AFR *Neutral Citation No.2025:AHC-LKO:12387*
Judgment Reserved on 13.02.2025
Judgment Delivered on 28.02.2025

Case :- MATTERS UNDER ARTICLE 227 No. - 7467 of 2021

Petitioner :- Bajaj Allianz Life Insurance Co. Ltd.
Respondent :- Shradha Padmaja Awasthi And Ors.
Counsel for Petitioner :- Prasoon Srivastava
Counsel for Respondent :- Dhruv Kumar

Hon'ble Pankaj Bhatia,J.

1. Heard Sri Prasoon Srivastava, learned Counsel for the petitioner and Sri Dhruv Kumar, learned Counsel appearing on behalf of the respondent no.1. None appears for opposite party no.2.

2. The present application under Article 227 of the Constitution of India has been filed challenging an award dated 21.12.2020 passed by the Permanent Lok Adalat, Lucknow in Case No.06 of 2017 (Smt. Padmaja Awasthi vs Bajaj Allianz Life Insurance Company Limited and another), whereby, the complaint filed by the respondent no.1 was allowed and the petitioner was directed to pay compensation of Rs.50,00,000/- (Rupees Fifty Lac Only) along with interest @ 9% from the date of filing of the case and Rs.5,000/- (Rupees Five Thousand Only) towards litigation cost.

3. Challenging the award impugned, the Counsel for the petitioner argues that the husband of the respondent no.1 became a member in the Master Policy issued by the petitioner-Company in favour of the respondent no.3-Yes Bank for the period 28.09.2012 up to 27.09.2013. Under the policy sum assured was Rs.50/- lac and the premium prescribed was Rs.16,854/- for a term of one year. Unfortunately the beneficiary, namely, Praveen Awasthi died on 26.01.2013 and a claim was filed. The petitioner-Company carried out investigation and repudiated the claim vide letter dated

09.01.2014 on the ground that "*medical consultations/ hospitalization on 23rd December, 2011 and was diagnosed of renal calculi + abscess-calf muscle with past history of anticoagulant medication, history of bleeding, history of blood transfusing and discharged against medical advice. This fact was not mentioned in the enrolment from dated 18.09.2012. These facts known to deceased life assured were not disclosed to us, hence the claim is repudiated.*"

4. In terms of the grievance redressal prescribed before the Reviewing Committee, the heirs of the deceased preferred a review, which too was dismissed on 09.05.2014. Challenging the said order, the respondent no.1 approached the Permanent Lok Adalat, Lucknow who has passed the award impugned herein.

5. Before the Permanent Lok Adalat, efforts for reconciliation were taken, however, they failed. Thereafter, the issues were taken up on merit and both the parties were heard. The Permanent Lok Adalat framed two issues of determination. First being "*whether the claimant was entitled for any amount of compensation towards the insurance claim*", and second being "*the relief to which the claimant was entitled*". The Permanent Lok Adalat decided both the points of determination and awarded compensation in favour for claimant.

6. Challenging the said award, the present application has been filed. It is pleaded that the deceased was admitted in Sahara Hospital, Lucknow 23.12.2011 due to bleeding caused for reaction of 'warfarin 5mg' medicine and was discharged on 27.12.2011 and had also given discharge certificate to the investigator. The said fact, according to the petitioner, was not disclosed in the proposal/ enrolment form, which is the basis for repudiation of death claim by

the petitioner. The petitioner further places on record a copy of the medical document dated 23.12.2011 showing that the deceased was discharged against medical advise by Avadh Critical/ Coronary Care Unit. Reliance is placed upon the statement of the brother of the deceased, which was given at the time of admission before the Avadh Critical/ Coronary Care, which is contained in Annexure-5 of the paper book. It is also pleaded that the petitioner had provided a copy of the treatment undergone by the deceased at S.G.P.G.I., Lucknow and in terms of the Patient Registration Card, which was valid from 28.07.2010 to 27.07.2011. In the light of the aforesaid, it is argued that the policy was taken by declaring wrong statements in the declaration form, which facts have been ignored by the Permanent Lok Adalat and thus the award is liable to be set aside.

7. It is further argued by the Counsel for the petitioner that the respondent no.3-Yes Bank was the 'Master Policy Holder' who has issued the policy to the deceased without ascertaining the correct facts and without disclosing the same to the petitioner-Insurance Company and thus the liability, if any, should be fastened on Yes Bank and not against the petitioner. It is further argued that the Yes Bank is not a corporate agent of the Company and was simply a Master Policy Holder. In the present matter, no other points were argued by the Counsel for the petitioner. The judgment cited by the petitioner shall be referred subsequently.

8. The Counsel for the respondent, strongly, refutes the arguments raised by the petitioner. He argues that firstly, in the statement referred to be given by the brother of the deceased, there is no mention as to where the said statement was given. He further argues that the treatment undergone by the deceased at Sahara Hospital was duly disclosed and the discharge summary, which is on record

at page 66 of the paper book, itself demonstrates that the deceased had taken ‘warfarin 5mg’ for arm pain. He argues that the said drugs warfarin was an over the counter drug, which the deceased had taken for arm pain and which somehow unfortunately caused coagulopathy, which was induced by the said medicine warfarin, for which, the deceased was admitted for a span of four days. He further argues that the policy was issued to the deceased by the respondent no.3-Yes Bank as the deceased had a Bank Account in the said Bank. He further argues that all the forms were filled by the members of the Bank. He draws my attention to the application made by the respondent no.1 that the reasons recorded by the claimant before Review Committee was never known to the claimant and had also requested that the proposal form be specifically provided to the claimant. It is stated that despite the said application, the declaration form was never provided to the respondent no.1. He further argues that on 28.01.2025 itself a letter was written by the respondent no.1 that her husband had suffered bleeding on account of reaction of the medicine warfarin and was not suffering from any disease, which is the reason recorded in the repudiation form. The said letter is on record at page 89 of the paper book. It is further argues that all the tests of the deceased was carried out when he was admitted at Sahara Hospital. The reports are on record and were duly given to the investigator and the said reports which are on record do not indicate the presence of any disease on the deceased.

9. It is further argued by the Counsel for the respondent that the deceased died on account of cardiac arrest which cannot be attributed to the reaction suffered by the deceased on account of the medicine undertaken for which he was admitted in the hospital and there is no corelation in between the cause of death and the reasons

given for rejecting the claim. He further draws my attention to the proposal formed as contained at page 40 of the paper book to suggest that the declaration of good health was required in terms of four points. The fourth being whether the persons sought to be insured was on medication or under hospital care for more than 7 days, to which, there is a tick mark in front of the block "No". He further argues that for the other columns the Bank officials had filled "NA" (Not Applicable) as is evident from the document. He further argues that the petitioner is wrong in arguing that the respondent no.3 was not an agent and on the basis of documents contained on the website of the petitioner, the respondent no.3, Yes Bank is still shown to be the Insurance Agent as a corporate agent. He further draws my attention to the written statement filed by the Yes Bank before the Permanent Lok Adalat wherein they admitted that they were the corporate agent of the petitioner-Company, which fact according to him were never disputed by the petitioner before the Permanent Lok Adalat or even before this Court. He further draws my attention to the Regulations framed by the Insurance Regulatory and Development Authority (IRDA) in terms of the power conferred by virtue of Section 114-A of the Insurance Act known as "Insurance Regulatory and Development Authority (Protection of Policyholders Interest) Regulations, 2002 and specifically places reliance on Regulation 3(4), which according to him was not contained in the proposal form. He further places reliance upon the Regulation 4 (1) and Regulation 4(4) of the said Regulations, 2002, which is quoted below:

> ***4. Proposal for insurance*** *(1) Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the*

> *insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.*
>
> *(2) ...*
>
> *(3) ...*
>
> *(4) Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover.*

10. The Counsel for the respondent further places reliance upon the regulations known as “The Insurance Regulatory and Development Authority (Licensing of Corporate Agents) Regulations, 2002, which have been farmed in exercise of powers under Sections 42, 42-D and 114A of the Insurance Act, and in particularly, reliance upon the Code of Conduct as prescribed under Regulation 9 to suggest that it is the duty of the corporate agent to tell the correct and material facts to the insurer and in view of the said prescriptions, it has to be presumed that all the material facts were duly disclosed to the Insurer.

11. The Counsel for the respondent lastly argues that no such plea were taken either in the repudiation order or before Permanent Lok Adalat and in fact, the material supplied by the respondent no.1 to the investigatory of the Bank were deliberately concealed by the petitioner-Company and were not filed before the Permanent Lok Adalat. He thus argues that the application is liable to be dismissed.

12. Before proceeding further with the submissions of the Counsel for the parties and the case laws cited, it is essential to notice the statutory provisions governing the insurance in India.

13. The Contract of Insurance in India governed by the stipulations contained in the Indian Contract Act and the Insurance Act. The insurance can be done in India only by the company authorized to carry out the said business in terms of the license granted to them by Regulatory Authority constituted under the Insurance Act.

14. Section 42 of the Insurance Act prescribes for appointment of Insurance Agent. For the purpose of the present case, Section 42(5) is quoted below:

> "***42. Appointment of insurance agents.—***
>
> *(5) The insurer shall be responsible for all the acts and omissions of its agents including violation of code of conduct specified under clause (h) of sub-section (3) and liable to a penalty which may extend to one crore rupees."*

15. Section 45 of the said Insurance Act makes a restriction to the effect that no policy of life insurance shall be called in question after the expiry of three years. The same can be questioned as having been obtained by fraud or on misrepresentation of material facts subject to the restrictions contained in Section 45(2) and the restrictions contained in sub-section (3) and sub-section (4) of Section 45. Section 45 is quoted below:

> *"**45. Policy not be called in question on ground of misstatement after three years**. —(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of*

revival of the policy or the date of the rider to the policy, whichever is later.

(2) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, <u>on the ground of fraud</u>:

Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation I. —For the purposes of this sub-section, the expression "fraud" means any of the following acts committed by the insured or by his agent, with intent to deceive the insurer or to induce the insurer to issue a life insurance policy: —

> *(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;*
>
> *(b) the active concealment of a fact by the insured having knowledge or belief of the fact;*
>
> *(c) any other act fitted to deceive; and*
>
> *(d) any such act or omission as the law specially declares to be fraudulent.*

Explanation II. — Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent keeping silence, to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section (2), <u>no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the misstatement of or suppression of a material fact was</u>

true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact are within the knowledge of the insurer:

Provided that in case of fraud, the onus of disproving lies upon the beneficiaries, in case the policyholder is not alive.

Explanation. —A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:

Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation. —For the purposes of this sub-section, the misstatement of or suppression of fact shall not be considered material unless it has a direct bearing on the

> *risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.*
>
> *(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."*

16. Section 51 of the Insurance Act further makes it mandatory to supply the proposal form etc. Section 51 is quoted below:

> *"**51. Supply of copies of proposals and medical reports**. —Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.*

17. As an issue has been raised, as to whether the respondent no.3 was the corporate agent of the petitioner or not, it is essential to notice that agency is prescribed under Chapter 10 of the Contract Act. Section 182 of the Contract Act defines the agent and member and is as under:

> "***182."Agent" and "principal" defined.**—An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".*

18. Section 238 of the Contract Act also prescribes for the effect on agreement of misrepresentation of fraud by the agent. Section 238 is quoted below:

> *"**238. Effect, on agreement, of misrepresentation of fraud, by agent**.—Misrepresentation made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals."*

19. In the backdrop of the said statutory provisions and the facts stated above, the judgment cited by the various parties are being referred to.

20. The Counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of ***Branch Manager, Bajaj Allianz Life Insurance Company Limited and others vs Dalbir Kaur***: *Civil Appeal No.3397 of 2020 arising out of SLP (C) No.10652 of 2020, decided on 09.10.2020* and emphasizes paragraphs 9 and 10 of the said judgments, which are quoted below:

> *"**9**. A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk. In the present case, as we have indicated, the proposer failed to disclose the vomiting of blood which had taken place barely a month prior to the issuance of the policy of insurance and of the hospitalization which had been occasioned as a consequence. The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had*

not been disclosed. This brings the ground for repudiation squarely within the principles which have been formulated by this Court in the decisions to which a reference has been made earlier. In Life Insurance Corporation of India vs Asha Goel, this Court held:

> *"12…The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of risk which may take place between the proposal and its acceptance. If there is any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person."*

***10**. This has been reiterated in the judgments in P C Chacko vs Chairman, Life Insurance Corporation of India and Satwant Kaur Sandhu vs New India Assurance Company Limited. In Satwant Kaur Sandhu vs New India Assurance Company Ltd., at the time of obtaining the Mediclaim policy, the insured suffered from chronic diabetes and renal failure, but failed to disclose the details of these illnesses in the policy proposal form. Upholding the repudiation of liability by the insurance company, this Court held:*

> *"25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a*

> *"material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance."*

21. The Counsel for the petitioner further places reliance on the judgment of Hon'ble Supreme Court in the case of ***Reliance Life Insurance Co. Ltd. and another vs Rakhaben Nareshbhai Rathod***: *Civil Appeal No.4261 of 2019 arising out of SLP (C) No.14312 of 2015, decided on 24.04.2019* wherein the provisions of the Insurance Act and the Regulations framed thereunder have considered. Emphasis is supplied in paragraph 26 of the said judgment, which is quoted below:

> *"**26**. Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure. The duty of disclosure in insurance contracts was established in a King's Bench decision in Carter v Boehm19, where Lord Mansfield held thus:*
>
> *Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the under-*
>
> *writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a*

belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist. It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement. The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in Satwant Kaur (supra) (1766) 3 Burr 1905 there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance. Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms."

22. The next reliance on the judgment of Hon'ble Supreme Court in the case of ***Satwant Kaur Sandhu vs New India Assurance Company Ltd.: 2009 AIR SCW 7213*** has been placed. Para 12 of the said judgment is quoted below:

> *"**12**. There is no dispute that Section 45 of the Insurance Act, 1938 (for short "the Act"), which places restrictions on the right of the insurer to call in question a life insurance policy on the ground of misstatement after a particular period, has no application on facts at hand, inasmuch as the said provision applies only in a case of life insurance policy. The present case relates to a mediclaim policy, which is entirely different from a life insurance policy. A mediclaim policy is a non-life insurance policy meant to assure the policy holder in respect of certain expenses pertaining to injury, accidents or hospitalizations. Nonetheless, it is a contract of insurance falling in the category of contract uberrimae fidei, meaning a contract of utmost good faith on the part of the assured. Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, 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, 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. (See: Joel Vs. Law Union & Crown Ins. Co.1)"*

23. The next judgment relied upon by the Counsel for the petitioner in the case of ***P.C. Chacko and another vs Chairman, Life Insurance Corporation of India and others****: Appeal (Civil) No.5322 of 2007 decided on 20.11.2007,* wherein the Hon'ble Supreme Court notices the observations made by the Madras High Court with the following effect:

> *"**17**. It is no doubt true that there exists a distinction between a representation and a warranty. A Division Bench of the Madras High Court in S.P. Maheshwari (supra) upon taking into consideration the history of*

insurance laws in United States of America, in England and in India stated :-

> *(10) One great principle of insurance law is that a contract of insurance is based upon utmost good faith Uberrima fides; in fact it is the fundamental basis upon which all contracts of insurance are made. In this respect there is no difference between one contract of insurance and another. Whether it be life or fire or marine the understanding is that the contract is uberrima fides and though there may be certain circumstances from the peculiar nature of marine insurance which require to be disclosed, and which do not apply to other contracts of insurance, that is rather an illustration of the application of the principle than a distinction in principle. From the very fact that the contract involves a risk and that it purports to shift the risk from one party to the other, each one is required to be absolutely innocent of every circumstance which goes to influence the judgment of the other while entering into the transaction."*

24. The last judgment relied upon by the Counsel for the petitioner is in the case of ***M/s Texco Marketing Pvt. Ltd. Vs Tata AIG General Insurance Company Ltd. And others;*** *Civil Appeal No.8249 of 2022 arising out of SLP (Civil) No.25457 of 2019, decided on 09.11.2022* with emphasis of paragraph 15, which is as under:

> *"**15.** An act of good faith on the part of the insurer starts from the time of its intention to execute the contract. A disclosure should be a norm and what constitutes a material fact requires a liberal interpretation. It is only when an insurer is not intending to act on an exclusion clause, the aforesaid principles may not require a strict compliance. The three elements which we have discussed are interconnected and overlapping. It is the foremost duty of the insurer to give effect to a due disclosure and notice in its true letter and spirit. When an exclusion clause is introduced making the contract unenforceable*

> *on the date on which it is executed, much to the knowledge of the insurer, non-disclosure and a failure to furnish a copy of the said contract by following the procedure required by statute, would make the said clause redundant and non-existent."*

25. The Counsel for the respondent no.1 places reliance on a Division Bench judgment of this Court in the case of ***Saurashtra Chemicals vs National Insurance Company Ltd.,*** wherein this Court had taken a view that the Insurance Company cannot plead more than the ground on which the insurance has been repudiated.

26. The last judgment in the case of ***Texco Marketing Pvt. Ltd. (supra)*** has been relied upon by the Counsel for the respondent no.1 also. Relevant paras 21 and 42 reads as under:

> *"**21**. On a discussion of the aforesaid principle, we would conclude that there is an onerous responsibility on the part of the insurer while dealing with an exclusion clause. We may only add that the insurer is statutorily mandated as per Clause 3(ii) of the Insurance Regulatory and Development Authority (Protection of Policy Holder's Interests, Regulation 2002) Act dated 16.10.2002 (hereinafter referred to as IRDA Regulation, 2002) to the effect that the insurer and his agent are duty bound to provide all material information in respect of a policy to the insured to enable him to decide on the best cover that would be in his interest. Further, sub-clause (iv) of Clause 3 mandates that if proposal form is not filled by the insured, a certificate has to be incorporated at the end of the said form that all the contents of the form and documents have been fully explained to the insured and made him to understand. Similarly, Clause 4 enjoins a duty upon the insurer to furnish a copy of the proposal form within thirty days of the acceptance, free of charge. Any non-compliance, obviously would lead to the irresistible conclusion that the offending clause, be it an exclusion clause, cannot be pressed into service by the*

insurer against the insured as he may not be in knowhow of the same.

***42**. Before we part with this case, we would like to extend a word of caution to all the insurance companies on the mandatory compliance of Clause (3) and (4) of the IRDA Regulation, 2002. Any non-compliance on the part of the insurance companies would take away their right to plead repudiation of contract by placing reliance upon any of the terms and conditions included thereunder."*

27. In the present case, the claim made by the family of the deceased were repudiated at the first instance through the communication dated 09.01.2014 for the following reasons:

> *"Medical consultations/ hospitalization on 23rd December, 2011 and was diagnosed of renal calculi + abscess-calf muscle with past history of anticoagulant medication, history of bleeding, history of blood transfusing and discharged against medical advice. This fact was not mentioned in the enrolment from dated 18.09.2012.*
>
> *These facts known to deceased life assured were not disclosed to us, hence the claim is repudiated."*

28. The Review Committee dismissed the review for the following reasons:

> *"It may be brought to your notice that the company had covered the risk for the above mentioned policies solely on the basis of facts as mentioned in the proposal form. However on receiving the claim intimation and perusal of various documents and medical reports submitted by you along with your claim, it appears that the deceased life assured was consultation/ treatment during 23/12/2011 for renal calculi with abscess calf muscle with past history of anticoagulant medication, history of bleeding, history of blood transfusion. These facts were known to the life assured prior to making the proposal for*

insurance and the same was deliberately concealed during the proposal of insurance. Had these facts made known to us we would not have accepted the proposal and issued the above said policy.

Hence the Claim Review Committee has came to a conclusion that the earlier decision of the company as communicated to you of repudiation of your claim for Death Benefit stands confirmed for non-disclosure of material facts known to Life Assured and was deliberately and willfully concealed in the proposal for insurance."

29. Thus the claim was repudiated for misstatement or suppression of material facts in exercise of powers under Section 45(4) of the Insurance Act.

30. In both two orders referred above, there were grounds that the petitioner while filling the proposal form has suppressed the material facts with regard to his admission at Sahara Hospital for caugulopathy, which was a material suppression. There was no allegation of fraud being played by the insured or by the agent, thus, the power to repudiate is subject to the prescriptions contained in Section 45(4) of the Insurance Act. Clearly there is no compliance of the second proviso to Section 45(4) as the premium amount collected in the policy was never refunded to the deceased. In the said two orders, the requirement of the explanation to Section 45(4) is also missing, wherein, an onus is cast upon the Insurer to co-relate the risk undertaken by the Insurer with the suppression of facts as essentially the cause of death of the deceased was cardiac arrest and the co-relation in between the suppression fact with regard to coagulopathy with the cause of death is apparently missing in the said two orders. The cause of death is apparently missing in the said two orders.

31. With regard to the fact whether the Yes Bank which had issued the policy as being a Master Policy Holder would be considered as an agent or the petitioner company, it is essential to notice the explanation to Section 45(3) of the Insurance Act which explains that the person who solicits and negotiates a contract of insurance shall be '*deemed for the purpose of the formation of the contract, to be the agent of the insurer'*.

32. In view thereof, the contention of the Counsel for the petitioner that the Yes Bank is not an agent and is simply a Master Policy Holder, merits rejection. As the policy was solicited by the Yes Bank and the contract of insurance was also negotiated by the Yes Bank as is evident from the stand taken by the Yes Bank at Permanent Lok Adalat and not denied by the petitioner company in any pleadings before the Permanent Lok Adalat or before this Court. It also appears from the record that despite the beneficiary of the policy requesting for providing the proposal form, the same was not provided and in view of the observations made by the Hon'ble Supreme court in para 42 of the judgment in the case of M/s Texco Marketing Pvt. Limited (Supra), the right of the Insurance Company to plead repudiation is taken away as held in para 42 of the precedent cited. The Hon'ble Supreme Court in the case of *M/s Texco Marketing Pvt. Limited (Supra)* had the occasion to consider the nature of the contract of and insurance as well as the judgment cited by respective parties before me and concluded in paras 21 and 42 as extracted above.

33. The entire case of the Insurance Company was based upon the repudiation of contract of insurance on the basis of misstatement and suppression of material facts. The said ground is not available to be pleaded by the petitioner in view of non-compliance of Clause

3 and Clause 4 of the IRDA Regulations, non-refund of the premium collected as prescribed under second proviso to Section 45 (4) and the Insurer not discharging the burden as prescribed under Section 45(4) and also not considering the fact that the Insurer had pleaded that the alleged misstatement or suppression was without any deliberate intention, even if it is presumed for the sake of argument that the contract was repudiated on the ground of fraud as prescribed under Section 45(3) of the Insurance Act.

34. Considering the reasoning recorded hereinabove, I have no hesitation in holding that the award of the Permanent Lok Adalat does not require any interference and the matter is liable to be dismissed and is accordingly ***dismissed***.

35. The amount deposited before this Court in terms of the order dated 18.03.2021 shall be paid to the beneficiaries along with accrued interest on the respondent no.1 on moving an application before the Senior Registrar of this Court.

Order Date:28.02.2025
akverma **(Pankaj Bhatia,J.)**