Sheela and Others Vs. Lic of India, Rep. by the Zonal Manager and Others

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Nov-24-2011

Judge : The Honourable Shri. Justice K.R. Udayabhanu President &Amp; the Honourable Mr. S. Chandramohan Nair Member

Appeal No. : Complaint Case No. CC/04/11

Appellant : Sheela and Others

Respondent : Lic of India, Rep. by the Zonal Manager and Others

Judgement :

JUSTICE SHRI. K.R. UDAYABHANU : PRESIDENT

The complainants are the L.R.S. (wife and children) of the deceased Sasidharan who had availed an L.I.C. policy from the opposite parties 1 to 4/L.I.C. authorities. A sum of Rs. 35 lakhs is claimed towards the assured sum and a sum of Rs. 1 lakh as compensation and 10,000/- as cost.

2. The deceased died on 17.1.2004in an accident. It is stated that he was a PWD contractor. The first complainant is the wife and the rest are the children. It is alleged that the 6th opposite party Abdul Asharaf/L.I.C. agent was a close friend of the deceased and that he used to visit their house frequently and he is very familiar to them for the past 8 years. The above agent is a Member of the Panchayat wherein the complainants are residing. The above agent/6th opposite

party used to persuade the assured to avail an L.I.C. policy. Meanwhile on 6.3.2002, the deceased met with a bike accident and was hospitalized. He got fully recovered from the injuries and the opposite parties 5/Development Officer and 6 Agent were thoroughly aware of the above accident. They came to the house and assured the deceased that if he avails the LIC Policy , it will help his family to have a secured life, if any such accident happens in future. The deceased had studied up to 10th standard but was very poor in English. He can not read and understand the contents of the application form /proposal form or fill up the relevant details in the form for joining in the policy. The 6th opposite party/agent was fully aware of the above fact. He brought a proposal form and acting as the agent of the L.I.C. enquired and collected the details and asked the deceased to put his signatures where x marks are put and assured that he will fill up the entire details in the form and submit it in the concerned office. The deceased had disclosed the entire personal details including his health to the opposite parties 5 and 6. They were fully aware of the above details. The above agent did not read over the application form or explain the contents. The deceased understood its contents. Believing the assurance of the agent, the deceased put his signatures where cross marks are put and handed over the unfilled form to the agent in the presence of 5th opposite party, Development officer along with an amount of Rs. 24,225/- at the office of the 4th opposite party/branch manager. It can be gathered that the opposite parties 5 and 6 have willfully neglected to enter some details in the proposal form with an evil motive of achieving both monetory and professional gain and for making business advancement for the first opposite party, LIC. As directed by opposite parties 5 and 6 the deceased had undergone medical check up prescribed by the L.I.C. The proposal form was accepted by the first opposite party and policy certificate No. 774432934 was issued. There was no reason to repudiate the policy by O.Ps 1 to 4. The deceased was of good health when he joined the policy until his death. As stated in the notice dated 14.8.2004, sent by the 3rd opposite party/Sub Divisional Manager, the assured/deceased happened to submit a disability certificate before the United India Insurance Company upon their assurance that he will be entitled to a better claim if it is submitted. The allegation in the above notice that the assured was diagnosed to have I.V.D.P. L-4-L5, tardy ulnar nerve palsy (Left) Type 2 Diabetes, Mellitus are false. The death of the assured is in no manner connected with the reasons mentioned in the above notice or with the accident caused to him on 6.3.2002. The assured died by drowning due to an accident.

3. The complainants are in very poor circumstances. The act of the opposite parties repudiating the claim is illegal. It is further alleged that the opposite parties 5 and 6/Development officer and Agent respectively are the representative of the L.I.C. and hence the L.I.C. is vicariously liable for the acts done by the opposite parties 5 and 6.

4. The opposite parties 1 to 4/L.I.C. authorities have filed a joint version. They have contended that it was revealed that the assured had been suffering from Type 2 Diabetes Mellitus and hyper tension as well as having physical disability on account of a road traffic accident. The intimation in respect of the death of the assured that he died on 17.1.2004 was received from the first complainant on 5.2.2004. In the view of the fact that the assured had passed away within a very short period from the date of commencement of the risk and also as it was an early claim detailed investigation, was carried out by the Manager(Sales) of the Ernakulam Divisional Office. The opposite parties are not aware of the visits made by the 5th and 6th opposite parties to the house of the assured or as to the so called association between the complainants and the 6th opposite party. As per Rule 8(4) of L.I.C. of India(Agents Rules) 1972. Agent is not authorized to collect any moneys or to accept risk factors on behalf of the corporation or to bind the corporation in any manner whatsoever. The opposite parties are not vicariously liable. The opposite parties were not aware that the assured had met with a bike accident etc. till the investigation report was received. The assured had at no point of time ever disclosed this vital material facts relating to health to any of these opposite parties. The said facts were deliberately and fraudulently suppressed by the assured at the time of submitting the proposal. The assured has submitted the proposal dated 29.10.2003 and the policy was issued with the date of commencement as 28.10.2003 bonafide believing that every statement containing therein are true and correct. The mode of premium was quarterly and the amount of premium was Rs. 23,281/- The sum assured was Rs. 15lakh. There was accident benefit of Rs. 5 lakh. The case in the complaint that the assured was very

poor in English and could not read or understand the contents of the proposal form etc. are false. The assured had expressly declared in the proposal that the statements and the answers had been given by him after fully understanding the questions and that the same were true and complete in every particular and that he had not with held any information. He had further agreed and declared that the particulars mentioned in the Forum shall be the basis of the contract of Insurance between him and L,I.C. of India and that if any untrue averments be contained therein the said contract shall be absolutely null and void and all moneys in respect therein shall stand forfeited to the L.I.C. of India. Every circumstance and facts regarding the state of health of the assured would influence judgment of a prudent insurer in fixing the premium and in determining whether the insurer would take the risk. In the proposal form the answers to specific questions as to the instances of medical consultation during the last 5 years etc were answered in the negative. The other questions as to the state of health were all answered in the negative. The medical examination being conducted for the purpose of insurance is only a cursory examination and any latent or inherent illness cannot be detected in such examination. The assured had answered the material questions as to his health contrary to true facts as revealed in the investigation conducted by the L.I.C. In the investigation it was confirmed that the assured had met with an accident prior to the proposal on 6.3.2002 and was under treatment in Medical College Hospital , Thrissur with I.P. No. 4227with the date of admission on 6.3.2002 and the date of discharge on 1.4.2002. He also underwent in patient treatment at Medical College Hospital, Thiruvananthapuram as I.P. No. 157930 with the date of admission on 3.4.2002 and date of discharge on 6.4.2002. The I.P card showed that he is a known Diabetic and had hyper tension. He underwent treatment in West Fort Hospital, Thrissur with hospital No. 241674 and the date of admission on 17.4.2002 and date of discharge on 26.4.2002. He was an inpatient at Aswini Hospital, Thrissur with I.P. No. 62117 with the date of admission on 16.2.2003 and the date of discharge on 17.2.2003 and had O.P. treatment therein vide O.P. No. 192579. The copies of F.I.R. and Medical records revealed that the assured had met with a road traffic accident on 6.3.2002 and was admitted and treated in the above hospitals. From the postmortem certificate dated 24.5.2004 and the Certificate of Chemical Analysis dated 5.5.2004 with letter dated 1.6.2004

, it is revealed that the sample of blood and viscera contained 220 mg of Ethyl Alcohol per 100ml. The fact that the assured used to consume alcohol was deliberately suppressed by the assured at the time of submitting the proposal.

5. It is further stated in the version that on account of the accident the assured was physically disabled and the dis ability was assessed at 20%. It is seen from the medical records that the assured was suffering from I.V.D.P. L4-L5 tardy ulnar nerve palsy(left) and Type 2 Diabetes Mellitus. The assured has availed policies from United India Assurance Company for personal accident benefit and have claimed the medical benefit for this disability. These facts were within the exclusive knowledge of the assured. He has suppressed the above with the ulterior motive to defraud the L.I.C and did not disclose the same in the proposal dated 29.10.2003. The misrepresentation rendered the policy void abinitio.

6. Even assuming that the proposal was filled by the 6th opposite party, Agent, in such case, while on filling up the proposal form 6th opposite party was acting as the agent of the proposer and not as agent of the L.I.C. He had declared in the proposal that his usual state of health is good. The contract of insurance being a contract of good faith, it was the duty of the assured to make full disclosure of all the material facts. Repudiation was communicated to the complainants vide letter dated 14.8.2004. If the correct details of his health were disclosed at the time of proposal definitely it would have affected the under writing process and the decision on accepting the risk. It could have even resulted in not accepting the proposal.

7. The L.I.C. is entitled to repudiate the claim and declare the policy void as per section 45 of the Insurance Act, 1932. The complainant had taken up the matter with Divisional Manager, Chennai and the matter was considered by the Claim Review Committee consisting of a retired judge of the High Court. The Claim Review Committee rejected the complaint and the same was communicated on 11.12.2004. It is contended that the assured was an educated man capable of forming a contract. The opposite parties are not liable to honour such a claim.

8. The 5th opposite party /Development officer has filed separate version denying the allegations in the complaint. It is pointed out that the assured was a P.W.D

contractor and had knowledge in English. He had availed the policy after fully understanding the relevant rules and regulations. It is denied that the 6th opposite party brought the application form and got the assured sign in places where the cross marks are made. The entire allegations in this regard made in the complaint are denied. It was the 6th opposite party L.I.C. Agent, who introduced the assured to the 5th opposite party. The 5th opposite party being a Development Officer went along with the agent and had discussed with the assured. Later the assured came over to the L.I.C. , Branch Office at Thrissur and the 6th opposite party introduced the assured to the Asst. Branch Manager(sales) and had discussion . After discussion he agreed to avail an L.I.C. policy. Then later on after going through the statements and rules and regulations in the proposal form submitted the filled and signed proposal form to the opposite parties with necessary documents and medical reports. On a perusal of the Medical Report, it can be seen that the assured had willfully chosen not to disclose his earlier accident to the doctor. He did not reveal the prior accident to the 5th and 6th opposite parties and the Asst. Branch Manager(Sales) and the medical officer. If there is a pre insurance illness or deformity, it should have been disclosed and that is why the proposal statements are supported by declarations to the effect that the contract would be null and void if the statement given by him turns to be false and untrue. The opposite party was cheated by the assured by suppressing and concealing the material facts.

9. The 6th opposite party /Agent was called absent and set ex-parte.

10. Evidence adduce consisted of the testimony of Pws 1 to 3, Dws1 to 7 and Exts. A1 to A16, B1 to B45.

11. Mr. Sasidharan, aged 42years, husband of the first complainant and the father of the other complainants availed the life insurance policy involved herein on 29.10.2003 and also paid the premium of Rs. 23,381/- to be remitted quarterly. The coverage of Ext. B4 policy is 15 lakhs having the period of maturity as 20 years with accident benefit of Rs. 5lakhs as can be seen from Ext. B4 Policy in original. The assured died on 17.1.2004 ie.2 months after availing the policy. His body was detected in the well adjacent to his house at about 1.45 noon as can be

seen from Ext. B11, F.I.R. As per the F.I.S. rendered by the cousin of the deceased, it is suspected that he fell down in to the well while painting the motor. There is no case that the death is not an accidental one for the opposite parties also although in Ext. B31, report of the investigator of the United India Insurance company with respect to the Janatha Personal accident policy for Rs. 5lakhs, the investigator has requested for re investigation pointing out that it is likely to be a suicide as the person had died soon after availing the policy and the coverage involved a rather large amount. The above investigator was also not examined. The L.I.C authorities got the matter investigated by Dw6, Gopakumar, Manager(sales) who submitted Ext. B12 Report wherein it is stated that the complainant was involved in a serious bike accident on 6.3.2002 and that as can be seen from Ext. B23 , copy of the F.I.R. dated 8.3.2003, the deceased was riding on the pillion of the motorcycle registered in the name of his son and driven by another person. In the above case he sustained injuries to the spine and was under treatment as I.P and also as O.P. for a considerable period as is evidenced by Ext. B14 to B18 and B42,Ext. B43 and Ext. B45 treatment records. It is alleged that he has undergone treatments at Medical College Hospital, Thrissur, Medical College Hospital, Thiruvananthapuram, West Fort Hospital, Thrissur and Aswini Hospital, Thrissur during various periods. As per Ext. B19, disability certificate produced by him before the United India, Insurance Company for settling the personal accident claim insurance policy, percentage of dis ability noted is 20%. The treatment records also showed that he was having Hyper tension and Diabetes Mellitus. He was paid a sum of Rs. 90,000/- towards the sum assured which was Rs. 3,00,000/- vide Ext. B32, personal accident policy on the basis of the percentage of disability. The amount of Rs. 90,000/- was paid on 3.9.2003 vide Ext. B20. As per Ext. B22 dated 29.10.2003, he had issued a lawyer notice to the United India Insurance Company, claiming compensation as per the Janatha Personal Accident policy with coverage of Rs. 5 lakhs that he had availed from the United India Insurance Company. The United India Insurance Company had it appears declined to provide further compensation under the Janatha Personal Accident policy as he was already paid Rs. 90,000/- under Ext. B32 personal accident Policy with a coverage Rs. 3,00,000/- It is on the same day ie 29.10.2003 that he has submitted Ext. B1 proposal for the impugned policy. On account of the impugned facts revealed that he has sustained a serious road traffic accident on 6.3.2002 and underwent treatment in various hospitals and as he himself has submitted a disability certificate ie. Ext. B19 wherein a permanent disability of 20% has been assessed and as the same has not been disclosed in Ext. B1 proposal Form, the opposite parties/L.I.C. authorities repudiated the claim as per Ext. A3 repudiation letter dated 14.8.2004.

12. It is the contention of the complainants that the 6th opposite party L.I.C. Agent, an elected Member of the Panchayat of the area and a close friend of the family was fully aware of the accident involved and that he along with the 5th opposite party/ Development officer, persuaded the deceased to join the policy in furtherance of their business interests and inspite of the fact that the deceased revealed everything pertaining to his health to the opposite parties 5 and 6/the development officer and the agent respectively and that the above particulars were concealed from Ext. B1 proposal form by 5 and 6 opposite parties and got the deceased sign in the places where cross marks are affixed in the proposal form and that the deceased was not sufficiently educated to read and understand English in which language the proposal forum is printed. It is also contended that the complainant had undergone medical check up by the doctors authorized by the L.I.C. It is also contended that the deceased was in good health and that Ext. B19 the disability certificate was obtained as advised by the United India Insurance Company authorities to obtain the certificate of disability with higher percentage and so that the benefits under Ext. B32 personal accident policy can be better paid. It is the contention that the opposite parties 5 and 6 being the representatives and agents of the L.I.C. the L.I.C. is vicariously bound for the actions of opposite parties 5 and 6. It is stressed that the opposite parties 5 and 6 are still in the employment of the L.I.C.

13. On the other hand it is contended that the deceased was a person having policy coverage from the year 1995 vide Ext. B13 proposal, submitted to the United India Insurance company and that he was well aware of the conditions for availing policy coverage and further that he had sufficient knowledge in English, as he was a PWD contractor admittedly and that as can be seen from Ext. B1 proposal he had an annual income of 3,50,000/- and also an I.T. payee. It is

pointed out that the signature of the deceased as can be seen in Ext. B13 and B1 is in English. Being a P.W.D. contractor, he would be having sufficient knowledge in English to understand the terms of the proposal form and can not be treated as an illiterate person who can not understand the contents and the implications of the terms of Ext. B1 proposal form. The counsel for the complainants has pointed out the 6th opposite party, the agent stood ex-parte and that although, he continues to be an agent of the L.I.C. , the L.I.C. did not get him testify and face cross examination. It is the contention that the case of the complainants that the above agent was personally conversant with the state of affairs of the deceased and was a close friend of the deceased stands established. It is also pointed pout that there is nothing to show that the United India Insurance Company had considered 20% disability as certified in Ext. B19, disability certificate in computing compensation under the personal accident policy. Dw4, the branch manager of the United India Insurance company who was examined has stated that the details of calculation can be seen only in the work sheets which is not available. Dw1 the manager of L.I.C. also could not depose into his regard. It is also pointed out that it is admitted that two cases instituted by the petitioners are pending against the united India insurance company and hence Dw4 the branch manager of United India Insurance company , Thrissur has testified in support of the case of the opposite parties on account of the above ill will. The argument notes submitted by the complainants it is mentioned that O.P.s 333/05, 334/05 are pending in this regard before CDRF, Thrissur. It is also pointed out that in Ext. B3, Confidential Report, submitted by O.P.5, the development officer has mentioned that the assured was a completely healthy person. It is also pointed out that Dw7/O.P. 5 , the Development officer has deposed that the assured came to the L.I.C. office which is situated in the 3rd floor of the building by using stairs and that he used to travel by motor bike. Dws 1and 7 have admitted that the 6th opposite party/agent was an elected member of the Panchayat wherein the deceased was residing. It is also contended that the fact that Ext. B22 notice has been issued by the deceased on the same date on which Ext. B1, proposal form was submitted indicated that he had no intention to suppress any material facts. It is pointed out that Dw5 the then branch Manager of Thrissur L.I.C. has only stated that he can not say as to whether the assured has suppressed any material facts. It is also pointed out that as can be seen from the explanation submitted to the L.I.C. authorities by the 5th opposite party/Development officer, it is specifically mentioned that the party (deceased) was not interested in taking the policy at first; and that himself and the agent went to his house 3 times and managed the policy. Dw7/O.P. 5 has also testified that he has enquired from the neighboring residents as to the details of the deceased. The contention is that the deceased was repeatedly persuaded by O.Ps 5 and 6 to avail the policy. It is also pointed out that the evidence of Pw2 the Pathologist, and Ext. A13, A14 and A15 Medical Reports did not contain anything adverse with respect to the health of the deceased. It is the contention that it is the opposite parties 5 and 6, the Development Officer and the agent respectively who suppressed material facts relating to the health of the deceased. It is pointed out that Ext. B12 Report of investigation is totally unreliable.

14. It is also contended that Ext. B1 Proposal in the declaration by the proposer, the name and designation of the person who allegedly explained the contents of the Forum is left blank. It is contended that no body has explained the contents of the Forum to the assured. It is contended that the signature of the assured was obtained in an unfilled up Form where x marks are put by the opposite parties 5 and 6, the Development Officer, and the Agent respectively. It is pointed out that the explanation in this regard as to the absence of the name of the person who explained the terms in the Form to the assured by Dws 1 and 7 can not be believed. It is also pointed out that the statement of Dw7/Development Officer in the cross examination that he is not aware as to who filled up Ext. B1 Forum is in contradiction with the explanation of the agent furnished to the L.I.C. wherein he has mentioned that the proposal form was filled up at the office of the Assistant Branch Manager, ie. Dw5, and this form was filled up in the presence of the Assistant Branch Manager and Development Officer/Dw7.

15. We find that as per Ext. B14 to B18, and B40 to B43 and B45, the treatment records it stands established that the assured was an inpatient at West Fort Hospital, Thrissur from 17.4.2002 to 26.4.2002 and at Medical College Hospital, Thiruvananthapuram from 3.4.2002 to 6.4.2002. and at Medical college Hospital, Thrissur from 6.3.2002 to 1.4.2002 and at Aswini hospital, Thrissur from 16.2.2003 to 17.2.2003. Ext. B42 is the case sheet of treatment undergone at Medical

college hospital, Thrissur and Ext. B24 is the Wound Certificate with respect to bike accident. As per the treatment records, he was having I.V.D.P.(intervertebral disc prolapse)L4,L5 Sciatica (Right side). In Ext. B19, Disability Certificate issued by the Asst. Professor of Orthapaedics, Medical college hospital, Thrissur on verification of medical reports, it is mentioned that he was having I.V.D.P. which was proved by Magnetic Resonance Imaging and was treated with pelvic traction and other supportive measures. Subsequent to the initial treatment he was again admitted on 17.4.2002 with back ache radiating to right lower limb It is mentioned in the disability certificate that he is having difficulty in standing, climbing stairs and up hill and also having loss of sensation on the dorsum on the right foot. His neurological problems on account of the spinal injury is persisting, it is mentioned in Ext. A19 disability certificate dated 16.7.2003. A permanent disability of 20% as per Mc. Brides scale is also mentioned therein.

16. It is seen from Ext. B36 copy of the judgment in O.P.(MV)605/02 with respect to the bike accident which was decreed subsequent to the death that It is mentioned in the petition filed before MACT that in the accident, he sustained dis location of hip and disc. As per Ext. B36 a sum of Rs. 37,500/- has been awarded as compensation. As already noted above, a sum of Rs. 90,000/- was paid on 3.9.2003 vide Ext. B20 with respect to Ext. B32 Personal Accident Policy. Dw4, the senior branch manager of the Insurance Company has deposed that the assured was paid compensation as per the percentage of disability ie 20% vide Ext. B19 disability certificate. Although the same was challenged in the cross examination we find that on verification of Ext. B32 the personal accident policy the compensation has been paid as per the percentage of disability as the sum insured therein is Rs. 3lakhs and as per the terms of the policy, payment is to be made on the basis of permanent disability as assessed by the doctor.

17. It has also to be noted that it is on the next month after receipt of the compensation with respect to the personal accident policy that he has obtained the impugned policy by submitting the proposal on 29.10.2003. Further as pointed out by the opposite parties it is on the same day of issuing Ext. B22, lawyer notice to the United India Insurance Company claiming compensation for personal accident in another policy with United India Insurance Company, ie Janatha Personal

accident policy that had a coverage of Rs. 5,00,000/- that he has submitted Ext. B1, proposal. Both are dated. 29.10.2003. As can be seen from Ext. B13 he was having personal accident coverage policy with the United India Insurance company from 1995. In Ext. B13, proposal also there is column with respect to health and existing illness if any. Hence the contention of the counsel for the opposite parties that the assured was aware of the conditions of Insurance policies and as to the requirements like mentioning the pre existing illness etc. appears true.

18. As per Ext. B15, B42 and B45 Treatment records it is seen that he is a known diabetic. It is seen in Ext. B15 that he was being administered Insulin injection . It is also pointed out that as per Ext. B8 and B9, the Postmortem Certificate and Chemical Analysis Certificate of the viscera respectively that the sample of blood taken from the body at the time of postmortem contained 220 milligram of Ethyl Alcohol in 100 milliliters of blood. It is pointed out that the above content is quite on the higher side and further that the accident that resulted in his death has taken place in the forenoon. The clolumn with respect to the consumption of alcoholic beverage is answered in the negative in Ext. B1. It is pointed out that the above answer in Ext. B1 is also false.

19. We find that signatures of the deceased contained in Ext. B1 Proposal Form with respect to the impugned policy and Ext. B13 Proposal Form dated 21.8.95 with respect to the personal accident claims policy are in English and written with style and flair. He was also a PWD Contractor and admittedly studied up to the 10nth standard although no records of educational qualifications have been produced. As is already noted above as per Ext,. B1 he was having an annual income of 3,50,000/- The income in Ext. B13 proposal of 1995 is mentioned as Rs. 75,000/- Evidently he was not an illiterate person or a person who will sign on the dotted line. The contention that he was mislead by the 5th and 6th opposite parties, the Development Officer and the Agent respectively can not be accepted as such.

20. The version of the complainant that the 6th opposite party Agent was a family friend and an elected member of the Panchayat in which the complainants and the deceased were residing and that he knew everything as to the state of affairs of

the assured stands unchallenged. As mentioned above the 6th opposite party stood ex-parte although he is still an agent with the L.I.C. The above person was not made to testify. It appears that the assured and the agent might have colluded and suppressed material facts as to the state of health of the deceased in Ext. B1 Proposal. Dw7, The Development officer has denied that he was present when Ext. B1 Proposal form was filled up and when the deceased affixed his signatures in Ext. B1. He has also denied that he was aware of the bike accident and the consequent treatment underwent by the deceased. The contention that the 5th opposite party, Development Officer was also involved in the scheme and himself and the Agent made the deceased join the policy stands not proved although Dw7 , the Development officer has stated that he has enquired about the deceased with the neighboring residents and that he had visited the house of the assured. It is his version that the assured appeared quite healthy. It has to be noted that it is the contention of the complainants also that the state of health of the assured was good and that he had no disability and that Ext. B19 disability certificate was obtained in order to get a higher claim amount as directed by the officials of the United India Insurance Company. We find that the complainants are estopped from raising such contention in the view of the fact that on the basis of the disability certificate the assured has obtained compensation as per the percentage of disability and the assured has also issued lawyer notice claiming further compensation on the basis of the above disability with respect to the Janatha Personal Accident Policy. The treatment records would also show that he had sustained intervertebral disc prolapse L4-L5 and underwent treatment including traction and that he was a known case of Diabetes Mellitus. The L.I.C. also can not be made liable for the action of the agent even if it is without the knowledge of the complainant as the agent is not vested with such authority to mis represent facts (Mrs. Maniluxmi Patel Vs. Hindustan Corporative Insurance Society Ltd. and another A. I. R 1962 , Calcutta , 625).

21. The contention that the deceased before admitted into the policy had undergone medical examinations and the doctor of the L.I.C. have certified that he is of good health will not absolve the assured from not revealing the actual state of his health in the proposal. The evidence of Pw2, the Pathologist and Pw3, the authorized doctor of the L.I.C. would show that the clinical examinations and the

Lab tests are not sufficiently invasive so as to detect illness that the assured was having and if under medication. The contention is that the assured had an accidental death and that the same has no nexus with the bike accident and the consequent disability if any that he was having is not relevant. It is specifically held in P.J Chacko and another Vs. Chairman, L.I.C. of India, A .I. R 2008 SC 424 that a person making any wrong statement with knowledge of consequences thereof is estopped from pleading that even if such fact had been disclosed, it would not have been made any material change. The Supreme court in the above decision has reiterated that it must appear from the face of the record that the intention of the proposer was bonafide. It is not necessary for the insurer to establish that the suppression was fraudulently made by the policy holder or that he must have been aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose. Each one of the parties is required to be absolutely innocent of every circumstances which goes to influence the judgment of the other while entering into the transaction. If the deceased had not suppressed material facts it would have influenced the L.I.C. whether to insure or not, the deceased. (Ajay Prakash Mittal Vs. L.I.C. of India 1997(2) CPR 233 (NC)). Any fact which goes to the root of the contract of Insurance and has bearing on the risk involved would be a material fact. (Satwant Kaur Sandhu Vs. New India Assurance Company Ltd, 2009 CTJ 956 Supreme Court(CP). It is in evidence that the L.I.C. even if insure such a person a higher premium would have been demanded and the period of maturity would not have been that long. The maturity period of the instant policy was 20years as can be seen from Ext. B4 Policy. Further the intending assured would have been subjected to stricter medical examinations, the proforma of which has been produced vide Ext. B26 to B30. Hence he find that such contentions are not available to explain the suppression of material facts in Ext. B1 proposal form.

22. We find that there was deficiency in service on the part of the opposite party/L.I.C. also in the matter. As has been brought out in Ext. B1 Proposal at the place where the declaration by the proposer is seen, the name of the person, who has explained the contents of the form is not mentioned. The place is left blank. The name, designation and occupation of such person is to be mentioned therein, although in the space for the signature of the assured the signature has been

affixed. The explanation of Dws 1,5, and 7 that the name of the person who explained the contents of the form was not written as it was the agent himself who explained the contents. The explanation is applicable only with respect to a person who is not conversant in English. The opposite parties have not produced any authority or guideline in this regard. None in the official hierarchy has detected the above omission when the proposal was processed. Further the 6th opposite party, Agent as already noted above did not file version or testify. It is admitted that he has still the agent of the L.I.C. Ext. B25 filed with respect to the proceedings initiated against the Agent and the Development Officer would show that the Development officer was issued with a warning and the Agent was also sternly warned. It is also seen in Ext. B25 that considering the seriousness of the lapse on the part of the Agent it has been decided that for all cases of sum assured of Rs. 2 lakhs and above, introduced by the agent should have M.H.R. (Moral Hazard Report) by the Developing Officer and all such cases must be introduced to M.E. by the Development Officer only. It has also been decided that no advance will be granted to the agent for one year from the date of the order ie 3.2. 05 and not to consider the Agent for entry into a new club in the Club Membership Year 2005-2006 and all the commissions paid to the Agent under the particular policy will be recovered. It is also intimated that on repetition any instance of the above nature he will be liable for action under provisions of L.I.C. of India((Agents) (Regulations 1972) as well as I.R.D.A (Agents) Regulations 2002. The above letter is issued by the Senior Divisional Manager of LIC. But we find that the above punishment can not be treated as a serious one in view of the fact that the impugned policy involved Rs. 15 lakhs and Rs. 5lakhs towards accidental death benefit. We find that the L.I.C ought not to have retained his services further as his activity amounted to mis leading vulnerable individuals with full knowledge that the action amounted to clear violation of the rules in this regard. The L.I.C. has also found that there is lapse on the part of the 5th opposite party, the Development Officer and he was also advised to be more careful in future while recommending lives for insurance. In the letter issued by the Divisional Manager dtd. 20.1.2005, it has been held that the Development Officer has acted in a manner prejudicial to the interests of the corporation. It is pointed out that he should have made all reasonable enquiries with regard to the lives to be insured before recommending proposals for acceptance and bring to the notice of the corporation the circumstances, which may adversely affect the risk undertaken. It is also pertinent to note that the complainant has not claimed any compensation from opposite parties 5 and 6, the Development Officer and the Agent.

23. We find that the attitude of the L.I.C. in handing out rather flea bite punishment to the Agent would indicate that the L.I.C. is interested only to enhance its business and would go to any extent to condone the fraudulent actions of its agents. In view of the above serious lapse on the part of the L.I.C we direct the L.I.C./opposite parties 1 to 4 to refund the premium paid ie Rs. 23,281/- with interest at 9% from 28.10.2003, the date on which the premium was paid. The complainants would not be entitled any other amount ie the assured sum or the accident benefit in view of the fact that material facts have been suppressed in Ext. B1 proposal by the assured.

In the result, the O.P. is allowed in part as follows:

The opposite parties 1 to 4 /Life Insurance Corporation of India will refund to the complainants a sum of Rs. 23,281/- with interest at 9% per annum from 28.10.2003. The amount is to be paid within 3 months from the date of receipt of this order, failing which the complainant will be entitled for interest at 12% from 24.11.2011, the date of this order. In the circumstances, the parties will bear their own costs.

The original petition is disposed of accordingly.