

Before Hemant Gupta & Augustine George Masih, JJ.

MAX NEW YORK LIFE INSURANCE CO. LTD.,—Petitioner

versus

**INSURANCE OMBUDSMAN, CHANDIGARH AND
ANOTHER,—Respondents**

C.M.P. NO. 20040 OF 2008

17th December, 2008

*Constitution of India, 1950—Art. 226—Death of insured—
Repudiation of claim on ground that insured was suffering from
hypertension for last 10 years—No medical history of insured
having suffered from hypertension for last 10 years—No record of
any medicine having been taken by insured or any treatment taken
from any hospital or a physician—Moreover, hypertension is a
disease which can escape attention of a person and is required to
be diagnosed by experts—Petition dismissed, order passed by
Insurance Ombudsman held legal.*

Held, that the finding recorded by the Insurance Ombudsman that there is no medical history of the patient having suffered from hypertension for the last 10 years is not supported by any record. Except the note in the physician statement that the patient was suffering from hypertension for the last 10 years, there is no record of any medicine having been taken by the insured or any treatment taken from any hospital or a physician prior to the said date. There is no proof of the insured having been suffering from hypertension for a period of 10 years and assuming it to be so, hypertension is a disease which can escape attention of a person and is required to be diagnosed by experts.

(Para 7 & 8)

Ms. Vandanaa Malhotra, Advocate for the petitioner.

HEMANT GUPTA, J.

(1) The Challenge in the present petition is to the order passed by the Insurance Ombudsman, Chandigarh, on 5th August, 2008, Annexure

P-1, whereby the complaint filed by respondent No. 2 was allowed and finding was given that insurance claim is payable by the petitioner.

(2) Smt. Harjinder Kaur, wife of respondent No. 2, was insured by the appellant with the date of commencement of the policy as 22nd November, 2007. Smt. Harjinder Kaur died on 7th January, 2008 but the claim lodged by respondent No. 2 was repudiated on the ground that the insured was suffering from hypertension for the last 10 years but such information was not disclosed. It was the claim of respondent No. 2 that his wife was not having any medical problem and her death was sudden.

(3) The stand of the petitioner is that in the proposal form, the insured has categorically stated that she was not suffering from any hypertension or high blood pressure, whereas, as per attending physician statement, Annexure P-8, the insured was suffering from hypertension for the last 10 years and, thus, the insured having withheld the material information in respect of hypertension, the petitioner has rightly repudiated the claim.

(4) The learned Insurance Ombudsman has found that though the doctor has stated that the insured was suffering from hypertension for the last 10 years, but there is no documentary proof or any other documentary record to support this statement. A clarification was sought from Dayanand Medical College, Ludhiana, the place of death of the insured. The summary of the record was produced wherein it is mentioned that the patient is suffering from hypertension for the last ten years but no supporting document could be furnished to substantiate the statement regarding the patient suffering from hypertension for ten years. On the basis of the hospital treatment certificate, learned Insurance Ombudsman recorded a finding that the insured had difficulty in swallowing and breathlessness but there is no record to the effect that the insured disclosed that she was suffering from hypertension for the last 10 years. Thus, it could not be substantiated on record that the insured was suffering from hypertension for 10 years.

(5) Learned counsel for the petitioner has vehemently argued that the petitioner has not disclosed the factum of hypertension which

was an important fact. In the absence of non disclosure of such material fact, learned Insurance Ombudsman has committed grave illegality in allowing the claim. It has been further pointed out that the cause of death is SLE i.e., Systematic Lupus Erytmotosis including stiffness of all joints groups, redness and pain:

(6) As per physician statement, the physician was consulted for the first time on 2nd January, 2008 with complaint of difficulty in swallowing and breathlessness. The patient was diagnosed for SLE after admission. In the hospital treatment certificate, it has been mentioned that difficulty in swallowing and breathlessness for three days was reported by the patient herself and that diagnose was confirmed after admission.

(7) Thus, the finding recorded by the Insurance Ombudsman that there is no medical history of the patient having suffered from hypertension for that last 10 years is not supported by any record. Except the note in the physician statment that the patient was suffering from hypertension for the last 10 years, there is no record of any medicine having been taken by the insured or any treatment taken from any hospital or physician prior to the said date. A Division Bench of this Court in **Life Insurance Corporation of India versus Permanent Lok Adalat and Another, CWP No. 9738 of 2008 decided on 17th October, 2008** has relied upon the judgment of a Division Bench of Patna High Court in case reported as **Rattan Lal and another versus Metropolitan Insurance Company Limited (1)**, wherein it was held that the duty to disclose is limited to the facts within the knowledge of the assured, a mistaken statement about a material fact made honestly, that is, with belief in its truth, will not affect the validity of the contract. Relying upon decision of a Division Bench of Madras High Court in **All India General Insurance Co. Ltd., and another versus S.P. Maheshwari, (2)**, it was found that answers to questions are representations and a false representation will not operate to vitiate the contract or avoid the policy unless the fact is actually material or clearly intended to be made

(1) AIR 1959 Patna 413

(2) AIR 1960 Madras 484

material by the agreement between the parties. The insurer can avoid the policy only by proving that the statement is false or fraudulent or that it was false and material to the risk.

(18) In the present case, there is no proof of the insured having been suffering from hypertension for a period of 10 years and assuming it to be so, hypertension is a disease which can escape attention of a person and is required to be diagnosed by experts.

(19) In view of the above, we do not find that order dated 5th August, 2008, Annexure P-1, passed by the Insurance Ombudsman is illegal and unwarranted in any manner. Consequently, present writ petition dismissed.

R.N.R.