NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 349 OF 2023
(Against the Order dated 09/02/2023 in Complaint No. 1015/2016 of the State Commission Delhi)

1. LIFE INSURANCE CORPORATION OF INDIA
ROHTAK DIVISION OFFICE SCO, 3,4,5, SEC-1
ROHTAK .....Appellant(s)

Versus

1. SHIKHA JAIN
W/O LATE SANYAN JAIN, R/O C-152, PREET VIHAR
EAST DELHI .....Respondent(s)

BEFORE:
HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER

FOR THE APPELLANT :

Dated : 19 August 2024

ORDER

For the Appellant **Mr Ankur Goel, Advocate**

For the Respondent Appearance Not Marked

ORDER

PER SUBHASH CHANDRA

1. This First Appeal under Section 51 of the Consumer Protection Act 2019 assails order dated 09.02.2023 of the Delhi State Consumer Disputes Redressal Commission, New Delhi (in short, “State Commission”) in Consumer Complaint No. 1015 of 2016 allowing the complaint and directing the respondent to pay Rs 10,00,000/- to the complainant/ respondent with simple interest at 6% p.a. from 02.09.2014 (date of repudiation of claim) till 09.02.2023 (date of order) on or before 09.04. 2023 or with interest at 9% p.a. till actual realisation in

default along with Rs 1,00,000/- as costs for mental agony and harassment and litigation cost of Rs 50,000/-.

2. We have heard learned Counsel for the parties and perused the record carefully.

3. Briefly put, the late husband of the respondent (Sanyam Jain) took a Jeevan Anand (with profits) (with Accident Benefit) Policy of the appellant for Rs 10,00,000/- on 19.02.2013. The Deceased Life Assured (DLA) expired in Max Hospital, Patparganj, New Delhi on 08.10.2013. The claim for insurance was repudiated by the appellant on the ground that the DLA was suffering from Chronic Liver Disease (CLD) for the past 4 years being an alcoholic and that he was admitted in a condition of jaundice which is a direct result of CLD. The DLA expired within 7 months of taking the policy which did not disclose material facts relating to his health as required in a contract of *ubberima fides*. Alleging that the State Commission did not appreciate the facts, the appellant has impugned the order praying for setting it aside and for order(s) as deemed it and proper.

4. The appellant's case is that the DLA did not make full disclosure of his health condition and withheld material details relating to CLD as required at the time of the submitting the proposal form. According to the appellant, the respondent was a chronic alcoholic and his cause of death was due to jaundice as a result of damage to his liver that was evident from the medical report of the hospital**.** Alleging that the State Commission failed to appreciate the evidence placed before it, the appellant has challenged the impugned order on the grounds that (i) the entire medical records of Max Super Speciality Hospital from 04.10.2013 till 08.10.2013 were ignored; (ii) the treatment record was clear in recording the DLA to be a known case of CLD for 4 years which preceded the date of proposal of the policy; (iii) the State commission erred in holding that the policy having been accepted, it was incorrect to claim that the DLA was suffering from CLD since a medical examination had been conducted, as insurance was a policy of *Uberima Fide* or contract of good faith which required the DLA to disclose all material facts; (iii) the policy had been rightly repudiated on grounds of fraud in view of non- disclosure of all material evidence; (iv) in view of the policy having been taken in Hissar, Haryana, the State Commission did not have territorial jurisdiction; (v) The State Commission had erred in holding that the appellant had not filed any evidence that the DLAwas suffering from CLD for 4 years as he had voluntarily suppressed these facts at the time of taking the policy. It was contended that for these reasons there was no deficiency in service on part of the appellant and that the impugned order had erroneously held the appellant to be liable for the same.

5. *Per contra*, it was contended by the respondent that the contention of the appellant regarding was jurisdiction was baseless as the DLA was resident of Delhi and was admitted in Max Hospital, IP Extension, New Delhi. It was stated that the doctor who had conducted the medical examination had not been examined. It was argued that the DLA was neither suffering from nor was treated for CLD for 4 years as alleged. It wa contended that the burden of proof to prove the the DLA suffered from CLD as a pre-existing disease was on the appellant which had not been discharged. It was denied that the medical examination by the doctor was not detailed or based on inputs of the DLA but detailed and based on test reports. Reliance was placed on the following judgments: (i) of the Madhya Pradesh High Court in ***LIC of India Vs. Ambika Prasad Pandey***, AIR 1999 Madhya Prasad 13 in FA No. 55 of 1994 which held that burden of proof to prove suppression of material facts by insured lay on

the insurance company with regard to the allegation that the insured was suffering from a serious ailment before filling in the questionnaire ofr the policy and that if the doctor was not examined there was a failure in the discharge of burden of proof; (ii) Punjab & Haryana High Court in RSA No. 2220/1989 dated 04.01.2012; (iii) Chattisgarh High Court in WP No. 448/2012; ***LIC of India Vs. District Permanent Lok Adalat & Anr.,*** Civil Spl. Appeal (W) No. 1158 of 2003 dated 29.04.2004 that held that the insurance company was required to verify correctness of information provided and (iv) ***Golcha Minerals Pvt. Ltd. & Anr. Vs. Union of India & Ors.,*** WP (Civil) 2106 of 1991 dated 27.05.2004 which held that:

> 34. In fact, in the present case, the application for inclusion of soap-stone, in the existing mining lease has been made prior to making of an application by the respondent No. 3, and the petitioner has otherwise preferential right to be considered for grant of mining lease for soap-stone, even if it is assumed that earlier grant was not valid, the application for inclusion having been given after expiry of 30 days of Notification under Rule 59 was issued.
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> 35. In view of the aforesaid, obviously the conclusion reached by the Central Government cannot be sustained. The Central Government has reached its conclusion by ignoring the scheme of Section 6 of the MMRD Act and Rule 24 of the MCR in respect of the existing mining lease and by erroneously assuming that the existing lease in excess of 10 Sq. Kms. had automatically ceased to exist qua any specific area, for which there is no warrant under law.
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> 36. Accordingly, the writ petition succeeds and is allowed. The order of the Central Government under challenge is quashed and the order passed by the State Government in favour of the petitioner is restored. As a result of this, any order passed by the State Government in compliance of the Central Government order will automatically come to an end.

37. There shall, however, be no order as to costs.

6. The State Commission has held as under:

> 9. It is clear from the record that no evidence was filed by the Opposite Party to show us that the insured was suffering from CLD at the time of obtaining the policy in question and the complainant voluntarily suppressed this information from the Opposite Party. Even the death summary issued by the Max Super Speciality Hospital, Patparganj, Delhi fail to reflect that the insured was suffering from CLD from last four years. Therefore, we are of the opinion that the Opposite Party was wrong in repudiating the claim of the complainant vide letter dated 02.09.2014 on the ground that the insured suppressed about his CLD at the time of taking policy.
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> 11…. The cause of death is clearly mentioned in death summary as *"Accute on Chronic Liver Disease with Sepsis and Hepatic Encephalopathy with Heptorenal Syndrome"* which shows that the death of the insured was not due to an accident and therefore the aforesaid provision does not apply to the insured in the present case.

7. The letter of repudiation dated 02.09.2014 issued by the appellant reads as under:

> As per treatment papers of Max Hospital, New Delhi, DLA was suffering from CLD for the last four years and concealed this material information while taking insurance. This information was not disclosed at the time of taking insurance. He did not, however, disclose this fact in the proposal form personal statement.
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> It is, therefore, evident that he had made deliberate incorrect statements and withheld correct information from us regarding his health at the time of effecting assurance and hence in terms of the policy contract and the declaration contained in the forms of proposal for assurance we hereby repudiate the above claim and accordingly we are not liable for any payment under the above policy and all monies that have been paid in consequence thereof belong to us.

8. Appellant has relied upon the medical records of Max Hospital where the patient, who was 38 years of age, was admitted following a road accident on 29.03.2013 for which he admittedly received initial treatment in Meerut. As per the record of Max Hospital, IP Extension, New Delhi, the DLA was admitted to the hospital on 04.10.2013 as an alleged case of road traffic accident (RTA) on 29.03.2013 with low general condition with one episode of Hemetemesis or vomiting of blood. As per the Death Summary, the patient was treated conservatively on ventilator but did not respond despite medications as mentioned and went into a sudden cardiac arrest on 08.10.2013 resulting in death. The post mortem report did not express any specific opinion regarding cause of death and recorded that a definite cause could be indicated only after chemical analysis of viscera. However, the death summary recorded cause of death as "Accute on Chronic Liver Disease with Sepsis and Hepatic Encephalopathy with Heptorenal Syndrome". As per the Medical Progress Notes of the hospital maintained by the doctors, the patient's brother-in-law (attendant) stated that he was known case of Chronic Liver Disease for 4 years. The medical records thereafter continue to mention this although no record of any previous medications for this chronic condition or any tests of the liver during the stay in hospital were done/recommended. On this basis, the appellant has concluded that the DLA was a known case of CLD who chose not to disclose this material fact while taking a life insurance policy and was therefore not entitled to any claim.

9. The issue which falls for consideration is whether the repudiation of the claim by appellant was justified on ground of suppression of material facts.

10. The law relating to suppression of material evidence has been laid down by the Hon'ble Supreme Court of India in
Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd., C.A No. 2776/2022 decided on 10.07.2009 that in case of suppression of material facts, insurer was fully justified in repudiating the insurance contract and that it was not for the insured to decide what was 'material', and in ***P C Chacko & Anr. Vs. Chairman, LIC of India & Ors.,*** C.A No. 5322/2007 decided on 20.11.2007 that a contract of insurance is a contact of *ubberima fidei* (utmost good faith) requiring full disclosure of material facts. However, it is moot whether merely on the basis of a statement of the attendant/brother in law of the DLA, who was neither examined nor his affidavit brought on record, the fact of CLD as a pre-existing disease, as has been done in the present case, can be concluded. Admittedly, the DLA had a history of RTA and poor medical condition at the time of admission. However, it is neither the appellant's case nor of the Hospital that this was on account of the 'pre-existing' CLD.

The appellant has not brought on record any evidence to substantiate that the DLA was under any treatment for CLD by way of medication or hospitalization prior to his submitting a proposal for insurance to establish that although the incidence of CLD was in his knowledge, it was wilfully not disclosed in the proposal form. No details of medication for this disease while the DLA was admitted in hospital have also been brought out. The disclosure of "material information", must necessarily be established to be in the knowledge of the person requiring to make the disclosure. In the instant case, the appellant has not done so. It is being asserted that the information pertaining to CLD was known to the DLA for at least four years preceding his submission of the proposal form for the purpose of the policy but was not provided to the appellant. The onus of proving that the DLA's CLD was a pre-existing disease lies upon the appellant. He is required to prove this more substantively based on evidence brought on record through affidavit rather than by relying on an unverified statement by a third person. The records of the Max Hospital have also recorded and repeated this without even mentioning in the Death Summary that the patient, while being conservatively managed, was also managed for CLD. Lastly, the post mortem report is also not definitive as it only records that a conclusive cause of death can only be provided after chemical analysis of the viscera which has not been brought on record.

11. For the aforesaid reasons and in the facts and circumstances of this case, the basis of repudiation of the claim by the appellant cannot be sustained. Accordingly, we do not find reason to disturb the finding of the State Commission with regard to upholding the respondent's primary contention of allowing the complaint and to direct payment of the sum assured under the policy with compensation by way of interest within the time prescribed or with penal interest and cost of litigation. However, the award of compensation of Rs 1,00,000/- towards mental agony and harassment cannot be sustained as it would amount to award of multiple reliefs, in view of the fact that the interest being awarded subsumes all compensations.

12. In view the discussion above, the appeal is disallowed and disposed of with the following directions:

(i) appellant shall pay the respondent the claim amount of Rs 10,00,000/- under the insurance policy with interest @ 6% p.a. from the date of repudiation of the claim i.e., 02.09.2014 within a period of 6 weeks, failing which the applicable rate of interest shall be @ 9% p.a. till realization;

(ii) appellant shall also pay the respondent Rs 50,000/- as the cost of litigation along with the payment directed above;

(iii) the direction to pay the respondent Rs 1,00,000/- towards mental agony and harassment is set aside.

(iv) Pending IAs are disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER