Before Hemant Gupta & Kanwaljit Singh Ahluwalia, JJ.

LIFE INSURANCE CORPORATION OF INDIA,—*Petitioner*

versus

PERMANENT LOK ADALAT AND ANOTHER,—*Respondents*

CWP No. 9738 of 2007

17th October, 2008

Constitution of India, 1950—Art. 226—Insurance Act, 1938—S. 45—Insured failing to disclose factum of his ailment though he was on medical leave when he filled up proposal form—Death of insured after 2 years of issuance of insurance policy—Non-disclosure & misrepresentation of material facts which vitiate contract of life insurance—Insurance company entitled to repudiate claim—Fact that insured, survived for two years is of no consequence-Petition allowed, award of Permanent Lok Adalat directing Insurance Company to make payment of insured amount along with interest set aside.

Held, that the insured has not disclosed the factum of his ailment though he was on medical leave when he filled up the proposal form. Such material fact cannot be said to be trivial which could be ignored by the insured saved by Section 45 of the Insurance Act. Non-disclosure of such material fact and the fact that cause of death is heart attack, on account of which the deceased was on medical leave, clearly disentitle the insured to claim compensation. It is a case of misrepresentation of a material fact which vitiates the contract of life insurance. The fact that the deceased has survived for a period of two years is of no consequence. Such condition is a condition of valid enforceable contract available to the insurance company under Section 17 of the Contract Act, 1872. Section 45 of the Act deals only with trivial incorrect statements made in the proposal form to deny liberty to the insurance company to avoid insurance contract within period of two years. But where the material facts have been withheld or incorrect information furnished, the contract of insurance, independent of Section

45 of the Act, would entitle the insurance company to repudiate the claim.

(Para 19)

B. R. Mahajan, Advocate *for the petitioner.*

Hari Om Attri, Advocate *for respondent No. 2.*

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the award, dated 24th February, 2007, Annexure P-22, passed by the Permanent Lok Adalat, Hisar, directing payment of sum assured i.e. Rs. 1,00,000 along with interest at the rate of 10% per annum from the date of death of insured till payment.

(2) Dalip Singh, husband of respondent No. 2, (hereinafter referred to as "insured") submitted a proposal for insurance for Rs. 1,00,000 on his life on 14th September, 2002. The insured made declaration regarding his state of health which was signed by him after admitting all answers to the questions in the proposal to have been recorded correctly. A declaration was also made that all the answers have been given by him after fully understanding and all the answers are true and complete in all particulars and he has not withheld any information. It was also agreed by him that the statements made in the proposal form and declaration shall be basis of the contract of assurance and if any untrue averments are contained therein, the contract of assurance shall be absolutely null and void. One of the declarations which was given by the insured was that he has not consulted any medical practitioner during last five years for any ailment requiring treatment for more than a week and that he has never been admitted to any hospital or nursing home for general check up, observation, treatment operation and that he has not absented from place of work on the ground of health during the last five years. The insured has also given answers in negative to the questions that the insured was not suffering from or have ever suffered from ailments pertaining to liver, stomach, heart, lungs, kidney, brain or nervous system. A duly filled in proposal form has been appended as Annexure P-1 with the writ

petition. The said declaration was accepted and insurance policy was issued on 19th September, 2002. Clause 5 of the conditions and privileges of the Insurance Policy provides for forfeiture of policy in certain events. The said clause reads as under :—

> "5. **Forfeiture in certain events :**—In case the premiums shall not be duly paid or in case any condition herein contained or endorsed herein shall be contravened or in case it is found that any untrue or incorrect statement is contained in the proposal, personal statement, declaration and connected documents or any material information is withheld, then and in every such case but subject to the provisions of Section 45 of the Insurance Act, 1938, wherever applicable, this policy shall be void and all claims to any benefit in virtue hereof shall cease and determine and all moneys that have been paid in consequence hereof shall belong to the Corporation excepting always in so far as relief is provided in terms of the Privileges herein contained or may be lawfully granted by the Corporation".

(3) The insured died on 16th November, 2004 i.e. after two years of the issuance of insurance policy. A claim for insurance amount was lodged with the petitioner disclosing the cause of death as heart attack. Since it was an early claim, the matter was enquired into by the Petitioner and it was found that answers to the questions given by the life assured in the proposal form were false and were given with a view to influence the decision of the Corporation in accepting the proposal for insurance and that these answers were very material for the purpose of assessment of the risk. It was found that the life assured had suffered from dilated cardio myopathy for which he had taken treatment from the hospital and was on medical leave at the time of submitting the proposal for insurance on 14th September, 2002. In fact, the insured availed medical leave from 19th August, 2002 to 18th September, 2002 and remained hospitalized from 1st September, 2002 to 3rd September, 2002. Such facts were not disclosed in the proposal form. The claim arising out of the policy raised by the assured was repudiated on the ground of deliberate misstatement and withholding

of material statement regarding health of the life assured at the time of submitting proposal for insurance.

(4) Aggrieved against such repudiation, respondent No. 2, wife of insured, has filed an application under Section 22(c)(i) of the Legal Services Authority Act, 1987, for directing the petitioner herein to pay the policy benefits. The petitioner disputed the claim for assured amount on the ground that the policy was obtained by playing fraud and suppressing material information regarding health and instead insured gave false information in the proposal form and, thus, the contract was void *ab initio*. The plea regarding medical leave of the life assured and his admission in Sewak Sabha hospital was also specifically pleaded.

(5) The photo state copy of policy was produced by respondent No. 2 as Exhibit P-1 in evidence before the Permanent Lok Adalat whereas death certificate was produced as Exhibit P-2. On the other hand, the petitioner examined RW 1 Ram Niwas, Pay Clerk of the office of the employer of the insured. The said witness produced the leave record of the insured and deposed that the insured remained on leave for 31 days from 19th August, 2002 to 18th September, 2002. Dr. B. K. Gupta from Sewak Sabha Hospital, Hisar, was examined as RW 2 who has deposed that the insured was suffering from dilation of heart and was treated for dilated cardio myopathy. The certificate and bed head tickets were produced as Exhibits P-8 to P-10. Dr. Amit Mehta was examined as RW 3 who has treated the insured at Sukhda Hospital, Hisar from 2nd October, 2004 to 4th October, 2004 and from 11th October, 2004 to 13th October, 2004. The insured died on 16th November, 2004.

(6) The Permanent Lok Adalat returned a finding under Issue No. 2 that the insured was suffering from dilated cardio myopathy during the period from 19th August, 2002 to 18th September, 2002 and that this fact was not disclosed to the insurance company. It was held that the insured had died after two years of obtaining the insurance policy but the cause of death has not been proved on the record though there was concealment of his ailment by the insured. Therefore, the

petitioner was directed to make payment of the insured amount along with interest.

(7) Learned counsel for the petitioner has vehemently argued that the award of the Permanent Lok Adalat is patently illegal, against the provisions of Section 45 of the Insurance Act, 1938 (for short "the Act"), terms of the contract and the law applicable thereto. It is also agrued that the findings recorded are against facts on record. It is contended that once Issue No. 2 is decided in favour of the petitioner to the effect that the insured was suffering from dilated cardio myopathy from 19th August, 2002 to 18th September, 2002 and such fact having not been disclosed, the Permanent Lok Adalat Committed grave legal error in holding that such non disclosure is not material as the insured has died after two years. It is argued that concealment of material fact relevant for the issuance of policy is a valid ground for repudiation of Claim even after the expiry of two years. It is also argued that the finding that the cause of death is not available on record is factually incorrect. Therefore, it cannot be said that the ailment for which the insured was admitted in hospital has nothing to do with the cause of death of the insured. It is submitted that the said findings are factually incorrect as in the claim form Exhibit P-2 itself, the cause of death disclosed is heart attack. Still further, medical evidence such as of RW 3, Dr. Amit Mehta under whom the insured was under treatment immediately before his death and that of RW 2, Dr. B. K. Gupta sufficiently co-relate that the insured was suffering from dilated cardio myopathy in the year 2002 when the policy was taken and that the heart attack was the cause of death.

(8) It is also contended that in terms of Section 45 of the Act, an incorrect or false declaration given in the proposal form within a period of two years alone can not be a ground for repudiation of the claim but if the insurer shows that such statement was on a material fact or suppressed fact which was material to be disclosed and that statement was fraudulently made or withheld by the policy holder then such incorrect or false statement will not give validity to the policy even after the expiry of two years. It is, thus, contended that inaccurate or false statement in the proposal form within a period of two years can be ignored except in situation where such statement is on material

facts or had suppressed facts or made fraudulently. It is contended that the contract of insurance is *uberrima fides*, i.e. of utmost good faith, therefore, non-disclosure of material facts and furnishing of incorrect and suppression of correct facts entitles the insurance company to repudiate the policy. Reliance is placed upon **P.C. Chacko and another** *versus* **Chairman, Life Insurance Corporation of India and others (1),** and **Life Insurance Corporation of India** *versus* **Smt. G.M. Channabasemma (2).** It is contended that even after the expiry of two years period, incorrect statement on material matters or suppressed facts which were material to be disclosed but fraudulently made is sufficient to repudiate the policy at any point of time.

(9) The issue raised is not *res integra*. One of the earlier judgements which has considered the duty of the insured and liability of the insurance company were examined by a Division Bench of Patna High Court in **Rattan Lal and another** *versus* **Metropolitan Insurance Company Limited (3),** independent of the provisions of Section 45 of the Act. The said case is in respect of death of insured within a period of six months but it was held that the contracts of insurance including the contracts of life assured are contracts *uberrima fides* and every fact of materiality must be disclosed otherwise there is good ground for rescission. It was held that this duty to disclose continues up to the conclusion of the contract and covers any material alteration in the character of the risk which may take place between proposal and acceptance. It was held to the following effect :—

> "The well-settled law in the filed of insurance is that contract of insurance including the contracts of life assurance are contracts uberrima fides and every fact of materiality must be disclosed otherwise there is good ground for rescission. And this duty to disclose continues up to the conclusion of the contract and covers any material alteration in the character of the risk which may take place between proposal and acceptance. **Looker** *versus* **Law Union and Rock Insurance Co.** (1928) 1 KB 554. **Jessel M.R. in London**

(1) (2008) 1 SCC 321
(2) AIR 1991 SC 392
(3) AIR 1959 Patna 413

Assurance Co. *versus* **Monsel,** (1879) 11Ch D 363 observed :

"As regards the general principle, I am not prepared to lay down as making any difference in substance between one contract of assurance and another. Whether it is life, or fire, or marine insurance, I take it good faith is required in all cases and though there may be certain circumstances from the peculiar nature of marine insurance, which requires to be disclosed, and which do not apply to other contracts of insurance, that is rather in my opinion an illustration of the application of the principle than a distinction of principle".

Therefore, in this case non-disclosure of material facts even in the absence of misrepresentation or fraud may make the contract voidable at the instance of the parties to whom 'uberrima fides' is due. But then in such cases sometimes a ticklish question arises as to what is a material fact. Authorities say that any fact which tends to suggest that the life insured is likely to fall short of the average duration is a material fact, **Thomson** *versus* **Weems** (1884) 9 AC 671; and rightly so for after all life assurance is nothing but a scientific assessment of an average duration of a life, and that is not possible unless all correct data about that life are diligently and faithfully made available to the company.

But then the border line between what is material and what is not material is more often than not so faint and dim and there is always a danger of one being taken for the other. Therefore, in order to avoid this danger one has to be careful in drawing a distinction between what is illness or material change in health and what is ordinary simple disorder. A disorder is not one 'tending to shorten life' simply from the circumstances that the assured dies from it **Watson** *versus* **Mainwaring** (1813)4 Taunt 763.

A good health means reasonably good health **Yorke** *versus* **Yorkshire Insurance,** (1918) 1 KB 662 ; and

National Mutual *versus* **Smallfield, (1972) N. Z. Law 1074.** A warranty of good health can 'never mean that a man has not in him the seeds of some disorder. We are all born with the seeds of mortality in us' **Willis** *versus* **Poole,** (1780) 2 Parks' **Marine Insurance 8th Ed p. 935.** Life insurance is peculiar in that the assured is often ignorant as to the fact most material in assessing the premium—the state of his own health.

Though he may have a general idea as to his own physical well-being, he may well be unaware of an incipient but deadly disease within his system that a doctor might have diagnosed. The rule is, warranties apart, that the insurer may only avoid the policy if the assured knowingly misrepresents his state of health. It is true that this is not consistent with what Roche J., laid down in **Graham** *versus* **Westren Australian Insurance,** (1931) 40 LR 64.

According to that learned Judge, the principle had been settled for years that "if there is information given, be it quite innocent, which is not a matter of contract, and never becomes a matter of contract, yet, nevertheless, if it is inaccurate, it can be used to avoid the policy or policies in question". It, however, appears from authorities that though this may be true as to marine risks but so far as life insurance is concerned, that does appear to stand on a special position in this respect, as is evident also from the discussion made in Halsbury's Laws of England, Volume 18, Art. 588. Therein a distinction has been drawn between misrepresentation and non-disclosure and in the course of that it has been observed :

".....Since, however, the duty to disclose is limited to facts within the knowledge of the assured, a mistaken statement about a material fact (Wheelon versus Hardisty (1858) 8E and B 232) made honestly, that is, with belief in its truth, will not affect the validity of the contract (Anderson

versus Fitzgerald (1853) 4 H. L. Cas. 484), unless there is an express condition that it shall do so".

It may be said that the present case is one where there was a condition imposed on the assured and accepted by him that in case he fell ill or there was any change in his health between the date of the proposal and the date of his acceptance by the company, he would send an intimation of that event to the company. But in this connection it has to be remembered that a statement which is expressed to depend upon the assured's state of mind will not be untrue simply because he has unaware of the true facts (1858) 8E and B. 232.

Therefore, if in his honest judgment there was no illness or any change of health but only an ordinary disorder, the mere non-communication of that event to the company cannot be a ground for the insurer to avoid the policy. This, in my opinion, in ultimate analysis always turns out to be a question of fact whether any particular physical nervous disorder amounts to an illness or is a more disorder. Looked at, therefore, from these points of view that we have to approach the present case".

(10) The aforesaid judgment has explained minutely a material fact which is sufficient for repudiation of the contract. It was examined that though the person may have a general idea as to his own physical well-being, he may well be unaware of an incipient but deadly disease within his system that a doctor might have diagnosed. It was held that the rule is, warranties apart, that the insurers may only avoid the policy if the assured knowingly misrepresents his state of health. Therefore, in his honest judgment there was no illness or any change to health but only an ordinary disorder, the mere non-communication of that event to the company cannot be a ground for the insure to avoid the policy. Thus, it can be said that material fact is not an ordinary disorder of health and does not include the disease which a doctor might have diagnosed.

(11) In **All India General Insurance Co., Ltd., and another** *versus* **S. P. Maheshwari (4),** a Division Bench of Madras High Court has examined the codification of law of insurance, particularly consequences of enactment of Section 45 of the Act. It was a case where the claim was lodged within two years of the taking of policy. The Division Bench has examined and explained the difference between warrantee and representation in respect of contract of insurance. It was held to the following effect :—

> "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.
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> Mutual trust and confidence is the basis upon which the parties proceed. The insurer trusts to the representations of the assured, and proceeds upon the confidence that he does not keep back any circumstance in his knowlege, so as to mislead the insurer into a belief that the circumstance does not exists, or to induce him to estimate the risk as if it did not. On the other hand, the assured relies upon the honesty of the insurer for the communication of every fact which he ought to know before he invests his money and the non-disclosure of which will affect his judgment, as for instance,

(4) AIR 1960 Madras 484

where the insurer grants a policy where he will never run any risk there under.

This duty to disclose not only exists at the time of entering into the contract but continues during its subsistence and after the risk has happened.

17. The duty of disclosure comes under two heads, *viz.*, (i) representation ; and (ii) warranties : representations which are made the basis of the contract and those which do not constitute the basis of the contract of insurance. The former are known as warranties. A representation is not strictly speaking a part of the contract of insurance or of the essence of it, but rather something collateral or preliminary and in the nature of an inducement to it. A false representation unlike a false warranty will not operate to vitiate the contract or avoid the policy unless it relates to a fact actually material or clearly intended to be made material by the agreement of the parties.

It is sufficient if the representation is substantially true. A misrepresentation renders the policy void on the ground of fraud while miscompliance with a warranty operates as an express breach of the contract. A stipulation inserted in writing on the face of the policy on the literal truth or fulfillment of which the validity of the entire contract depends is a warranty. The stipulation is considered to be on the fact of the policy although it may be written in the margin or transversely or on a subjoined paper referred to in the policy".

(12) The effect of warrantee is if any point of answer to the question is untrue then notwithstanding the untruth might have arisen inadvertently and without fraud, the claim can be repudiated. It was held to the following effect :—

"18. .....Thus, if a person effecting a policy of insurance says "I warrant such and such things which are here stated", and that is part of the contract, then, whether they are material

> or not is quite unimportant ; the party must *ad here* to his warranty, whether material or immaterial. But if the party makes no warranty at all but, simply makes a certain statement, if that statement has been made *bona fide* unless it is material, it does not signify whether it is false or not false. Indeed, whether made *bona fide* or not if it is not material, the untruth is quite unimportant. If there is no fraud in a representation it is perfectly clear that it cannot affect the contract ; and even if material but there is no fraud it it, and it forms no part of the contract, it cannot vitiate the right of the party to recover".

(13) While explaining that what is meant by representation, it was held to mean a verbal and written statement made by the assured to the underwriter, at or before the making of the contract, as to existence of some fact or state of facts calculated to induce the underwriter more readily to assume the risk, by diminishing the estimate he would otherwise have formed of it. The representation was found to be of two kinds (i) a positive affirmation, based upon knowledge that the facts represented either do or will exists, and (ii) a mere declaration of brief or expectation that such facts do or will exists. It was found that the main distinction between representation and warrantly is that as a general rule answers to questions are representations and not warranties. In the case of a warranty materiality or immateriality of the warranted signifies nothing. Its incorrectness constitutes a defence to an action on the policy, but in case of representation, the insurer can avoid the policy only by proving that the statement is false and fraudulent or that it was false and material to risk. The Court held as under :—

> "20. Representations may be of two kinds (i) a positive affirmation, based upon knowledge that the facts represented either do or will exist, and (ii) a mere declaration of belief or expectation that such facts do or will exist. The Marine Insurance Act, 1906, recognizes the above classification by declaring that "a representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief". Though Arnold (Arnold on the Law of Marine Insurance and Average 14th Edition S. 527) refers

to a third class of representation, *viz.*, a mere communication of information received from others ; this supposed third class must always fall within one or of the two classes specified above. Representations of the first kind are called "positive representations" which again are sub-divided into (1) affirmative and (2) promissory, while representations of the second kind are called representations of statements of expectation.

21. Therefore, the main distinction between represention and warranty is that as a general rule answers to questions are representations and not warranties, though it is possible for persons to stipulate that answers to certain questions shall be the basis of the contract, in which case they become part of the warranties. In the case of a warranty materiality or immateriality of the fact warranted signifies nothing. Its incorrectness constitutes a defence to an action on the policy, even though it be not material and be made in perfect good faith. But, in the case of a representation, the insurer can avoid the policy only by proving that the statement is false and fraudulent or that it was false and material to the risk. In other words, it is only a material misrepresentation that can avoid a policy if the truth of the facts contained in the representation be not warranted by the policy.

24. To sum up, in policies of life insurance there is an understanding that the contract is Uberrima fides and no party is allowed to play hide and seek but each will have to place his cards on the table ; and even mental reservations of any kind are not allowed. This Uberrima Fides is two-way traffic. Contracts of insurance, being contracts of faith, imposition by either party will constitute good ground for avoidance.

27. This brings us on finally to the topics of nondisclosure or misrepresentation which are practically the positive and negative aspects of the same thing. The effect of misrepresentation on the contract is precisely the same as

that of non-disclosure ; it affords the aggrieved party a ground for avoiding 'he contract. There are a number of dicta and one decision to the effect that life insurance is an exception to the general rule that innocent misrepresentation may afford grounds for ıvoiding a policy and that the misrepresentation must be fraudulent to have this effect upon a policy of life insurance. But in order to give the insurer grounds for avoidance both under non-disclosure as well as misrepresentations, both must relate only to material information.

28. What facts are material, the concealment of which or the misrepresentation of which, would afford a ground for the avoidance of the policy ?"

(14) After referring to principles of life insurance, the Court held that rule, therefore, is warranties apart, that the insurers may only avoid the policy if the assured knowingly misrepresent his state of health as he is bound to disclose no more than what he actually knows. He is not bound to disclose facts which he does not know or facts not within the knowledge of the insurer. Hon'ble Justice Anantanarayanan, while agreeing with the view of Hon'ble Justice Ramaswami, in the aforesaid judgment held that Section 45 of the Act has remedied the grave hardship resulting from the doctrine that misrepresentation within the warranty even with reference to the most trivial or non material details would vitiate the contract. The said provision has been enacted with the intention that application of rigid and stringent rule of warranty to trivial or inconsequential misrepresentation ought to be mitigated in the interest of justice. The Court concluded to the following effect :—

"44. This, to a considerable extent, does mitigate the rigour of the rule that the most trivial misrepresentation within the ambit of the warranty, might still be a good enough defence for the Insurance Company to refuse payment on the policy.

47. .....We can thus see that great injury might be cause by the refusal of the Insurance company to honour the contract, because of an alleged non-disclosure relating to some very

> minor ailment, which had no reference at all to the life expectation.....
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> Secondly, I think that, having the great advantage of codification, we should go further and indicate that, even within the two year period, only misrepresentation which are material, in the sense of having some effect upon life expectation, whether direct or indirect, should be allowed in defence for avoidance of the cantract. Of course, within this period, the further conditions laid down in section 45 need not be made applicable. For instance, it may not at all be necessary to lay down that the policy holder knew that the statement was false, or that he fraudulently suppressed this knowledge.
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> But, if the law is to be retained, as it stands, cases of hardship and injustice might arise, within the two year period, which the Courts would be powerless to remedy, since the principle of warranty would hold the field....."

(15) A reading of the aforesaid leads to the fact that the duty of disclosure comes under two heads i.e., representation and warranties. The warranties are representations which are made the basis of the contract. A representation is is collateral or preliminary or in the nature of an inducement to the policy of insurance. A false representation will not operate to vitiable the contract or void the policy unless it relates to a fact actually material or clearly intended to be made material by the agreement of the parties. A misrepresentation renders the policy void on the ground of fraud. In the case of representation, the insurer can avoid the policy only by proving that the statement is false and fraudulent or that it was false and material to the risk. Thus, the common thread in the case of warranties or representation is a fact actually material or intended to be made material by the agreement of the parties. The misrepresentation which the material having effect upon life expectation, whether direct or indirect, are the possible defence for avoidance of the contract.

(16) The case of **Mithoolal Nayak** *versus* **Life Insurance Corporation of India (5),** is almost para materia with the facts of the present case. That was a case where the insurred has died after two years. It was held to the following effect :—

> ".....As we think that S. 45 of the Insurance Act applies in the present case, we are relieved of the task of examining the legal position that would follow as a result of inaccurate statements made by the insured in the proposal form or the personal statement etc, in a case where S. 45 does not apply and where the averments made in the proposal form and in the personal statement are made the basis of the contract.
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> (8) The three conditions for the application of the second part of S. 45 are—
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> (a) the statement must be on a material matter or must suppress facts which it was material to disclose ;
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> (b) the suppression must be fraudulently made by the policy-holder ; and
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> (c) the policy holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.
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> The crucial question before us is whether these three conditions were fulfilled in the present case. We think that they were. We are unable to agree with the learned trial Judge that the ailments for which Mahajan Deolal was treated by Dr. Lakshmanan in September-October, 1943 were trivial or casual ailments. Nor do we think that Mahajan Deolal was likely to forget in July, 1944 that he had been treated by Dr. Lakshmanan for certain serious ailments only a few months before that date.....Mahajan Deolal must have known that it was material to disclose that fact to the

(5) AIR 1962 S.C. 814

respondent company. In this answers to the questions put to him he not only failed to disclose what it was material for him to disclose, but he made a false statement to the effect that he had not been treated by any doctor for any such serious ailments as anaemia or shortness of breath or asthma. In other words, there was deliberate suppression fraudulently made by Mahajan Deolal. Fraud, according to S. 17 of the Indian Contract Act, 1872 (IX to 1872), means and includes *inter alia* any of the following acts committed by a party to contract with intent to deceive another party or to induce him to enter into a contact—

(1) the suggestion, as to a fact of that which is not true by one who does not believe it to be true ; and

(2) the active concealment of a fact by one having knowledge or belief of the fact. Judged by the standard laid down in S. 17, Mahajan Deolal was clearly guilty of a fraudulent suppression of material facts when he made his statements on 16th July, 1944 statements which he must have known were deliberately false. Therefore, we are in agreement with the High Court in answering the first question against the appellant.

9. .....The principle underlying the Explanation to S. 19 of the Contract Act is that a false representation, whether fraudulent or innocent, is irrelevant if it has not induced the party to whom it is made to act upon it by entering into a contract. We do not think that that principle applies in the present case. The terms of the policy make it clear that the averments made as to the state of health of the insured in the proposal form and the personal statement were the basis of the contract between the parties, and the circumstance that Mahajan Deolal had taken pains to falsify or conceal that he

had been treated for a serious ailment by Dr. Lakshmanan only a few months before the policy was taken shows that the falsification or concealment had an important bearing in obtaining the other party's consent. A man who has so acted cannot afterwards turn round and say : "It could have made no difference if you had known the truth". In our opinion, no question of waiver arises in the circumstances of this case, nor can the appellant take advantage of the Explanation to S. 19 of the Indian Contract Act".

(17) In **Life Insurance Corporation of India** *versus* **Smt. G. M. Channabasemma (6),** Supreme Court held that the assured is under solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not.

(18) In **P.C. Chacko and another** *versus* **Chairman, Life Insurance Corporation of India and others (7),** Hon'ble Supreme Court was considering a claim lodged by the insured who died within six months of taking the policy. The judgments in **S.P. Maheshwari's case** (*supra*) **and Rattan Lal's case** (*supra*) were referred to and the judgment of the Division Bench of the High Court dismissing the suit of the legal representatives of the deceased insured was maintained.

(19) In the present case, the insured has not disclosed the factum of his ailment though he was on medical leave when he filled up the proposal form. Such material fact cannot be said to be trivial which could be ignored by the insured saved by Section 45 of the Act. Non-disclosure of such material fact and the fact that cause of death is heart attack, on account of which the deceased was on medical leave, clearly disentitle the insured to claim compensation. It is a case of misrepresentation of a material fact which vitiates the contract of life insurance. The fact that the deceased has survived for a period of two years is of no consequence. Such condition is a condition of valid enforceable contract available to the Insurance company under Section

(6) AIR 1991 S.C. 392
(7) (2008) 1 SCC 321

17 of the Contract Act, 1872. Section 45 of the Act deals only with trivial incorrect statements made in the proposal form to deny liberty to the insurance company to avoid insurance contract within period of two years. But where the material facts have been withheld or incorrect information furnished, the contract of insurance, independent of Section 45 of the Act, would entitle the insurance company to repudiate the claim.

(20) In view of the above, We are of the opinion that the Award of Permanent Lok Adalat is not based upon correct interpretation of Section 45 of the Act. Thus we allow the present writ petition and set aside the award dated 24th February, 2007, Annexure P-22 with no order as to costs.

R.N.R.

Before Mehtab S. Gill & Augustine George Masih, J.J.

MAHIPAL,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 19357 of 2007

22nd October, 2008

Constitution of India, 1950—Art. 226—Allegations of tampering of service book—Over-writing/cutting in date of birth—Petitioneer continued to serve beyond date of attaining age of superannuation—Not entitled to benefit of said period towards pensionary benefits and salary—Petitioner drawing salary on continuance of said period of service beyond the period of superannuation—Petitioner an illiterate person can be compensated for said period by granting minimum of pay scale—Excess payment, if any, made to pertitioner for said period ordered to be recovered from retiral benefits treating him to have retired from service with effect from actual date of superannuation.