also failed to consider the fact that the contents of the proposal form of the Third Insurance Policy were never read out to the Petitioner's Uncle. If the contents of the proposal form were read out to the Petitioner's uncle, he would have corrected the error made by the Respondent’s representative. If the intention of the Petitioner's uncle was to hide the previous insurance policies, he would not have disclosed the First Insurance Policy also. The State Commission as well as the e District Commission have wrongly relied on the Apex Court’s Judgment in Reliance Life Insurance Company Limited & Anr. Vs. Rekha Ben Nareshbhai Rathod II (2019) CPJ 53 (SC) as the facts of that case were different from the facts of the instant case.

iii. The State Commission as well as the Hon'ble District Forum failed to appreciate the law that the suppression of material fact must be with the intention of committing fraud with the insurance company as was held by the Hon'ble Supreme Court in Life Insurance Corporation of India v Asha Goel (Smt.) & Anr. (2001) 2 SCC 160. The National Commission in a recent judgment in Life Insurance Corporation of India v Vijay Pal Singh 2021 (4) CPR 365 has held that there has to be malafide intention of the insured to hide any material fact.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are

summed up below.

8.1 In addition to the averments made under the grounds (para 7), the Petitioner contends that the both the Fora below have wrongly relied on the Apex Court’s Judgment in Reliance Life Insurance Company Limited & Anr. Vs. Rekha Ben Nareshbhai Rathod (supra) as the facts of that case were different from the facts of the case at hand. In Rekha Ben case the insured therein took the previous policy from Max New York Life Insurance Co. Ltd. which was not disclosed to Reliance Life Insurance Co. Ltd. who issued the subsequent policy. In that case there were two different insurance companies and Reliance Life Insurance Co. Ltd. who issued the second insurance policy had no way of knowing whether any previous policy was taken by the insured and not disclosed in the proposal form. Whereas in the instant case the Petitioner's Uncle took the First, Second and Third insurance policy from the Respondents only and the Respondents must have scrutinized its own record before issuing the Third Insurance Policy. If the intention of the insured was to hide about the previous policies, he would not have disclosed even the First Insurance Policy while taking the Third Insurance Policy. The insured informed about all the previous polices to the Respondent's representative and it was due to the Respondent's agent mistake the Second Insurance Policy could not be mentioned in the proposal form. Both the Fora failed to appreciate the law that the suppression of material fact must be with the intention to committing fraud with the insurance company as was held by the Hon'ble Supreme Court in Life Insurance Corporation of India v Asha Goel (Smt.) & Anr. (2001) 2 SCC 160. The Hon'ble Supreme Court in this case had held that on a fair reading of this Section 45 (2) of the Insurance Act, 1938, it is clear that it is restrictive in nature. It lays down three conditions for applicability of the second part of the Section namely: (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 policyholder 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. Mere inaccuracy or falsity in respect of some recitals or items in the proposal is not sufficient. The burden of proof is on the insurer to establish the circumstances and unless the insurer is able to do so there is no question of policy being avoided on the ground of mis-statement of fact. In the instant case, the Petitioner's uncle clearly informed about all the previous policies to the Respondent's agent. It is was the Respondent's agent's mistake that the Second Insurance Policy was not mentioned in the proposal form of the Third Insurance Policy. The Hon'ble National Commission in Life Insurance Corporation of India v Vijay Pal Singh (supra) has held that there has to be malafide intention of the insured to hide any material fact: *"18. In Life Insurance Corporation of India Vs. Smt. Shahida Begum (supra), this Commission has specifically held that non-disclosure of previous policies as mentioned in Schedule-A while taking the policies as mentioned in Schedule (B) specifically, when there is not even an iota of evidence to suggest that there was* *mala fide intention on the part of the assured person to do so. There is no material on record to prove that the assured person was not keeping good health at the time of taking insurance policy in large number, but paying huge sums of insurance premium"* In the instant case also there is no evidence on record which proves that the Petitioner's Uncle intentionally did not disclose about the Second Insurance Policy. The Petitioner's uncle had told about all the previous policies to the Respondents representative and it was the respondent's representative's mistake that the Second Insurance Policy was not mentioned in the proposal of the Third Insurance Policy.

8.2 On the other hand it is contended by the Respondent that reason for repudiating the third insurance policy taken by the Petitioner’s uncle is non-disclosure of previously held policy. The insured failed to disclose to Respondents about the second insurance policy bearing policy no. 199882104, taken by the petitioner's uncle just a month prior to purchasing the third policy. Such information is considered material information. As the time span since the purchase of the policy and the death of the policy holder has not even exceeded two years, the Respondents are completely within their rights to repudiate a policy obtained on false information. The Respondents sent a letter containing the reason for repudiating the claim on 16.07.2016. The District Forum dismissed the complaint filed by the Petitioner and the State Commission also dismissed the Appeal. The impugned order has been very clearly and meticulously drafted, answering all the major points argued by both the parties. It is unjustified to state that such an order was passed arbitrarily and without application of mind. It is further contended that had the information with regards to any previous policies held by the Petitioner's Uncle been given to the Respondents, Respondent No.3 would have conducted a thorough medical exam and detailed investigation with regards to the Petitioner's Uncle's Income, Background, Previously suffered diseases and medical conditions etc, and only on the basis of the investigation report would have issued/rejected the policy proposal. As none of the investigative procedures were done, the policy is de facto considered invalid, obtained by deceit and fraud. Thus no insurance claim can arise out of said policy. The claims of the petitioner claiming inadequacy and lack of proper service are completely untrue. The respondents have paid 2 out of the 3 policies obtained by the Petitioner's uncle. The two policies which have been paid out had no issues in their paperwork, hence they were paid out. The third policy was bought using false information and hence is liable to be repudiated. The impugned order has very appropriately referred two landmark judgements on the matter of disclosure of material facts. The first case referred is Reliance Life Insurance vs. Rekha Ben Nareshbhai Rathod SLP (C) No. 14312 of 2015, the Hon'ble Supreme Court observed that the failure of the Insured to disclose the policy of insurance obtained earlier amounted to suppression of a material fact that ought to have been disclosed to the insurance company and such non-disclosure rightly entitled the latter to repudiate the claim under the Policy. This principle clearly applies in the current case as the Petitioner's Uncle, the insured, clearly suppressed the information regarding his second policy. The Second case relied in the impugned order is LIC of India &

Anr. Vs Vidya Devi & Anr. In which it was observed that the Assured is under solemn obligation to make true and full disclosure of information on the subject which is within his knowledge. It is not for the purpose to determine whether the information sought for is material for the purpose of policy or not. The Petitioner's uncle was aware of the Second insurance policy which he bought just a month prior to purchasing the third policy and still did not disclose it when asked. Thus, repudiation is justified.

9. In this case there are concurrent findings of both the Fora below. Both the Fora below have duly looked into the facts of the case and contentions of the parties in the light of case laws on the subject. Non-disclosure of details with respect to the second policy in the proposal form for the third policy is not in dispute. Hon'ble Supreme Court in Rekhaben Case (Supra) have observed that failure of insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy. The Hon'ble Court further observed in this case that a person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequence arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it. In **Manmohan Nanda Versus United India Assurance Company Limited and Another (2022) 4 SCC 582**, the Hon'ble Supreme Court held that "*insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim uberrimae fidei."* The Hon'ble Supreme Court further held that

"Whether a fact is material will depend on the circumstances, as proved by evidence, of the particular case. It is for the court to rule as a matter of law, whether, a particular fact is capable of being material and to give directions as to the test to be applied. Rules of universal application are not therefore to be expected, but the propositions set out in the following paragraphs are well established :

(i) Any fact is material which leads to the inference, in the circumstances of the particular case, that the subject matter of insurance is not an ordinary risk, but is exceptionally liable to be affected by the peril insured against. This is referred to as the "physical hazard".

(ii) Any fact is material which leads to the inference that the particular proposer is a person, or one of a class of persons, whose proposal for insurance ought to be subjected at all or accepted at a normal rate. This is usually referred to as the "moral hazard".

(iii) The materiality of a particular fact is determined by the circumstances of each case and is a question of fact.

If a fact, although material, is one which the proposer did not and could not in the particular circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty."

In the present case non-disclosure of second policy in the proposal form for the third policy is a material fact. Had the insured disclosed the fact of both the policies correctly in the proposal form, it could have affected the decision of the Insurance Company for issuance of policy, hence non-disclosure of fact about the second policy in the proposal form for third policy is a material fact. As was held by the Hon'ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577] held that *"the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity."*

10. Both the Fora below have given well-reasoned orders and we are in agreement with the findings of the State Commission. We find no reason to interfere with its findings, hence the order of the State Commission is upheld. Accordingly the Revision Petition is dismissed.

11. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER