

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT.

Insurance Appeal No.201 of 2016

State Life Insurance Corporation, etc. **VS** **Mst. Shazia Mir Arshad**

JUDGMENT.

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| Date of Hearing | 17.05.2017. |
| Appellants by | Mr. Ibrar Ahmad, Advocate. |
| Respondent by | Mr. Liaqat Ali Butt, Advocate. |

HABIB ULLAH AMIR, J:- State Life Insurance Corporation of Pakistan etc. the appellants have called in question vires of the decision dated 06.01.2016 of the learned Additional District Judge, Lahore working as Insurance Tribunal under Insurance Ordinance 2000, whereby he accepted application of respondent for recovery of policy proceeds.

2. Precisely, the facts of case are that Mir Arshad Pervaiz, deceased husband of the respondent purchased insurance policy No.507880632-1 for a sum assured i.e. Rs:2,00,000/- commencing from 01.07.2005 against yearly premium of Rs:16,014/-. He died on 07.09.2008 whereupon respondent filed his death claim being his nominee which was repudiated by appellants after investigation on the ground that the contract of insurance was obtained fraudulently through concealment of material facts. The appellant refused payment of death claim on the plea of concealment of facts and mis-statement by the insured in proposal form statedly in line with provisions of Section 79 of Insurance Ordinance, 2000. The respondent approached learned Insurance Tribunal, Lahore

against repudiation of insurance claim by filing application for recovery of policy proceeds and her application was accepted vide judgment dated 06.01.2016 in the following manner:-

“In view of my findings given above, the application for recovery of insurance claim is accepted as prayed for alongwith liquidated damages under Section 118 of Insurance Ordinance. The liquidated damages shall be paid for the period during which the failure to make payment continues (from the date of death of insured till realization of claim) and shall be calculated at monthly rests at the rate of 5% higher than the prevailing base rate. The respondent will bear the costs of the case”

3. Arguments heard. Record perused.
4. In her application for recovery of policy proceeds the respondent has given the detail of policy as under:-

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| (i) | Policy No. | 507880632-1 with profit |
| (ii) | Name of Life Insured | Mir Arshad Pervaiz |
| (iii) | Sum Assured | Rs:2,00,000/- |
| (iv) | Table/Term | 03/20 years |
| (v) | Supplementary Contracts | (i). A.I.B. (ii). F.I.B—15% for 19 years |
| (vi) | Medical/Non-Medical | Non-Medical |
| (vii) | Age of Assured | 46 years |
| (viii) | Date of commencement | 01.07.2005 |
| (ix) | Yearly Premium | Rs:16,014/- |
| (x) | Last premium paid on | 01.07.2008 |
| (xi) | Assured date of death | 07.09.2008 |

5. In application it is further averred that petitioner was a nominee and her husband Mir Arshad Pervaiz expired on 07.09.2008 and after his demise, respondent No.2 was approached and accordingly, claim papers were issued by appellant vide letter dated 28.11.2008 and then after scrutiny of claim papers and investigation by the claim examiner, appellants proceeded to repudiate the claim vide order dated 30.03.2010. It is averred that repudiation of policy was derogatory to the terms

of policy schedule while the policy was called in question after 04-years, 08-months and 29-days despite that it was not in the domain of appellants to call in question policy after two years in consonance with the provisions envisaged under Section 80 of Insurance Ordinance, 2000. The application of respondent has been controverted by appellants on different grounds.

6. In order to prove her claim, Shazia Meer Arshad-respondent appeared as AW-1 and deposed that Life Insurance policy in the sum of Rs:2,00,000/- was purchased by her husband from State Life Insurance Corporation Gujrat Zone and she was nominee of the policy and term of policy was 20-years. She further deposed that the annual premium of the purchased policy was fixed as Rs:16,014/- and commencement date of policy was 01.07.2005. She also deposed that an additional contract of Family Income Benefit @ 15% was included in the policy. The policy holder died on 07.09.2008 and after death of insured on 28.11.2008 his death claim was lodged with appellant, however, it was repudiated vide letter No.30.03.2010 Exh.AW-1. She further deposed that her husband was healthy at the time of purchasing of life insurance policy. In rebuttal to the deposition of Shazia Mir Arshad, RW-1 Mohammad Bakhsh deposed that Mir Arshad Pervaiz obtained Life Insurance Policy which commenced from 01.07.2005 and lapsed on 01.07.2006 due to non-payment of premium, however, policy was revived, subject to declaration of good health. The policy holder filed declaration to that effect and policy remained enforced for 01-year, 08-months and 06-days after revival. He further deposed

that insured obtained policy by concealing material information regarding his continuous, past eight years illness of diabetes mellitus CLD and Hepatitis-C and medical certificate issued by Dr. Arshad Javed Sheikh was also produced as Mark-A. He also deposed that insured did not disclose the material facts before obtaining the policy that he had met with an accident in the year 1994 and remained under treatment for two years from Chattha Hospital and Jalil Hospital, Gujranwala. He further deposed that insured was also suffering from diabetes at the time of accident in 1994 and he got treatment from Sheikh Zaid Hospital, Lahore from 24.07.2008 to 31.07.2008. He further deposed that he investigated the ailment of the insured. He got statement of the widow and produced the inquiry report dated 26.10.2009. The appellants also produced Dr. Arshad Javed as RW-2 who deposed that medical certificate dated 08.07.2009 was in his handwriting and signed by him and that Mir Arshad Pervaiz remained under his treatment from February 2008 to September 2008.

7. Learned counsel for appellant has argued that insurance claim is based on policy obtained through fraud, misrepresentation and concealment of material facts, therefore, it was rightly repudiated by appellants while on the other hand, it has been argued by the learned counsel for the respondent that insured was thoroughly medically examined at the time of policy and he was not undergoing ailment at the time when he purchased policy. Moreover, the law does not permit for an inquiry after signing of the insurance contract and its approval

by the corporation and also that appellants are not legally authorized to repudiate policy after lapse of two years as provided in Section 80 of the Insurance Ordinance, 2000.

8. Section 80 of the Insurance Ordinance, 2000 provides that notwithstanding anything contained in Section 79, no policy of life insurance effected before the commencement date of the Ordinance *ibid* shall after the expiry of two years from the commencement date of this Ordinance and no policy of life insurance effected after the commencement date shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the policy-holder, or in any other document leading to the issue of the policy, is inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it is material to disclose and that it is fraudulently made by the policy holder and that the policy holder knows at the time of making it that the statement was false or that it suppressed facts which it was material to disclose, while Section 79 of the Insurance Ordinance reads as under:-

“---(1) This Section shall apply where the person who became the policy-holder under a contract of insurance upon the contract being entered into:

- (a) Failed to comply with the duty of disclosure; or***
- (b) Made a misrepresentation to the insurer before the contract was entered into.***

“(2) The insurer may not avoid a contract of insurance by reason only of the failure to comply with the duty of disclosure or the misrepresentation if:

- (a) the insurer would have entered into the contract, for the same premium and on the same terms and conditions, even if the insured had not failed to***

comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into; or

(b) the failure to comply with the duty of disclosure or the misrepresentation was not fraudulent:

Provided that in circumstances to which clause (b) refers, the insurer shall be entitled to be placed, in such manner, nor otherwise inconsistent with this sub-section, as may be prescribed, in a position in which the insurer would have been if the failure had not occurred or the misrepresentation had not been made.

(3) Subject to sub-section (2), if the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.

(4) Nothing in this section shall affect any right of an insurer to recover damages from any person in respect of loss suffered by the insurer as a result of a fraudulent act by that person, or any criminal liability to which any person may be subject by reason of a fraudulent act by that person”

9. Bare reading of above quoted sections unveil that no policy of insurance effected shall after expiry of two years from the commencement date shall after the expiry of two years from the date from which it was effected be called in question by insurer and that an insurer may avoid a contract of insurance by reason only of the failure of insured to comply with duty of disclosure or misrepresentation unless the failure is fraudulent or misrepresentation is made fraudulently.

10. Disclosure of material facts as to ones health, is a ticklish issue and that what is material depends upon the circumstances of each case, the concept of good health means reasonably good health and a warranty of good health can never mean that a person has not in him the seeds of disorder as one is born with seeds of mortality. A person can be ignorant about his health or about the deadly disease, which has its roots in him. A person has normally a general idea of his health, so question arises as to when the contract of insurance becomes voidable at the option of insurer. Non-disclosure relates to the facts which

are in the knowledge of the person making statement. A person who is himself unaware of his ill health, can make an innocent statement that he is not suffering from disease/illness. This statement cannot be used against such a person and statement is fatal only when person making the statement deliberately and willfully suppresses the material facts, knowing that disclosure of such facts was material and facts were fraudulently suppressed.

11. It has been laid down in judgment reported as “State Life Insurance Corporation of Pakistan through Chairman and another” Vs. Javed Iqbal” (2011 CLD 948) that illness of the insured, subsequent to issuance of insurance policy is of no legal consequence and cannot be relied upon to assert or prove that such illness existed prior to issuance of the insurance policy and insured cannot be accused of not disclosing any illness that has occurred after insurance policy had been obtained and once the insurance company fails to prove any material concealment qua the health of insured at the time when the insurance policy was issued it cannot repudiate insurance policy. Similarly in case law reported as “State Life Insurance Corporation and others” Vs. Mst. Shumila and others” (2013 CLD1525) it has been laid down that the appellants once entered into the contract after fully satisfying themselves and accepted the report of a competent Medical Officer of their own choice, so keeping in view, the provision of Section 77 of the Insurance Ordinance, 2000 read with Section 78 and subsection (2)(a)(b) of Section 79 on the subject, the appellants cannot repudiate or

avoid the contract after lapse of three years and that too after the death of deceased. It has also been laid down therein that in case appellants failed to pay amount insured by policy holder within the stipulated period of ninety days, without any reasonable, plausible excuse, they may be burdened with liquidated amount to be paid without any further pretext on any ground alongwith the amount decreed in favour of nominee, but not later than ninety days as envisaged in Section 118 of the Insurance Ordinance, 2000.

12. In this case, it is not denied by appellants that Mir Arshad Pervaiz deceased purchased Life Insurance policy. Appellant's own witness RW-1 Mohammad Bakhsh deposed that Mir Arshad Pervaiz obtained Life Insurance policy commencing from 01.07.2005 and policy lapsed on 01.07.2006 due to non-payment of premium but policy was revived, subject to submission of declaration of good health and on 18.12.2006 insured filed declaration Exh.R-3. As discussed earlier under Section 80 of Insurance Ordinance, 2000 a policy cannot be called in question on grounds of misrepresentation, false statement or suppression of material facts, after two years from the date when the policy is effected and period of two years, even in cases where the policy is revived/renewed and the period would be counted from the original date of the policy in question. Reliance is placed on judgment reported as *"State Life Insurance Corporation Vs. Mst. Sadaqat Bano"* (PLD 2008 Lahore 461).

13. Record is also annexed with documents establishing that the insured was also medically examined. In the circumstances appellants cannot claim that the policy holder had concealed his serious ailment which he was undergoing prior to purchase of the policy and even otherwise the claim of appellants in trial that deceased had made concealment of his ailment in policy form is not supported with any evidence and their own witness RW-2 Dr. Arshad Javed conceded that deceased Mir Arshad Pervaiz was not personally known to him and he also confirmed that certificate brought on record by appellants in trial was issued by him after the death of Mir Arshad Pervaiz and the stance of appellants that the deceased remained admitted in hospital when his leg was fractured due to an accident, is not supported with any material.

14. Another aspect of the matter is that appellants vide letter No.DC/GRT/E/NRCC(REP)/10 dated 30.03.2010 Exh.AW-1, intimated the respondent Mst. Shazia Mir Arshad that State Life Insurance Corporation had gathered sufficient evidence to prove the concealment of facts by deceased, therefore, the policy had been rendered null and void and expressed inability to pay the claim under policy and admittedly respondent Shazia Mir Arshad was not given right of hearing by appellants before repudiating insurance claim. Under the law principle of natural justice enshrined in the maxim *audi alteram partem* is one of the most important principles and its violation is always considered enough to vitiate even most solemn proceedings and where adverse action is contemplated to be

taken against a person he has a right to defend such action, notwithstanding the fact that the statute governing his right does not contain provision of the principle of natural justice and even in absence thereof it is to be considered as a part of such statute in the interest of justice. It has also been settled by Superior Courts that principle of natural justice is now made inbuilt part of civil contracts like the one under discussion as principle originates from Islamic System of Justice as evident from historical episode when *“Iblees was scolded for having misled Hazrat Adam (A.S.) into disobedience of Allah’s command. Almighty Allah called upon Iblees to explain his conduct and after having an explanation from him which was found untenable, he was condemned and punished for all times to come”*. Thus, the principle of natural justice has to be applied in all kinds of proceedings strictly and departure therefrom would render subsequent actions illegal in the eye of law. There are also plethora of judgments rendered by Superior Courts that in all proceedings by whomsoever held, whether judicial or administrative, the principle of natural justice has to be observed if the proceedings might result in consequences affecting the person or property or other right of the parties concerned and this rule applies even though there may be no positive words in the statute of legal document whereby their powers is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness. Moreover, whenever any person or body of person is empowered to take decision after ex-post facto investigation into

facts which would result in consequences affecting the person, property or other right of another person, then in the absence of any express words in the enactment giving such power excluding the application of the principles of natural justice, the Courts of law are inclined generally to imply that the power so given is coupled with the duty to act in accordance with such principle of natural justice as may be applicable in the facts and circumstances of a case. We are fortified by the judgments reported as “Pakistan International Airlines Corporation (PIAC) through Chairman and others Vs. Nasir Jamal Malik and others” (2001 SCMR 934), “Hazara (Hill Tract) Improvement Trust through Chairman and others Vs. Mst. Qaisra Elahi and others” (2005 SCMR 678), “Abdul Hafeez Abbasi and others Vs. Managing Director, Pakistan International Airlines Corporation, Karachi and others” (2002 SCMR 1034) and “The University of DACCA through Its Vice Chancellor and the Registrar University of DACCA Vs. Zakir Ahmed” (PLD 1965 Supreme Court 90).

15. It has been observed in this case that insurance policy was repudiated by appellants without affording an opportunity of hearing to respondent Mst. Shazia Mir Arshad and thus, appellants violated principle of natural justice and the requirement of law that before repudiation of claim right of hearing must be afforded to the person aggrieved of the order of repudiation. In this regard reliance is placed on case law reported as “State Life Insurance Corporation and others” Vs. Mst. Shumila and others” (2013 CLD1525).

16. The deceased Mir Arshad Pervaiz purchased life insurance policy and its date of commencement was 01.07.2005 which remained in field till his death and once insurance contract has been signed and approved by company and that is in field, illness of the policy holder, subsequent to issuance of insurance policy is of no legal consequence and cannot be relied upon to assert or prove that such illness existed prior to issuance of the insurance policy. Reliance is placed on judgment reported as *“State Life Insurance Corporation of Pakistan thorough Chairman and another” Vs. Javed Iqbal” (2011 CLD 948)*. In this case, appellants have not been able to prove that insured was suffering from any serious ailment at the time of issuance of insurance policy and it has rightly been held by the learned Insurance Tribunal that the respondent being nominee wife of insured is entitled to the recovery of insurance claim filed by her.

17. Section 118 of Insurance Ordinance, 2000 provides that it shall be an implied term of every contract of insurance that where payment on a policy issued by an insurer becomes due and the person entitled thereto has complied with all the requirements, including the filing of complete papers, for claiming the payment, the insurer shall, if he fails to make the payment within a period of ninety days from the date on which the payment becomes due or the date on which the claimant complies with the requirements, whichever is later, pay as liquidated damages a sum calculated in the manner as specified in sub-section (2) on the amount so payable unless he proves

that such failure was due to circumstances beyond its control and this provision of law i.e. Section 118 of Insurance Ordinance 2000 has been inserted to safeguard the interests of claimants and to ensure that settlement of claims are not unduly delayed/prolonged. In this case the appellants were not prevented by any cause beyond their control to process and pay the claim within time frame provided in Section 118 of Insurance Ordinance, 2000 and respondent was forced by acts and omissions on the part of appellants/insurance company to resort to litigation and if time consumed in litigation is excluded, it would set a bad precedent and create a loophole in the law which could be abused by unscrupulous insurance companies to drag claimants in protracted litigation and deprive them of their lawful claims for years and if allowed, it would be contrary to the principles of equity, justice and fair play and good conscience and would also defeat the very purpose for which provision was made for payment of liquidated damages. In this case neither scrutiny of claimants' claim was finalized during 90-days period nor any payment was made and the policy was repudiated by the appellants Insurance Corporation after expiry of such period, therefore, respondent was rightly held to receive liquidated damages as well.

18. Viewing the case of respondent on the above settled principles, we are unable to agree with the appellants that the deceased Mir Arshad Pervaiz had made concealment of facts at the time of purchasing or revival of the policy and failed to disclose the factum of any serious ailment, rather he had

supplied information and passed medical examination which shows that deceased was of good health and thus, appellant failed to adduce any cogent evidence to the effect that policy holder was aware of his ailment and had deliberately concealed and made fraudulent misrepresentation. Therefore, in view of the discussion made above, it is held that the learned Insurance Tribunal passed impugned decision by appreciating material available on record including evidence produced and adduced by parties and neither any illegality has been pointed out nor found in the impugned decision of learned Insurance Tribunal and in the circumstances discussed above, this appeal merits dismissal.

19. As a sequel of above discussion, the insurance appeal in hand being devoid of merits is dismissed.

(Muhammad Farrukh Irfan Khan)
Judge

(Habib Ullah Amir)
Judge

Approved for reporting.

Judge

Sadheer Ahmad