



LAW COMMISSION OF INDIA
ONE HUNDRED AND TWELFTH REPORT

ON

SECTION 45 OF THE INSURANCE ACT, 1938.

June, 1985

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CHAPTER 1

INTRODUCTION

1.1. This report deals with section 45 of the Insurance Act, 1938. The section deals with the right of the insurer to repudiate a policy on the life of the insured. In the working of the section, certain difficulties have been noticed and the Law Commission has taken up its examination as part of its function of revising the laws of our country. Scope of the report.

1.2. Section 45 of the Insurance Act, 1938 reads as follows :

Section 45, Insurance Act, 1938

*“Policy not to be called in question on ground of mis-statement after 2 years—*No policy of life insurance effected before the commencement of this Act shall, after the expiry of two years from the date of the commencement of this Act and no policy of life insurance effected after the coming into force of this Act 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 insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose :

Provided that 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.”

1.3. The period of two years mentioned in the section runs, in the case of a policy effected before the commencement of the Act, which is July 1, 1939; and in other cases, the period runs from the date on which the policy was effected. Even in the case of revival of a lapsed policy, the period has to be calculated from the date on which the policy was originally effected.¹

Date from which the period of 2 years is counted.

1.4. The Government of India decided to nationalise life insurance business in India in order to ensure absolute security to the policy-holder in the matter of his life insurance protection, to spread insurance much more widely and in particular to the rural areas, and as a further step in the direction of more effective mobilisation of public savings.² Accordingly, in 1956, Parliament passed the Life Insurance Corporation Act, and s. 43 of the LIC makes s. 45 of the Insurance Act applicable to the Life Insurance Corporation as it applied to any other insurer.

Effect of the Life Insurance Corporation Act, 1956.

1. *Mithoolal v. LIC*. AIR 1962 SC 814.

2. Statement of Objects and Reasons to the LIC Act, 1956.

CHAPTER 2

SCOPE OF SECTION 45 OF THE INSURANCE ACT, 1938

Scope of s. 45.

2.1. Under the English Common Law, contracts of insurance are contracts *uberrima fides* or contracts of utmost good faith, so that, if the insured had made incorrect statements or suppressed facts, the insurer could avoid the contract even after the policy had been in force for several years and all the premiums paid would be forfeited to the insurer. It had been the practice of the insurer to insert in the policy and the form of proposal, a clause, that *all* the answers stated formed the basis and part of the terms of the contract. The result was that any variation, whether it was material or not, and however slight the variation may be, gave a right to the insurer to avoid the policy. This caused immense loss and hardship to the insured and more often to his legal representatives, if he was dead, especially to illiterate widows. The section was therefore enacted to modify the rule and to mitigate the rule of utmost good faith. The contractual right of the insurer to repudiate a claim whenever the inaccuracy or suppression was discovered, was restricted. The section does not affect the insurer's right for a period of two years from the date of the policy, but thereafter, no policy can be challenged on the ground that any statement made in the proposal or in any report of the medical officer or any document was inaccurate or false unless it was material to disclose, and it was fraudulently made, and the policy-holder knew at the time he made it, that it was false; or he suppressed a fact material to be disclosed, provided that nothing in that section prevents the insurer from calling for proof of age of the insured or to adjust the rate of premium according to the correct age.

LIC and s. 45.

2.2. In one case³ decided by the Madras High Court, where the Corporation sought to repudiate a claim, one of the learned Judges observed :

“Whenever claims are repudiated or disputes come to courts of law, the LIC should not put up fight on the pattern of ordinary litigants. But it must be on a higher plane so as to inspire confidence in the public that claims are not resisted on frivolous pleas and reckless allegations. All the relevant materials gathered by the Corporation in the course of its investigation of a particular claim shall be placed before the court to enable it to judge the truth. There shall be a frank and full disclosure of all the material evidence and no attempt should be made to suppress or withhold the same.”

Other Courts have also made similar remarks.⁴

3. *LIC v. Parvathavardhini*, AIR 1965 Mad. 357.

4. *Daulat Ram v. Bharat Insurance Co.* AIR 1973 Delhi 180; *LIC v. Shakuntala Bai*, AIR 1975 AP 68; and *V. Srinivasa Pillai v. LIC*, AIR 1977 Mad. 381

CHAPTER 3

WORKING OF THE SECTION AND THE PROBLEMS ARISING THEREFROM

3.1. Cases which have come up before courts can be classified into three categories, Judicial decisions. namely (a) where the policy has lapsed but renewed and the insured died within 2 years of the renewal but more than 2 years after the date of the original policy and the claim was repudiated; (b) where the insured died within 2 years of the date of the policy and the claim was also repudiated within that time; and (c) where the insured died within 2 years of the date of the policy and the claim was repudiated more than 2 years of the date of the policy.⁵ In cases of death after 2 years from the date of the policy, there is no difficulty, because s. 45 will be applicable and enforced strictly.

3.2. In a case from Punjab,⁵ the insured took two policies in 1944. They lapsed in 1947 and in 1948 they were revived on a personal declaration of good health by the insured but without any medical examination or certificate. The insured died in 1949 and the insurer sought to repudiate the claim on the ground that the insured was suffering from tuberculosis even from 1944. Since the insurer failed to prove the allegation, the claim of the insured was decreed. Category (a).

3.3. In this case, the death of the insured is within 2 years and the repudiation of the claim is also within 2 years. In this class of cases, courts, while accepting the doctrine of *uberrima fides* have insisted upon the fairness of the insurer also and required proof that someone, on behalf of the insurer, had drawn the attention of the insured to tricky and ambiguous questions in the form of proposal and that the insured had clearly understood the question before giving his answer⁶. Category (b)

In *All India General Insurance Co. v. S.P. Maheshwari*⁷, the Court upheld the repudiation of the claim of the respondent, on the ground that there was a deliberate mis-representation by the insured about his drinking habits and that there was non-disclosure by the insured that he was suffering from venereal disease. In the course of the judgment, *Anantanarayanan J.*, however observed :

“..... even within the 2 years period, only misrepresentations 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 contract. Of course, within this period, the further conditions laid down in s. 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. But, if the law is to be retained, as it stands,⁸ cases of hardship and injustice might arise, within the 2-year period, which the courts would be powerless to remedy, since the principle of warranty would hold the field. I might also observe that, with modern scientific methods of medical examination including serological and x-ray tests, in cases of doubt, it should be more and more possible for Insurance Companies to satisfy themselves about life expectation by accurate data, which have nothing to do with what the insured man says about his own health”.

3.4. The Supreme Court had occasion to examine the scope of the section⁸. In this case, the policy was issued in March, 1945 but it was to come into effect Category (c)

5. *Lakshmi Insurance Co. v. Bibi Padmavati*, AIR 1961 Punj 253.

6. *LIC v. Shakuntala Bai*, AIR 1975 AP 68.

7. AIR 1960 Mad 484.

8. *Mithoolal v. LIC*, AIR 1962 SC 814.

from January 15, 1945. The insured died in November 1946 and the claim of the assignee of the policy was repudiated on October 10, 1947. The Supreme Court while holding on the facts of the case that the policy holder was guilty of fraudulent suppression and that the respondent rightly repudiated the claim, laid down the following propositions :—

(1) Whether the revival of a lapsed policy constitutes a new contract or not for other purposes, it is clear from the wording of the operative part of s. 45 that the period of two years for the purpose of the section has to be calculated from the date on which the policy was originally effected.

(2) The three conditions for the applicability of the second part of s. 45 are—

- (a) the statement must be on a material matter or must suppress facts which it was material to disclose;
- (b) the suppression must be fraudulently made by the policy-holder; and
- (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.

On the basis of this statement of the law the High Courts have held that the repudiation by the LIC, of the claims of persons entitled to the insurance amounts on the death of the insured, was wrong.

In *New Indian Assurance Co. vs. Sulochana*,⁹ the Policy came into effect in 1949, the insured died in 1950, and the repudiation of the claim was in 1952. The High Court held that the insurer must prove the ingredients set out in the 2nd proposition laid down by the Supreme Court.

So also in *LIC Vs. Janaki Ammal*¹⁰; *LIC Vs. B. Chandra Vathamma*;¹¹ *Manohar Lal Vs. LIC*.¹²

Therefore, in order to avoid the onerous part of s. 45, the insurer must challenge the claim within two years of the coming into effect of the policy, when the insured had died within the period. This state of law might cause the following difficulties to the insurer :

- (1) It does not allow sufficient time to the insurer to make the necessary investigation for repudiating the claim;
- (2) A clever claimant may wait for the 2 years to elapse before informing the insurer; and
- (3) The insurer may not know to whom the repudiation is to be made, because, if the insured is dead the insurer must wait and see to whom the letters of administration to the estate of the deceased are granted.

The Problem.

3.5. We may now restate the problems as follows :

- (1) Where the insured dies within 2 years of the date when the policy comes into effect, should the insurer be allowed some time for investigation to enable the insurer to repudiate a claim after 2 years from the date of the policy without being under the obligation of satisfying the onerous conditions of s. 45 ?
- (2) Where the insured dies within 2 years of the date of the policy and the repudiation of a claim is also within that period, can the insurer rely on the doctrine of *uberrima fides* or should the insurer be allowed to repudiate only for material mis-representations ?

9. AIR 1962 Assam 65.

10. AIR 1968 Mad. 324.

11. AIR 1971 AP. 41.

12. AIR 1981 Delhi 171.

CHAPTER 4

THE POSITION IN OTHER COUNTRIES

4.1. As far as the U.K. is concerned, the position is that while the doctrine of *uberrima fides* is strictly adhered to, courts come to the rescue of claimants by insisting on fairness and good faith on the part of the insurer also. The Position in U. K.

4.2. Section 84 of the consolidated Life Insurance Act, 1945-61, provides that a policy shall not be avoided by reason only of any incorrect statement (other than a statement as to the age of the life insured) made in any proposal or other document on the faith of which the policy was issued or re-instated by the company unless the statement— The Position in Australia.

(a) was fraudulently untrue; or

(b) being a statement material in relation to the risk of the company under the policy, was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is earlier.

Therefore, if the insured dies within 3 years of the date of the policy and the policy was issued on the basis of an incorrect statement material to the risk of the company, any claim based on the policy can be repudiated at any time thereafter.

4.3. In the United States, the method employed is to have 'incontestable clauses' in the policy. In some States they are imposed by statute. The effect of these clauses is that after a certain period, the policy cannot be contested and a claim cannot be challenged on any ground of error or mis-statement. If death takes place during the contestable period, any claim based on the policy can be challenged on the grounds of error or mis-statement at any time, so that, the insurer's right to repudiate does not depend upon the time when the repudiation is made. The Position in the U.S.

CHAPTER 5

COMMENTS RECEIVED ON THE WORKING PAPER

Comments on the working Paper.

5.1. The Working Paper prepared on the subject under consideration was circulated by the Commission in March, 1985 to interested persons and bodies including the Life Insurance Corporation of India, State Governments, High Courts and Bar Associations. A request was made to forward comments by the 15th April, 1985. All the comments received upto the 1st June, 1985 have been taken into consideration before finalising the Commission's views.

It may also be mentioned that very informative views have been expressed by one Association. The Commission would like to express its appreciation of the interest shown by the said Association in the matter¹³ and also its gratitude to those who have sent comments on the Working Paper.

As regards the receipt of comments, the following persons/bodies have forwarded us their comments on the Working Paper :

- (a) two High Courts.¹⁴
- (b) State Governments.¹⁵
- (c) one research institution.¹⁶
- (d) two persons.¹⁷
- (e) Life Insurance Corporation of India.²³

One High Court^{14(a)} concurs with the suggestions of the Law Commission to recast section 45 on the ground that the section as proposed to be revised would reduce the scope of avoiding the lawful claim of an insured by the insurer.

However, in the reply received from the other High Court, it has been mentioned that the Judges have no comments to offer.^{14(b)}

Four State Governments¹⁸ have concurred with the suggestion of the Commission. One State Government¹⁹ fully endorses the background given by the Commission for the examination of the working of section 45 of the Insurance Act, 1938, and states that if the law is to be retained as it stands, cases of hardships and injustice might arise within the two year period and the courts would be helpless to remedy.

Another State Government²⁰ does not agree with the suggestion of the Law Commission because, according to it, the proposed amendment would make the provision a rigid one resulting in injustice to the insurer in a genuine case of fraud.

One person suggests²¹ that a period of 2 years instead of 3 years is more than sufficient after which LIC cannot repudiate claims under any circumstances, whatsoever.

13. Law Commission File No. F.2(2)/85-LC, Sl. Nos. 13(R) and 22(R).

14. Law Commission File No. F.2(2)/85-LC, Sl. Nos. 16(R) and 24(R).

14(a). Law Commission File No. F.2(2)/85-LC, Sl. No. 24(R).

14(b). Law Commission File No. F.2(2)/85-LC, Sl. No. 16(R).

15. Law Commission File No. F.2(2)/85-LC, Sl. Nos. 12(R), 15(R), 18(R), 19(R), 23(R) and 27(R).

16. Law Commission File No. F.2(2)/85-LC, Sl. Nos. 13(R) and 22(R).

17. Law Commission File No. F.2(2)/85-LC, Sl. Nos. 17(R) and 21(R).

18. Law Commission File No. F.2(2)/85-LC, Sl. Nos. 12(R), 15(R), 23(R) and 27(R).

19. Law Commission File No. F.2(2)/85-LC, Sl. No. 19(R).

20. Law Commission File No. F.2(2)/85-LC, Sl. No. 18(R).

21. Law Commission File No. F.2(2)/85-LC, Sl. No. 21(R).

Another person²² does not make any specific comment on the Working Paper.

The Life Insurance Corporation of India²³ has in its comments suggested that if death occurs within three years from the date of the policy or its revival, the right to repudiate for mis-statements should be available for a period of one year from the date of intimation of death. In cases of fraud, it has suggested that it should have a right to call the policy in question for a period upto 5 years and that where a policy is continuously in force for a period of 6 to 8 years without its being called in question, the LIC shall be deemed to have waived its right to repudiate the policy on any ground.

The Commission has carefully considered the suggestion of the LIC in the light of the decided cases mentioned earlier in this Report. In view of the observations of many of the Courts that the LIC should not be like an ordinary litigant and put forth frivolous defences to repudiate claims and in the interests of the insured and claimants, the Commission feels that such a long period should not be given to the LIC to repudiate claims and the period of 3 years recommended is a sufficiently long period for the LIC to make independent investigations rather than leave the insured in a state of uncertainty for a period of 8 years. The Commission therefore feels that no change need be made in its recommendations.

22. Law Commission File No. F.2(2)/85-LC, Sl. No. 17(R).

23. Law Commission File No. F.2(2)/85-LC, Sl. No. 28(R).

CHAPTER 6

RECOMMENDATIONS

Recommendation 6.1. On the basis of the materials contained in the preceding Chapters, we now proceed to make our own recommendations on the subject under consideration. Section 45 should be recast in such a manner as would reconcile the right of the insured or a claimant by giving protection from challenge on frivolous grounds, and the right of the LIC to repudiate *only* on good grounds.

How s. 45 should be recast.

6.2. We recommend that section 45 of the Insurance Act, 1938, should be recast in the following manner :

“Section 45 : Policy not to be called in question on ground of mis-statement after 3 years.

- (1) *No policy of life insurance shall be called in question after the expiry of three years from the date on which the policy is effected or where the policy is revived after it has lapsed for any reason, from the date on which it is so revived.*
- (2) *A policy of life insurance may be called in question at any time within three years from the date on which the policy is effected or, as the case may be, the date on which it is revived, on the ground that any statement being a statement 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.”*

(K.K. MATHEW)

Chairman

Sd/-

(J.P. CHATURVEDI)

Member

Sd/,

(DR. M.B. RAO)

Member

Sd/,

(P.M. BAKSHI)

Part-time Member

Sd/,

(VEPA P. SARATHI)

Part-time Member

Sd/,

(S. RAMAIAH)

Member Secretary

Sd/,

Dated : 6th June, 1985.

Justice K.K. Mathew

D.O. No.F.2(2)/85-L.C.

New Delhi-110001.

Dated the 6th June, 1985.

My dear Minister,

I am forwarding herewith the One Hundred and Twelfth Report of the Law Commission on "Section 45 of the Insurance Act, 1938: Policy not to be called in question on ground of mis-statement after 2 years."

The subject was taken up by the Law Commission on its own. The need for taking up the subject is explained in para 1.1 of the Report.

The Commission is indebted to Shri Vepa P. Sarathi, Part-time Member, and Shri S. Ramaiah, Member Secretary for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

Sd/

(K.K. Mathew)

Shri A.K. Sen,
Honourable Minister of Law
and Justice,
New Delhi

Encl : 112th Report.