

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 206 OF 2017

(Against the Order dated 06/10/2016 in Complaint No. 35/2015 of the State Commission
Maharashtra)

1. INDUMATI

W/O. DEEPAK RACHMALE, R/O. RACHMALE HOSPITAL,
BARSHI ROAD, LATUR, TQ. & DIST. LATUR,
MAHARASHTRA

.....Appellant(s)

Versus

1. SENIOR DIVISIONAL MANAGER, LIFE INSURANCE
CORPORATION OF INDIA & 2 ORS.

LIFE INSURANCE CORPORATION OF INDIA, DIVISION
OFFICE, AURANGABAD, ADALAT ROAD,
AURANGABAD,

MAHARASHTRA

2. THE ZONAL MANAGER,

LIFE INSURANCE CORPORATION OF INDIA, WESTERN
ZONAL OFFICE, YOGKHEME, JEEVAN BEEMA MARG,
MUMBAI-

3. THE OMBUDSMAN LIFE INSURANCE CORPORATION
OF INDIA,

JEEVAN SEVA ANNEXURE, 3RD FLOOR, (ABOVE MNTL)
S.V. ROAD, SANTAKRUJ (W),

MUMBAI-400054

MAHARASHTRA

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. ATUL B. DAKH, ADVOCATE

FOR THE RESPONDENT : MR. KAPIL SANKLA, ADVOCATE WITH
MR. AKHILESH AGARWAL, ADVOCATE
MR. HANISH PHOGAT, ADVOCATE
MR. GOPESH JINDAL, ADVOCATE
MR. PAGUN SHARMA, ADVOCATE

Dated : 22 July 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 06.10.2016 of the State Commission in complaint no. 35 of 2015 whereby the complaint was dismissed.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'complainant') and the learned counsel for the respondents no. 1 to 3 (hereinafter referred to as the 'insurance company') and perused the memorandum of appeal.
3. There is a delay of 23 days in filing the present appeal.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

4. The facts in brief are that on 23.08.2009, Shri Deepak Bhausahab Rachmale, the husband of the complainant (hereinafter referred to as the 'deceased insured') had obtained insurance policy from the insurance company for the insured sum of Rs. 30,00,000/-. It is alleged that during the subsistence of the insurance policy, on 08.06.2012, the deceased insured died due to septic shock. The complainant filed a claim with the insurance company. The insurance company repudiated complainant's claim vide its letter dated 28.02.2013 on the ground of withholding the material information regarding health by the deceased insured while submitting the insurance proposal. It is alleged that the complainant made representation to the insurance company on 16.04.2013 and the insurance company confirmed the repudiation of her claim vide its letter dated 29.09.2013. Thereafter, the complainant preferred an appeal with the Ombudsman on 30.02.2015 and the said appeal has been pending with the Ombudsman on 30.02.2015.

5. Being aggrieved, the complainant filed a consumer complaint before the State Commission with the prayer to direct the insurance company to pay Rs.30,00,000/- as a policy amount, Rs. 12,000/- towards financial loss caused to the complainant and Rs. 5,00,000/- towards mental torture and harassment along with 14% interest from 28.02.2013 till realization of amount to the complainant.

6. The insurance company contested the complaint by way of affidavit of its Manager, namely, Mahesh Vasudeo Sahastrabuddhe. It is stated that the deceased did not disclose in the proposal form that he was admitted in the hospital for the treatment of Pleural effusion taken by him in Lilawati Hospital Mumbai during the period from 29.08.2005 to 03.09.2005, therefore, his claim was rightly repudiated by the insurance company. It is also stated that the complaint is barred by limitation. It is also stated that before issuing the policy the deceased was examined by panel doctor of the insurance company but the deceased insured is not discharged from the liability of disclosing correct information in the proposal form and the policy in question was obtained by playing fraud. Hence, there is no question of applicability of doctrine of estoppel. The complaint is liable to be dismissed.

7. The State Commission, vide its order dated 06.10.2016, dismissed the complaint.

8. Being aggrieved by the order dated 06.10.2016, the complainant has filed the instant appeal seeking setting aside of the impugned order.

9. The main question before us is as to whether the repudiation of the claim by the insurance company is justified.

10. Before this Commission, learned counsel for the complainant has argued that as per section 45 of the Insurance Act, 1938, no policy of life insurance can be called in question by the insurer on the ground of inaccuracies or falsehood after the expiry of two years from when the policy was effected and in the case at hand, the policy in question was issued on 24.08.2009 while the deceased insured died on 08.06.2012 and hence, the repudiation of the claim by the insurance company is not sustainable in the eye of law. He further argued that the treatment taken (pleural effusion and anti-tuberculosis) was not such that would disentitle him to the policy and therefore, not disclosing the same would not amount to deliberate or willful act on the part of the deceased insured. He further argued that the insurer's panel doctor had examined the deceased insured before issuing the policy and when he was found fit and eligible, the insurance company issued the policy. He further argued that the cause of death is 'due to or as a consequence of in a case of Aplastic and 'due to or as a consequences of Anemia' and the deceased insured had taken the treatment for pleural effusion and anti-tuberculosis and both have no nexus with each other, therefore, the repudiation made by the insurance company is not correct and unjustified. He also sought to invoke the doctrine of estoppel against the insurance company on the ground that another policy had been settled by the insurance company in 2008. In support of his contentions, learned counsel placed reliance on the following decisions:

1. Sulbha Prakash Motekar & Ors. Vs. Life Insurance Corporation of India (2021) 13 SCC 561
2. Manmohan Nanda vs. United India Insurance Co. Ltd. & Ors. (2022) 4 SCC 582
3. LIC of India vs. Murala Siva Parvathi, revision petition no. 602 of 2009 (NC) decided on 10.12.2014

11. Learned counsel for the insurance company has argued that on the detailed investigation conducted by the insurance company, it was found that the deceased insured had suppressed the material information that he was suffering from right side pleural effusion and had taken anti-tuberculosis treatment in the year 2005 and had been admitted in Lilawati Hospital for the treatment of Metabolic Encephalopathy from 29.08.2005 to 03.09.2005 but the said facts were not stated at the time of taking the policy. He further argued that the deceased insured himself was a doctor and he would very well understood the importance of declaring the same but despite this, he did not disclose the same while obtaining the insurance policy. He further argued as that as regards the doctrine of estoppel is concerned, this doctrine is not attracted in the instant matter and regardless of examination by a panel doctor the insured was not discharged of his duty of true and full declaration. In support of his contentions, he placed reliance on the following judgments.

1. Satwant Kaur Sandhu vs. New India Assurance Co. Ltd. (2009) 8 SCC 316
2. Reliance Life Insurance Company Ltd. vs. Rekhaben Nareshbhai Rathod (2019) 6 SCC 175
3. Kanchan Bal vs. Kotak Mahindra Old Mutual Life Insurance Co. Ltd. 2016 SCC Online NCDRC 425

4. Branch Manager, LIC vs. Jyothi Sudhir 2016 SCC Online NCDRC 2445

5. LIC through Branch Manager vs. Lacha Devi 2015 SCC Online NCDRC 3738

6. LIC vs. Murala Siva Parvathi, revision petition no. 602 o 2009, decided on 10.12.2014 (NC)

12. In the instant case, it is not in dispute that the insured died after 34 months of taking the policy. It is also not in dispute that he did not disclose in the proposal form his right side pleural effusion and anti-tuberculosis treatment taken in 2005, and his admission in Lilawati hospital for the treatment of Metaboloic Encephalopathy. Additionally, from a perusal of the proposal form, it is seen that as against point no. 6(e), the deceased insured had stated 'No', which reads as under:

(e) Are you suffering from or have you ever suffered from Diabetes, Tuberculosis, High Blood Pressure, Cancer, Epilepsy, Hernia, Leprosy or any other disease ?	No
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13. As regards the point that under section 45 of the Insurance Act, 1938, the insurer cannot question a policy after two years, but from a perusal of clause (4) of that section, it is seen that the insurer may do so if he can show that inaccuracies were material and were suppressed fraudulently and the policy maker knew the statement to be false. It is significant to note that the deceased insured was a doctor and he himself knew that not disclosing his earlier ailments was a material omission. It is also important to note that the medical examination of the deceased insured by a panel of doctor does not take away the liability to make true and full disclosures. Tuberculosis is not a disease that gets cured in a matter of days and the information regarding hospitalisation would affect the risk profile. It is quite possible that the insurance company would have either rejected the proposal form for policy or asked for a higher premium considering his past illness. We are of the opinion that the State Commission has rightly held that the omission to mention this material information is deliberate and fraudulent. Reliance is placed on *Satwant Kaur Sandhu vs. New India Assurance Company Ltd.* (supra) and *Reliance Life Insurance Company Ltd. vs. Rekhaben Nareshbhai Rathod* (supra) wherein it has been held that deliberate suppression of material fact pertinent to health of the insured vitiates the contract of insurance, which is based on utmost good faith.

14. The Hon'ble Supreme Court in the case of *Reliance Life Insurance Company Ltd. vs. Rekhaben Nareshbhai Rathod* (supra) has held as under;

“Materiality of a fact also depends on the surrounding circumstances and the nature of information sought by the insurer. It covers a failure to disclose vital information which the insurer requires in order to determine firstly, whether or not to assume the risk of insurance, and secondly, if it does not accept the risk, upon what terms it should do so. The insurer is better equipped to determine the limits of risk-taking as it deals with the exercise of assessments on a day-to-day basis. In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not accept the risk is a material fact. If the proposer has knowledge of such fact, she

or he is obliged to disclose it particularly while answering questions in the proposal form. An inaccurate answer will entitle the insurer to repudiate because there is a presumption that information sought in the proposal form is material for the purpose of entering into a contract of insurance.”

15. As regards the reliance of the complainant on the decision of Sulbha Prakash (supra), it is seen that in that case, the insured suffered from lumbar spondylitis and sciatica that was not disclosed. The court while holding that the repudiation was incorrect recorded, ‘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 is incorrect and not justified’. But in the present case, the deceased insured suffered from tuberculosis which is such a disease that could disentitle the insured from getting his life insured. Therefore, the decision rendered in the case of Sulbha Prakash is of no help to the present case and the argument that there is no nexus between the cause of death and the material suppression has no force and the same is rejected.

16. As regards the claim that in another policy, the amount has been paid, and therefore, the insurer is estopped from denying this claim, it is seen that no documentary evidence regarding second policy has been placed on record, therefore, this ground fails and is rejected.

17. In view of the above discussion, we are of the opinion that the impugned order dated 06.10.2016 of the State Commission suffers from no infirmity or illegality. Therefore, the appeal being without merit is dismissed.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER