

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 355 OF 2017**

(Against the Order dated 19/07/2016 in Complaint No. 10/2014 of the State Commission  
Karnataka)

1. AVIVA LIFE INSURANCE CO. INDIA LTD.

THROUGH ITS GENERAL MANAGER, AVIVA TOWER  
SECTOR ROAD, OPP. GOLF COURSE DLF, PH-V SECTOR-  
43,  
GURGAON-122003

.....Appellant(s)

Versus

1. KARIYAPPA

S/O. PAMPANNA K. OCC: AGRICULTURE, POST:  
GUNDURU, TQ. GANGAVATHI,  
DIST. KOPPAL

.....Respondent(s)

**BEFORE:**

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

FOR THE APPELLANT : MR. JOYDIP BHATTACHARYA, ADVOCATE AND  
MS. LIVYA P. LALU, ADVOCATE

FOR THE RESPONDENT : MR. CHANDRA SEKHAR, ADVOCATE AND  
MR. FAEEK-UL-FAROOQ, ADVOCATE

**Dated : 08 April 2024**

**ORDER**

**PER SUBHASH CHANDRA**

1. Appellant Insurance Company has filed this Appeal challenging the order dated 19.07.2016 of the State Consumer Disputes Redressal Commission, Karnataka at Bangalore (for short "the State Commission") in Complaint NO.10 of 2014 filed by the Respondent. By the impugned order, the State Commission allowed the Complaint with costs of ₹5,000/- and directed the Appellant to pay to the Complainant/Respondent ₹30,00,000/- along with interest @ 8% p.a. from the date of complaint till actual realization. Appellant was directed to comply with the order within sixty days from the date of receipt of the order.

2. In brief, the facts of the case are that on 13.09.2012, Complainant's son namely Pampapathy had taken life insurance policy No.ALA 3115653 for sum assured of ₹30,00,000/- with yearly premium of ₹12,566/- for a period of 30 years. The policy was to expire on 13.09.2042. On 29.10.2012, THE Life Assured died due to heart attack. The Complainant informed the death of his son to Appellant Insurance Company along with necessary records. However, the claim was repudiated by the Appellant vide their letter dated 28.08.2013 stating that the Deceased Life Assured (DLA) was suffering from pre-existing Chronic Kidney Disease. Against the said repudiation, the Complainant filed the Complaint before the State Commission seeking direction to the Appellant Insurance

Company to pay the policy amount of ₹30,00,000/- along with compensation for mental agony and deficiency in service, amounting to ₹34,10,000/- along with interest @ 12% p.a.

3. Complaint was resisted by the Appellant by filing written version. The Appellant submitted that the Deceased Life Assured had obtained the policy from them by suppressing the material facts. It was submitted that the DLA was admitted as inpatient at Vijayanagar Institute of Medical Science, Bellary on 06.09.2012 with a history of breathlessness since two months and discharged on 07.09.2012. It was also submitted that as depicted from the progress notes of the hospital, the DLA was a known case of Chronic Kidney Disease and was on maintenance hemodialysis. Appellant stated that the Insurance Company had accepted the proposal in good faith and therefore, requested that the Complaint be dismissed.
4. We have heard learned Counsel for both the parties and perused the record. Short synopsis of written arguments has been filed by both the parties.
5. It is an admitted fact that Deceased Life Assured had taken policy for ₹30,00,000/- from the Appellant Insurance Company against annual premium of Rds.12,556/- for a period of 30 years. It is also an admitted fact that the risk commenced from 13.09.2012. It is argued on behalf of the Appellant that the State Commission has failed to appreciate the fact that the policy holder late Sh. Pampapathy had himself concealed the material fact about his health from them deliberately while filling up the proposal form. It is submitted that they have rightfully repudiated the claim as per terms and conditions of the policy and Section 45 of the Insurance Act. It is argued by the Appellant that the unsubstantiated alleged cause of death of the Deceased Life Assured was cardiac arrest. However, during investigation of the claim it was found that the deceased was a known case of Chronic Kidney Disease on Maintenance Hemodialysis prior to taking the subject policy. It is argued that the impugned order is a clear case of biased decision in derogation of law of *uberrima fides*. It is, therefore, prayed that the impugned order be set aside.
6. *Per contra*, it is argued on behalf of the Respondent/Complainant that the Appeal is wholly misplaced and the contentions raised therein are erroneous and devoid of any merit. It is argued that the deceased was physically and mentally fit at the time of obtaining the policy and they submitted the certificate dated 13.05.2013 issued by Dr. Madhusudan V. Hulagi of Jayanti Clinic, Karatagi showing that the policyholder died due to heart attack. Respondent has relied upon ***P. Venkat Naidu vs. Life Insurance Corporation of India & Anr.***, CPJ IV (2011) 6 SCC to contend that since the Appellant is taking the ground that the deceased life assured had suppressed the material fact regarding his health from them, the onus was on them to prove the same by producing any tangible evidence.
7. In ***P C Chacko & Anr. Vs. Chairman, LIC of India & Ors.***, C.A No. 5322 of 2007 decided on 20.11.2007, 2008 (1) SCC 321 it has been laid down by the Hon'ble Supreme Court that "*a contract of insurance is a contract of uberrima fidei (utmost good faith)*". It has also been held, in ***Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.***, C.A No. 2776 of 2022 decided on 10.07.2009, 2009 (8) SCC 316 that a contract of insurance falling under the category of *uberrimae fidei*,

“... an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, the obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily

depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment.”

**8.** In *Reliance Life Insurance Co. Ltd. Vs. Rekhaben Nareshbhai Rathod*, (2019) 6 SCC 175 the Hon’ble Supreme Court held that

The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed and whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance was a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. .... Thus, the failure of the insured should disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

**9.** In the light of the settled position of law, the contention of the appellant that the cause of death was not established or was not related to the information stated to have been withheld in the proposal form cannot be sustained. The DLA was under obligation to disclose all material facts known to him at the time of availing the policy. It is not material whether the cause of death was related to or not related to the facts not disclosed. The investigations of the respondent have revealed facts which were admittedly not disclosed at the time of the DLA’s proposal for the policy. These have not been controverted by the appellant. Hence, respondent cannot be faulted for repudiating the claim on the basis of non-disclosure of material facts.

**10.** For the foregoing reasons the finding of the State Commission cannot be sustained. The Appeal is, therefore, allowed. There shall be no order as to costs. Pending IAs stand disposed of with this order.

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**SUBHASH CHANDRA  
PRESIDING MEMBER**

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**DR. SADHNA SHANKER  
MEMBER**