



GAHC010208772021

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6542/2021

JOYANTA MAIBANGSA @ JOYANTA HOJAI
R/O. CHOTO NARAINPUR KACHARI, P.O./P.S. HARANGAJAO, DIST. DIMA
HASAON ASSAM, PIN-788818.

VERSUS

THE KOTAK MAHINDRA LIFE INSURANCE COMPANY LIMITED AND 4 ORS
REP. BY ITS MANAGING DIRECTOR, 2ND FLOOR, PLOT C-12, G-BLOCK,
BKC, BANDRA C, MUMBAI-400051, MAHARASTRA, INDIA.

2:THE MANAGING DIRECTOR

KOTAK MAHINDRA LIFE INS. CO. LTD.
2N FLOOR
PLOT C-12
G-BLOCK
BKC
BANDRA-C
MUMBAI-400051.

3:THE GRIEVANCE OFFICER KOTAK MAHINDRA LIFE INS. CO. LTD.

KOTAK TOWERS
7TH FLOOR
ZONE IV
BUILDING NO.21
INFINITY PARK OFF WESTERN EXPRESS HIGHWAY
GOREGAON MULUND LINK ROAD
MALAD EAST
MUMBAI-400097.

4:THE BRANCH MANAGER



RANGIRKHARI BRANCH
KOTAK MAHINDRA LIFE INS. CO. LTD.
SHOBHANA SUPER MARKET
HOLDING NO.34/1
2ND FLOOR
SILCHAR
ASSAM-788005.

5:INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA

REP. BY ITS CHAIRMAN
HAVING ITS REGISTERED OFFICE AT SY NO.115/1
FINANCIAL DISTRICT NANAKRAMGUDA
GACHHOWLI
HYDERABAD-50032

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, IRDAI

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT

Date : 25-01-2023

An unfortunate and helpless widow is before the Court with the grievance regarding non-payment of the amount covered by the Insurance Policy of her deceased husband. The husband was a victim of extremist violence and he had passed away on 28.04.2020. The life of the husband was insured with the respondent No. 1 which, however, was repudiated on 10.12.2020 on the alleged ground of suppression of facts. The efforts of the petitioner to redress her grievance by approaching the Insurance Ombudsmen having failed to yield any result, the writ court has been approached.

2. I have heard Shri B. D. Das, learned Senior Counsel assisted by Ms R. Deka, learned counsel for the petitioner whereas the respondent-Insurance Company is

represented by Shri M. Sharma, learned counsel.

3. The brief facts of the case may be narrated as follows.

4. The petitioner is a widow, who has instituted the present writ petition. It is the case of the petitioner that her husband Late Sontosh Hojai, during his life-time, had obtained a Life Insurance Policy with the Kotak Mahindra Life Insurance Company Ltd. on 30.03.2018 bearing Policy No. 09870477. The name of the policy was Kotak Assured Savings Plan (Basic Plan) along with Accident Death Benefit (Rider). The term of the policy was for a period of 20 years with guaranteed maturity benefit of Rs.25,42,929.40 and the basic sum assured for the policy was Rs.15,46,191/-. The petitioner was the nominee of the said policy. The premium amount was Rs. 2,53,216/-.

5. On 24.04.2020, the husband of the petitioner was abducted from the residence by some miscreants and having failed to trace him out, an FIR was lodged on 25.04.2020 which was registered as Harangajao PS Case No. 3/2020. Ultimately, on 30.04.2020, the body of the husband of the petitioner was found. In this connection, the petitioner had also written a letter to the High Court based upon which a *suo moto Habeas Corpus* case was registered as WP(Crl.) (*suo moto*) 1/2020.

6. Subsequently, the claim was made by the petitioner who was the legal heir and nominee. Such claim was made on 17.09.2020 in the local office of the respondent. However, the said claim was repudiated vide an order dated 10.12.2020. Against the aforesaid repudiation, an appeal was preferred by furnishing all relevant documents and information. Unfortunately, there was nothing to show that the appeal was even considered. Accordingly, by invoking the provisions of Rule 13 of the Insurance Ombudsmen Rules 2017, the complaint was, however, closed by the Ombudsmen



holding that there was lack of pecuniary jurisdiction.

7. Shri Das, the learned Senior Counsel for the petitioner has submitted that reason put forward in rejecting the claim of the petitioner is absolutely unreasonable and arbitrary and would rather, reflect the high handedness. The policy was opened on 21.03.2018 and it is not in dispute that the premiums were paid regularly. The incident occurred on 24.04.2020 when the husband of the petitioner was kidnapped from their residence by some unknown militants. An FIR was immediately lodged before the Harangajao Police Station in the district of Dima Hasao which was registered as Harangajao PS Case No. 3/2020 under Section 365 IPC. Since the husband of the petitioner could not be traced out, the petitioner addressed a letter dated 28.04.2020 to this Court which was, in turned, converted to a *suo moto* proceedings and registered as WP(Crl) (suo moto) No.1/2020. During the pendency of the aforesaid writ petition, the husband of the petitioner was found dead at Lailing village and under the Langting Police Station. The writ petition was, accordingly disposed of vide order dated 04.10.2021 as investigation was concluded and Charge-Sheet submitted.

8. By drawing the attention of this Court to the policy document, the learned Senior Counsel has submitted that all information, as sought for, was given by filling up the prescribed form. Against the "occupation" category the deceased had mentioned as self-employed and as further details, had put Trading. Against Sl. No. 2.6, information regarding the history of conviction under any criminal proceeding in India or abroad has been answered as "NO". Prior to obtaining of such Policy, the deceased husband was subjected to a number of queries and interrogation and only after being fully satisfied with his antecedents and eligibility, the policy was opened. The learned Senior Counsel has further submitted that the policy was opened on 30.03.2018 whereafter it was renewed from time to time and at no point of time, any objection was raised by the Insurance Company and rather, the premiums were accepted.

9. Shri Das, the learned Senior Counsel for the petitioner has submitted that at the time of obtaining the Policy, the deceased had to undergo a number of interrogation and queries regarding his antecedents and other activities.

10. In support of his submission, Shri Das, the learned Senior Counsel for the petitioner places reliance upon a decision of the

Hon'ble Supreme Court reported in the case of ***Satwant Kaur Sandhu Vs. New India Assurance Company Ltd.***, reported in **(2009) 8 SCC 316**. In the said case, reference was made to the Insurance Regulatory and Development Authority (Protection of Policy Holders' Interests) Regulations, 2002 leading to the following observation:

“24. In this regard, it would be apposite to make a reference to Regulation 2(1)(d) of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002, which explains the meaning of term "material". The Regulation reads thus:

“2. Definitions.—In these regulations, unless the context otherwise requires,—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) "Proposal Form" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be

granted.

Explanation: "Material" for the purpose of these regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer."

Thus, the Regulation also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the context of guiding the insurer to decide whether to undertake the risk or not."

11. Further, reference was made to the case of ***Sulbha Prakash Motegaonkar & Ors. Vs. Life Insurance Corporation of India***, reported in **2015 SCC OnLine SC 1880** wherein it has been held as follows:

"8. We are of the opinion that the National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischaemic heart disease and myocardial infarction had nothing to do with his lumbar spondylitis with P I D with sciatica. 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 was incorrect and not justified."

12. *Per contra*, Shri M Sharma, learned counsel for the Insurance Company has submitted that a contract of insurance is distinct from any other contract wherein, there is a requirement of utmost good faith. If, while at the time of opening a policy, there has been suppression of material facts or no candid disclosure, a policy can be repudiated. Shri Sharma, learned counsel has also raised the objection on the maintainability of the writ petition and in support of his submission, he has relied upon

the decision of the Hon'ble Supreme Court in the case of ***Federal Bank Ltd. Vs. Sagar Thomas & Ors.***, reported in **(2003) 10 SCC 733**. The Hon'ble Supreme Court in the said case had held that merely because of certain regulatory provisions to ensure that business or commercial activity carried on by a private bodies remains within a discipline that itself will not confer any status to be treated as a body amenable to Article 226 of the Constitution of India.

13. Since an issue had arisen regarding the maintainability of the writ petition on the ground that the respondent is not an instrumentality of the State under Article 12 of the Constitution of India, reference has been made to the case of ***BCCI Vs. Cricket Association of Bihar***, reported in **(2015) 3 SCC 251** wherein the Hon'ble Supreme Court has laid down a clear distinction of a body which may not be strictly one within the meaning of Article 12 of the Constitution of India but still, be amenable to the writ jurisdiction under Article 226 of the Constitution of India. In the said case, the status of the BCCI was the subject matter of dispute regarding amenability to writ jurisdiction. The Hon'ble Supreme Court has laid down as follow:

“34. The functions of the Board are clearly public functions, which, till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a nongovernment body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action.”

35. Our answer to question No.1, therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be State under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.”

14. In the case of ***Satwant Kaur Sandhu*** (supra), the Hon’ble Supreme Court has reiterated that it is a fundamental principle of Insurance Law that utmost good faith must be observed by the contracting parties. It is further been stated that good faith forbids the parties from non-disclosure of the facts which the party was aware of. For ready reference, the relevant paragraphs are extracted herein below:

“19. In United India Insurance Co. Ltd. Vs. M.K.J. Corporation², this Court has observed that it is a fundamental principle of insurance law that utmost faith must be observed by the contracting parties. Good faith forbids either party from non- disclosure of the facts which the party privately knows, to draw the other into a bargain, from his ignorance of that fact and his [1908] 2 K.B. 863 (1996) 6 SCC 428 believing the contrary. (Also see: Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd.³).

20. MacGillivray on Insurance Law (Tenth Edition) has summarised the assured's duty to disclose as under: "...the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms.”



15. In the case of *Reliance Life Insurance Company Ltd. Vs. Rekhaben Nareshbhai Rathod*, reported in **(2019) 6 SCC 175**, the Hon'ble Supreme Court was dealing with a matter where the proposer had set up a defence that signatures were obtained in the format without knowing the contents. Rejecting such submission, the Hon'ble Supreme court had held that once the contract was signed, the parties will be bound by the terms of the contract. The facts of the said case however do not appear to have much of relevance in the present dispute.

16. There is no dispute to the proposal advanced by Shri Sharma, learned counsel for the Insurance Company that a Policy of Insurance is a contract of utmost good faith where the parties are required to disclose all material facts. Keeping that principle in mind, let us examine the present dispute. None of the documents or the contents thereof would, even indicate that there has been any suppression of material facts while opening the policy by the husband of the petitioner. The fact that the policy was renewed from time to time which presumes a re-verification is also a relevant factor in favour of the policy holder. In the unfortunate episode of abduction and subsequent elimination of the husband of the petitioner, there is not even a semblance of any contributory negligence on the part of the husband of the petitioner.

17. As regards the ground of maintainability of the writ petition, in view of the law laid down by the Hon'ble Supreme in the case of *BCCI* (supra) wherein, it has been held that a body against which a writ petition is filed is not necessary to be a State or its instrumentality under Article 12 of the Constitution of India, coupled with the fact that duties discharged by the respondent-Company are



public duties, this Court is of the unhesitant opinion that the present petition is maintainable.

18. In view of the above, the repudiation made vide communication dated 10.12.2020 is set aside and the respondent-Insurance Company is, accordingly directed to pay the sum assured to the claimant who is the widow of the deceased expeditiously and in any case within an outer limit of 45 days from today.

19. No order as to cost.

JUDGE

Comparing Assistant