

V.Rethi vs the Insurance Ombudsman

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Court : Kerala

Decided On : Jan-29-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/26752/2015

Appellant : V.Rethi

Respondent : The Insurance Ombudsman

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
MONDAY, THE 29TH DAY OF JANUARY 2024 / 9TH MAGHA, 1945
WP(C) NO. 26752 OF 2015 PETITIONER: V.RETHI AGED 40 YEARS,
W/O.LATE P.RAJENDRAN, RESIDING AT KIZHAKKE BELLIKOTH,
P.O.AJANUR, ANANDRASRAM, KASARAGODE. BY ADVS.
SRI.V.V.SURENDRAN SRI.P.A.HARISH RESPONDENTS: 1 THE
INSURANCE OMBUDSMAN OFFICE OF THE INSURANCE
OMBUDSAMAN, 2ND FLOOR, PULINAT BUILDING, OPPOSITE
COCHIN SHIPYARD, M.G.ROAD, KOCHI-682 015. 2 THE BRANCH
MANAGER STATE BANK OF TRAVANCORE, HOSDURG BRANCH,
KANHANGAD,KASARAGOD-671 315. 3 THE GRIEVANCE

REDRESSAL OFFICER SBI LIFE INSURANCE CO.LTD., NATARAJ, M.V.ROAD AND WESTERN EXPRESS HIGHWAY JUNCTION, ANDHERI EAST, MUMBAI-400 069. -:2:- 4 SBI LIFE INSURANCE COMPANY REPRESENTED BY ITS MANAGER, CENTRAL PROCESSING CENTRE, KAPAS BHAVAN, PLOT NO.3A, SECTOR 10 CBD,BELAPUR, NAVI MUMBAI-400 614.

BY ADVS. SRI.T.SETHUMADHAVAN (SR.) SRI.K.JAJU BABU (SR.) SRI.K.JAJU BABU SR. SRI.T.SETHUMADHAVAN SR. SRI. JAYESH MOHAN KUMAR, SC, STATE BANK OF TRAVANCORE SMT.M.U.VIJAYALAKSHMI (FOR R3 AND R4) SRI. VENUGOPAL V (GP) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:-

JUDGMENT

The petitioner availed a housing loan from the 2 nd respondent Bank. An insurance policy, covering the amount of loan, was also taken from the 4 th respondent. About four months after the disbursal of the loan/commencement of the policy, the husband of the petitioner died due to cardiac arrest. The claim of the petitioner for payment under the policy was repudiated, stating that there was failure on the part of the husband of the petitioner to disclose the pre- existing health condition in the insurance proposal. The petitioner approached the Insurance Ombudsman, who by Ext.P11 order considered the grievance raised in terms of the provisions contained in the Redressal of Public Grievances Rules, 1998, and rejected the complaint on the finding that, the stand of the insurance company that there was failure to disclose a pre- existing condition was justified. It was found as follows:

5. The insurance cover is granted based on a simple declaration of good health made by the DLA. In this -:4:- case he obviously was diagnosed with Diabetes Mellitus and alcoholic liver disease in 02/2000 and was on medication. Whether the disease was cured or under control is not known, but from the discharge

summary of 02/2006 it is clear that he did indeed have

Diabetes Mellitus. The DLA may have presumed that this factor is not very important while filling the membership form or the declaration of good health, however that is for the Insurer to decide as to what constitutes material or not as they are undertaking the risk on the life. Insurance contract is based on the principle of "Uberrimae Fides" or "utmost good faith" which essentially means that both parties to a contract should disclose all the facts in good faith and based on the facts the contract is entered upon. In this case there has been a breach of this very core insurance principle in that the proposer has failed to disclose his earlier illness and/or treatment particulars. It is quite possible that the underwriting decision would have been entirely different to the extent of declinature if the full facts had been disclosed. Even assuming that the DLA was cured of DM and Liver disease after 2006 due to the treatment, he cannot be said to be in good health as a normal person who does not have any illness and therefore there is suppression of material information at the proposal stage. The deceased is a highly qualified person working as A.E.E. of PWD, Govt. of Kerala and he should have made a true declaration in the proposal form. All the Medical Reports produced by the insurance company have -:5:-

proved beyond doubt that he has been suffering from Cirrhosis of Liver with Portal Hypertension and DM since 2006. The complainant produced a Sonography report dated 18.08.2012 in which there is no mention of Liver Cirrhosis. But the report dated 14.06.2013 and discharge summary dated 18.06.2013 speak of Liver Cirrhosis, so also the discharge summary from A.J. Hospital dated 02.02.2006. The report dated 18.08.2012 when considered along with other reports and discharge summaries lacks authenticity and cannot come to the rescue of the insured in proving that he did not have pre-existing illness. The respondent insurer is totally justified in repudiating the claim.

2. The learned counsel for the petitioner would

submit that the death of the husband of the petitioner was on account of cardiac arrest and not on account of any pre-existing medical condition, as is now sought to be established by the insurance company. It is submitted that this cannot be stated to be a case where there was lack of utmost good faith on the part of the husband of the petitioner in the failure to disclose that he was suffering from diabetes and liver cirrhosis (alcoholic liver cirrhosis). -:6:- It is submitted that the ultimate cause of death was neither diabetes nor any condition related to alcoholic liver cirrhosis and therefore, the ground taken to repudiate the claim for insurance is not sustainable.

3. The learned counsel appearing for the 4th

respondent/insurance company would refer to the counter affidavit filed in this Court to contend that this was a clear case where there was failure to disclose the pre-existing medical condition. It is submitted that, as rightly found by the Insurance Ombudsman, a contract of insurance is an Uberrima fides contract, where utmost good faith is absolutely essential and the failure to disclose the pre-existing medical condition would certainly be a ground to repudiate the claim for insurance. It is submitted with reference to Ext.R4(f) that, the husband of the petitioner was suffering from diabetes mellitus and alcoholic liver disease for which he was treated at the A.J.Hospital and Reserch Centre, Mangalore. It is submitted that the policy was issued on 08-03-2013 and therefore, considering the period from 2006 to 2013, the fact that the petitioners -:7:- husband was suffering from diabetes and alcoholic liver disease was something that had to be disclosed in the proposal for insurance.

4. Having heard the learned counsel for the

petitioner, learned counsel for the 4 th respondent and the learned counsel for the 2nd respondent, I am of the view that the petitioner has not made out any case for grant of relief. As rightly held by the Insurance Ombudsman in Ext.P11 order, a contract of insurance is an Uberrima fides contract, where it was necessary for the proposer to disclose previous medical condition, especially when the policy was

one which contemplated the payment of the amount due under the housing loan in the event of the death of the policy holder during the term of the insurance. It is clear from Ext.R4(f) that the husband of the petitioner was suffering from diabetes mellitus and alcoholic liver disease even in the year 2006. This fact was admittedly not disclosed to the insurance company at the time when the insurance proposal was made and the policy was issued. This clearly constitutes a lack of good faith as held by the Insurance Ombudsman in Ext.P11. No ground is made out to interfere with the findings of the Insurance Ombudsman in Ext.P11 order in exercise of the jurisdiction vested in this Court under Article 226 of the Constitution of India. Writ petition fails and it is accordingly dismissed. Sd/- GOPINATH P. JUDGE

ats -:9:- APPENDIX OF WP(C) 26752/2015 PETITIONERS EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE CERTIFICATE OF INSURANCE ISSUED BY THE 4TH RESPONDENT DATED 8.3.2013 ALONG WITH ANNEXURES. EXHIBIT-P2: A TRUE COPY OF THE ABDOMINO-PELVIC SONOGRAPHY RESULT WITH RESPECT TO THE PETITIONER'S HUSBAND DATED 18.8.2012. EXHIBIT-P3: A TRUE COPY OF THE DISCHARGE SUMMARY DATED 18.6.2013 ISSUED A.J.HOSPITAL AND RESEARCH CENTRE WITH RESPECT TO THE HUSBAND OF THE PETITIONER. EXHIBIT-P4: A TRUE COPY OF THE ABDOMINO-PELVIC SONOGRAPHY CONDUCTED ON THE HUSBAND OF THE PETITIONER DATED 14.6.2013. EXHIBIT-P5: A TRUE COPY OF THE DEATH SUMMARY REPORT ISSUED BY KIMS TRUST HOSPITAL. EXHIBIT-P6: A TRUE COPY OF THE CLAIM STATEMENT PREFERRED BY THE PETITIONER. EXHIBIT-P7: A TRUE COPY OF THE LETTER DATED 11.1.2014 ISSUED BY THE 3RD RESPONDENT. EXHIBIT-P8: A TRUE COPY OF THE REPRESENTATION OF THE PETITIONER BEFORE THE GRIEVANCE REDRESSAL OFFICER DATED 19.2.2014. EXHIBIT-P9: A TRUE COPY OF THE COMMUNICATION DATED

22.2.2014 ISSUED BY THE CHIEF MANAGER CLAIMS, INTIMATING THE DECISION OF THE CLAIMS REVIEW COMMITTEE TO UPHOLD THE DECISION OF THE 4TH RESPONDENT.

EXHIBIT-P10: A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. EXHIBIT-P11: A TRUE COPY

OF THE ORDER DATED 31.3.2015. RESPONDENTS EXHIBITS EXHIBIT R4(a) COPY OF THE CERTIFICATE OF INCORPORATION VIDE NO.11-129113OF 2000. -:10:- EXHIBIT-R4(b) TRUE COPY OF THE LIST OF THE INSURERS DISPLAYED ON THE WEB SITE OF THE FINANCE MINISTRY EXHIBIT-R4(c) TRUE COPY OF THE MASTER POLICY BEARING NO.70000000908 OF STATE BANK OF TRAVANCORE EXHIBIT-R4(d) TRUE COPY OF THE SBI LIFE-RINn RAKSHA MEMBERSHIP FORM NO.7002039411 DATED 23.01.2013 EXHIBIT-R4(e) TRUE COPY OF CERTIFICATE OF INSURANCE IN THE NAME OF ONE OF THE MEMBER MR.P.RAJEDRAN. EXHIBIT-R4(f) TRUE COPY OF THE DISCHARGE SUMMARY OF A.J.HOSPITAL & RESEARCH CENTRE, MANGALORE DATED 07.02.2006 ISSUED IN FAVOUR OF RAJENDRAN EXHIBIT-R4(g) TRUE COPY OF THE DISCHARGE SUMMARY OF A.J.HOSPITAL & RESARCH CENTRE, MANGALORE DATED 18-06-2013 ISSUED IN FAVOUR OF RAJENDRAN EXHIBIT-R4(h) TRUE COPY OF THE REPUDIATION LETTER DATED 11.01.2014 FORWARDED BY THE SBI HEAD CLAIMS TO THE BRANCH MANAGER OF SBI, KASARGOD EXHIBIT-R4(i) TRUE COPY OF THE LETTER DATED 22.02.2014 ISSUED BY THE CHIEF MANAGER SBI TO THE PETITIONER

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