

**IN THE HIGH COURT OF ORISSA AT CUTTACK****WP(C) No. 17627 of 2016**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Tapaswini Panda *Petitioner (s)*

-versus-

Zonal Manager, LIC of India, Patna & Ors. *Opp. Party (s)*

Advocates appeared in the case:

For Petitioner (s) : *Mr. Debaraj Mohanty, Adv.*

-versus-

For Opp. Party (s) : *Mr. J. R. Deo, Adv.*
On behalf of
Mr. G. Misra, Sr. Adv.
(for O.Ps.1 & 2)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-17.05.2024

DATE OF JUDGMENT:-24.07.2024

Dr. S.K. Panigrahi, J.

1. The Petitioner, in this Writ Petition, seeks to challenge the award dated 31.03.2015 passed by the Insurance Ombudsman, Odisha, Bhubaneswar, wherein the Tribunal has confirmed the repudiation of death Claim under Policy No.593967375, Plan/term:165-11 for an assured sum of Rs.5,00,000/- (Five Lakh) by the Opp. Parties vide its letter dated 25.3.2013, for the aforesaid policy being illegal and arbitrary.



I. FACTS OF THE CASE:

2. Succinctly put, the facts of the case are as follows:

- (i) Late Raghunath Nayak, the father of the petitioner, had made three policies of Life Insurance Corporation of India, Sambalpur Division bearing policy No. 593080488, 593891802 and 593967375 respectively. The Opp. Party No. 2 also issued bonds in the respective policies. The father of the petitioner made a policy no.593891802 where in date of birth of late Ragunath Naik was declared to be 18.03.1952 on the basis of previous policy.
- (ii) The Opp. Parties accepted the same and issued bond in favour of late Ragunath Naik. Thereafter, the Opp.Parties accepted premium for the aforesaid policy.
- (iii) On 18.9.2010, Raghunath Nayak made another policy with the Opp. Party No.1 bearing Policy No.593967375 wherein date of birth has been declared as 18.03.1952 on the basis of previous policies status. The sum assured of the aforesaid policy was Rs.500000/-. The Opp. Party No.1 also accepted the same and issued bond no.8907. Thereafter, the Opp. Parties accepted premium for the aforesaid policy. It is pertinent to mention that in the aforesaid policies the petitioner is the nominee.
- (iv) As a matter fact, the policy holder namely Rghunath Nayak died on 15.03.2012. and thereafter the petitioner who is the nominee to the policies of the deceased Raghunath Nayak made claim for the insured amount to the Opp.Party No. 2 under the prescribed format



including all required credentials and the same has been duly accepted

- (v) After the claim made by the petitioner as the nominee to the policy holder for settlement of death benefit of her late father under the aforesaid three policies. It is pertinent to mention that the Opp. Party No.2 has settled the benefit under the two policies i.e. Policy nos.: 593080488, 593891802, but on 25.3.2013 the Opp. Party No.1 repudiated the benefit/claim under the Policy No.593967375 on account of the fact that there is mismatch in the age of the deceased father of the petitioner. Accordingly, as per Section 45 of the Insurance Act, the policy shall be void and all the claims or any benefit will cease and all the money paid in consequence thereof shall belong to the Corporation.
- (vi) Aggrieved by the aforesaid letter of repudiation dated 25.03.2013, the petitioner made a representation to the Opp. Party No. 3 praying therein that in order to settle the claim of death in favour of the nominee.
- (vii) Opp. Party No. 1 treated the representation of the petitioner as an appeal and referred the matter to the Insurance Ombudsman, Odisha, Bhubaneswar i.e. Opp. Party No.3 wherein the learned Insurance Ombudsman issued notice to the petitioner to appear and present her case. It is further submitted that after hearing both the parties the learned Insurance Ombudsman vide its order dated 25.3.2015 has been pleased to dismissed the grievance of the



petitioner on the ground of suppression of age of the policy holder thereby confirmed the repudiation of claim of the petitioner vide letter dated 25.03.2013, though the latest status of the policy shows that the age proof the deceased policy holder is as per the previous policy

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. The counsel appearing on behalf of the Petitioner urged the following submissions:

- (i) The earlier two policies of the deceased Raghunath Naik, the death claim amount has already been settled and paid to the petitioner without any objection with regard to the age of the policy holder but the Opp. Party No.1 repudiated the death benefit of the policy holder under the policy no. 593967375 on the ground of age mentioned in the voter id which is illegal and without any basis.
- (ii) The age has been given in the policy no. 593967375 on the basis of previous policies which has been duly accepted by the Opp. Parties at the time of acceptance of policy and also taken a premium for the aforesaid policy.
- (iii) In the previous policy i.e. policy No. 593891802, the date of birth has been mentioned as 18.3.1952 and when the said policy has been settled and the same reflection in the disputed policy and repudiation of the same and confirmation by the Opp. Party No. 1 is otherwise illegal, arbitrary and hence liable to be quashed.



- (iv) The documents of the Opp. Parties itself show that, at the time of the death, the age of the deceased was 61 years. The same is reflected in his death certificate.
- (v) The age of a person cannot be determined on the basis of the Voter ID, as it cannot be a conclusive evidence for determination of the age. In the instant case the Opp. Parties have accepted, the aforesaid three policies and admitted that the age of the policy holder was 18.3.195 and on that basis the two policies have been settled in favour of the petitioner.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NOS.1 & 2 :

- 4. Per Contra, learned counsel for the Opposite Party Nos.1 and 2 urged the following submissions:
 - (i). The first policy bearing Policy No. 593080488 of Life Assured was accepted on the basis of Voter ID Card. The subsequent policy bearing Policy No. 593891802 was completed on the basis of school certificate and policy No.593967375 was completed on the basis of previous policy showing D.O.B. as 18.03.1952 (i.e. whatever written in policy No.593891802). However, during investigation it was found that as per the Voter ID No.OR/15/113/332194, age of the deceased Life Assured was 67 and it is against the rule of LIC to accept any policy at this age.
 - (ii). The claims for the benefits under the third policy bearing Policy No. 593967375 on account of the fact that there was a mismatch of 8



years in the age of the deceased father of the petitioner vide letter dated 25.3.2013.

- (iii). The Learned Insurance Ombudsman vide its award dated 34.3.2015 dismissed the case of the petitioner on the ground of suppression of age (67 years to 59 years) of the policy holder at the time of taking of the policy, thereby confirming the validity of the repudiation of the claim of the petitioner.
- (iv). Being a non-early claim, Policy No. 593080488 was settled without any investigation. However, in case of early claims, claimant needs to submit all the claim papers at a time and should clearly mention all the policy in Claim Form A. But, in this case, the claimant (present petitioner) deliberately deposited claim papers of different branches (Bolangir and Sambalpur- 1) at different times. So, in the case of Policy No.593891802, though early claim was there but during investigation suppression of age was not revealed and the claim was admitted unknowingly by the Opp. Parties. However, during the investigation against Policy No. 593967375, it was found that there was suppression of age (67 years to 59 years) of the Life Assured at the time of taking of the policy. The Opp. Parties, thus, repudiated the claim as per the mandate of Section 45 of Insurance Act, 1938.
- (v). Further, the Policy No.593891802 would have been repudiated, had the suppression of age detected at time of inquiry.



(vi). Insurance is a contract of *uberrima fides* i.e utmost good faith. At the time of proposal stage the Opp. Parties accept proposal and other documents without any verification. However, LIC investigates the case, if death occurs within three years after date of commencement of the policy or within three years after the date of revival of the policy. In this case, as per LIC Rules policy was issued to Life Assured and collected premium.

IV. COURT'S ANALYSIS AND REASONS:

5. I have considered the submission of the learned counsels for the parties and perused the materials on record.
6. At the outset, an insurance policy must not be obtained through fraudulent actions by the insured. If fraudulent activity is discovered, the claim may be repudiated. The proposer must demonstrate bona fide intentions, which must be evident from the record. In such cases, it is not required for the insurer to prove that the suppression of information was done fraudulently by the policyholder, or that the policyholder was aware of the falsity of the statement or the material fact that was suppressed. A deliberate false statement that significantly impacts the insurance contract may lead to the policy being invalidated in law if discovered.
7. In this case, the discrepancy in the date of birth of the insured in the insurance policy would indeed be detrimental to the petitioner's claim. In this case, the discrepancy in the date of birth in the insurance policy would indeed be detrimental to the petitioner's claim. However, there is



an important consideration: the date of birth of the insured is consistent across all documents except the voter ID/electoral roll, which is, clearly, the sole basis for the Opp. Party/insurer's argument. Therefore, the resolution of the case hinges on the evidentiary value and credibility of the date of birth as recorded in the voter ID or electoral roll. The court must evaluate whether the voter ID or electoral roll entry is a reliable source of the insured's date of birth.

8. Now, in the realm of insurance policies, the veracity of one's date of birth is paramount, forming the bedrock upon which risk assessments and premium calculations rest. While a Voter ID card is a widely recognized identification document for civic duties, it is often deemed to be a non-standard proof of date of birth within the insurance industry. This preference stems from the Voter ID's primary purpose of verifying eligibility to vote rather than establishing a chronological record of one's birth. Consequently, insurers tend to favor more authoritative documents, such as school certificates or certified municipal records, to ensure the accuracy and reliability of the insured's personal information, thereby minimizing potential discrepancies in coverage provisions.
9. The Supreme Court in *Susil Kumar v. Rakesh Kumar*,¹ observed that date of birth contained in the voter list and the Election Identity Card are recorded as per the statement made by the person concerned and as such are not conclusive proof of date of birth.

¹ 2003 (8) SCC 673



10. Further, in *Babloo Pasi v. State Of Jharkhand*,² the Supreme Court reiterated its stance and held that, in the absence of evidence indicating the basis on which the entry in the Voters List bearing the name of the accused was made, merely presenting a copy of the Voters List, although it is a public document as per Section 35 of the Evidence Act, is insufficient to establish the age of the accused.

11. In *Ram Kripal alias Chirkut v. Deputy Director of Consolidation & Others*,³ the Allahabad High Court ruled that the informal nature of the date of birth recorded in the voter list and voter ID card renders it unreliable for determining the actual date of birth. The relevant excerpt is mentioned hereinbelow:

“22. The evidence being insignificant would not shift the burden on shoulders of the petitioners. There appears to be no reason as to why Smt. Gulabi did not examine any of her relatives in support of her case. The evidentiary value of voter-list of the year 1966 and 1973 is also of inconsequential nature. The voter-list is prepared on the statement and particulars furnished by such person. It is in the nature of self serving evidence. It is not safe to place much reliance upon it, in such matters. However, our legal system has always emphasis on value, weight and quality rather than quantity, multiplicity or plurality of witness. Nothing has come on record to connect Smt. Gulabi with the said birth entry.

23. Therefore, on facts at hand, in the absence of evidence to show on what material the entry in the Voters List in the name of the accused was made, a mere production of a copy of the Voters List, though a public document, in terms of Section 35, was not sufficient to prove the age of the accused.”

² 2008 (13) SCC 133

³ Civil Misc. Writ Petition No.13286 of 1981, All. HC



12. Based on the discussion above, it is evident that the Insurance Company erred in rejecting the petitioner's claim solely on the ground that the deceased insured's date of birth, as recorded in the voter ID/voter list, differed from the date of birth stated in his other documents.
13. It is generally accepted by Indian Courts that the date of birth recorded in the voter ID/voter list should not be relied upon to determine a person's age. This view is subscribed to by the Insurance Companies' policies, which categorize the voter ID as a non-standard proof document.
14. The voter list is compiled based on the statements and particulars provided by the individual, making it self-serving evidence. Therefore, it is unsafe to place significant reliance on it in such matters. Furthermore, the deceased/ insured's voter ID was likely issued during a time when automation, online records, and the internet existed only in a person's fever dream. It is common for dates of birth to be inaccurately recorded in many documents issued during that period. This case also falls in the category of such case.
15. It is further seen that insurance contracts are heavily dependent on reciprocal obligations and in an ideal situation, if both the parties understand their rights and responsibilities, and acted accordingly; the need for repudiating a claim would never arise. It has often been seen that there is a great deal of asymmetry of information in insurance contracts; and most of this asymmetry arises because the policyholder



does not understand the nuances of the contract – either on account of the lack of awareness or owing to the fact that the insurer has not bothered to explain the terms of the contract in their exhaustive detail. In any case, the controversy arises only when there is a repudiation of a claim, and by then it is too late.

16. In order to avoid such a scenario, there is need for making the proposal form more exhaustive, simple and meaningful; and to ensure that the proposer is explained the terms of interpretation of the queries and the replies thereto. It is no brainer that in most repudiated cases, one common argument is that the proposer has simply signed on the dotted line. The importance of the queries and the declaration has to be clearly explained to the proposer before obtaining his signature to ensure that the asymmetry is reduced to a great extent. The insurers should also highlight the utility of the free-look period in order that the policyholder takes an informed decision.
17. On the other hand, there have often been attempts to defraud the insurance companies either by making a claim that does not exist or by exaggerating a claim. In view of the lack of deterrent punishment, such incidences do not attract sufficient publicity and tend to get tacit approval. Taking a cue from the more advanced markets where the punitive measures for such offences are really strong, there is need to at least highlight such incidences, if not strictly apply them at this stage when the awareness levels are still relatively low. It will certainly reduce the number of attempts at defrauding insurers. Further, the importance



of the concept of utmost good faith in insurance has to be clearly explained to the common public. Interpretation of the clauses very strictly and in their word – and not in their spirit – should be avoided; and should there be any occasion for dual interpretation, the benefit of doubt should always be cast in favour of the policyholder.

18. With the onset of fresh channels like brokers, corporate agents, bancassurance etc., insurance intermediation has assumed new challenges. The insurance agent needs to be trained properly to make the prospective policy holders aware of the implication of giving wrong information at the time of taking the policies. At the same time, the insurance agent should also be disciplined in so far as filing wrong information at the behest of some of the illiterate and semi-illiterate policy holders in order to grab the policy by any means.

V. CONCLUSION:

19. Based on the analysis of both factual and legal aspects of the case, this Court concludes that the Opp. Party/Insurance Company erred in dismissing and rejecting the rightful claim of the Petitioner.
20. Unfortunately, it is a well-observed phenomenon that insurance companies, while readily accepting premiums from their clients, often adopt practices that result in significant challenges for policyholders at the time of filing claims. This dichotomy between the ease of premium collection and the rigorous scrutiny applied during the claims process highlights a critical area of concern in the insurance industry.



21. The process of paying premiums is streamlined, with multiple options available to ensure timely and hassle-free payments. However, when it comes to the moment of truth—filing a claim—policyholders often encounter a starkly different experience. The claims process can be arduous, marked by extensive documentation requirements, prolonged investigations, and meticulous scrutiny of every detail. Clients may find themselves entangled in bureaucratic red tape, facing delays and denials that can exacerbate their distress, particularly during times of personal loss or crisis.
22. It is, thus, strongly suggested that insurance companies critically evaluate their actions and prioritize working for the benefit of their customers. While the primary goal of any business is profitability, the insurance industry must balance this objective with a commitment to fairness and customer satisfaction.
23. Based on the foregoing, it is hereby ordered that the Opposite Parties to correct the identified error and reassess the Petitioner's claim. Additionally, the Opposing Parties are directed to disburse the insured amount to the Petitioner within one week from the date of receipt of this judgment/order.
24. The Writ Petition is, accordingly, allowed.

(Dr. S.K. Panigrahi)
Judge