

In the High Court of Fiji at Suva
Civil Jurisdiction
Civil Action No. HBC 165 of 2012
Between
Ramila Wati
Plaintiff
And
BSP Life (Fiji) Limited
Defendant

COUNSEL: Ms N.Raikaci for the plaintiff
Mr T. Tuitoga for the defendant
Date of hearing : 1st March, 2017
Date of Judgment: 29th March, 2017

Judgment

1. In these proceedings, the plaintiff complains that the defendant has declined her claim on her late husband Iman Ali's life insurance policy. Iman Ali,(the deceased) had obtained a life insurance policy with the defendant for a sum of \$ 20000. The plaintiff was named the beneficiary. The defendant states that the policy was avoided, as the deceased failed to disclose his previous medical conditions and made false misrepresentations, in breach of the Insurance Law Reform Act and his common law duty of good faith.
2. The amended statement of claim states that the deceased had purchased the policy from the defendant on 29th November, 2006, effective on 1st December, 2006. On 5th November, 2007, he was admitted to Wainibokasi hospital, as he developed congestive heart failure. On 11th August, 2008, he died of acute myocardial infarction, cardiac failure and hypertension. He did not have a history of chronic disease or disorder. He passed the mandatory medical test. No pre-existing condition was detected. The medical reports of Dr Jack Korai of 4th February, 2009, and 2nd November, 2011, confirmed that he was of sound health.

3. The defendant, in its statement of defence states that on 22 November, 2006, the deceased submitted his proposal form for life insurance with false and incorrect answers and declarations. The deceased had only disclosed that he had flu, in October, 2006. There was nothing in the Proposal that warranted the defendant's underwriters to call for medical tests before the policy was issued.
4. The statement of defence continues to state that the deceased failed to disclose that he had suffered a fracture of the left humerus on 18 April, 2003. He had hypertension, chest pains, diabetes and ischemic heart disease prior to November, 2006. He was diagnosed with ischemic heart disease on 15 November, 2004. In order to induce the defendant to make the Policy, he falsely and fraudulently represented that he was in good health. The medical reports confirm that he knew that the representations were false, in particular, the medical report of Dr Jack Koraii of 25 September, 2009, and the medical report of Dr Bakani of 24th August, 2012. The representations were material and influenced the defendant in fixing the premium and/or determining whether it would take the risk. The defendant refunded the premiums to the plaintiff.
5. The plaintiff in her reply joins issue with the defendant in its defence.

The hearing

PWI

6. The plaintiff, in her evidence said that her late husband was in very good health. In 2002, he met with an accident and was admitted to hospital. His hand was dislocated. In 2007, he had tension and went for a check-up to Wainibosi hospital. He was not admitted to hospital. He was in good health in 2005 and 2006. She denied that he was admitted to Wainibosi hospital, as stated in the medical report of 2nd November, 2011. The defendant should have asked him to obtain a medical report. She said that she is claiming damages for her suffering, as a result of the trouble she has undergone in this matter.

7. In cross-examination, her husband's proposal form was produced. He had answered in the negative to each of the several questions as to whether he had suffered from any illness or received medical treatment. The witness accepted that the dislocation of the deceased's arm in 2002, was an injury.
8. She said that her late husband hardly got sick. She was aware that her husband went to at Wainibokasi, Nausori and CWM hospitals, but not that he consulted Dr Reddy, as stated in his proposal form. The cause of his death was acute myocardial infarction, cardiac failure and hypertension. She denied that he had Type 2 diabetes and a heart condition prior to November,2006, and was taking medications. She did not agree with the medical reports of Dr Jack Koraii of 4th February,2009, 25th September,2009, and 2nd November,2011. She could not recall that he was admitted on 18th April,2003, to CWM hospital, as stated in Dr Bakani's report of 24th August,2012.
9. The deceased did not have a medical examination prior to the issue of the policy. She admitted that in 2007, she had insisted that he sees a Doctor. He had tension and diabetes that fluctuated. He was not admitted to Wainibokasi hospital in 2007, but treated there for 5 days.
10. In re-examination, PW1 said that she agrees with the answers given by her husband to the questions posed in the proposal form. He may not have understood that a broken arm was an injury and hence did not disclose same.
11. Dr Koraii in his report of 4th February,2009, had not mentioned the date and year the deceased suffered from hypertension, Type 2 diabetes and ischemic heart disease. The report of 25th September,2009, was issued seven months later on behalf of Dr Koraii. The witness said that the reports were dissimilar.

DW1,(Dr Jack Koraai of CWM hospital)

12. DW1 said that he had seen the deceased as an in-patient and out-patient at Wainibokasi hospital. After he issued his report of 4th February,2009, the defendant by its letter of 19th June,2009, asked him to advise as to when the deceased was diagnosed with hypertension, diabetes and ischemic heart disease. There followed his report of 25th September,2009, signed by his immediate supervisor Dr John Okoro. That report provided that the deceased was first diagnosed with ischemic heart disease on 15th November,2004, and was admitted on five occasions to CWM hospital between 2005 and 2008.

13. Next, he referred to his report of 2nd November,2011, and the report issued by Dr Bakani's on 24th August,2012.

14. The patient presented his discharge summary from CWM hospital to the Wainibokasi hospital.

15. He concluded his evidence in chief stating that the deceased had heart problems and diabetes prior to November,2006, and was on medication.

16. In cross-examination, he said that he made his report of 4th February,2009, after Imam Ali's death. There was no request made by the defendant then for specific dates to be given in that report. He obtained the information from the deceased's file in Wainibokasi hospital. A discharge summary is given by the patient for continuation of medical treatment.

17. He said that he was unaware of the present claim, until he received a sub poena. He denied that the dates and diseases were inserted in the medical reports, as dictated by the defendant.

18. It was put to DW1 that the dates in his medical report of 25th September,2009, as to when the deceased was first diagnosed with ischemic heart disease,(15th November,2004) is not consistent with his report of 2nd November,2011. The witness replied that he was discharged on 15th November,2004, and diagnosed earlier.
19. He said that he was unaware whether the deceased was diagnosed with any specific disease in 2006.
20. In re-examination, DW1 said that the defendant did not pay him for any reports nor offer him any money to testify on its behalf.
21. The deceased was diagnosed with a heart condition prior to 2006. Diabetes, hypertension and ischemic heart disease do not disappear. They are non communicable diseases afflicting a person for life. Medical treatment controls the symptoms.

DW2(Calvin Yee, Insurance Benefits Manager of the defendant)

22. DW2 said that when a proposal form is filled, his department looks at the declarations made by the insured. If the declarations do not indicate that he is suffering from any sickness, a life insurance policy will be issued. Medical examinations are called for in two instances: if the insured person is over 50 years of age, or if the sum insured is over \$300,000 and the person's age exceeds 30 years.
23. When an insured person dies, his department obtains the medical reports of the deceased to clarify the cause of death. Since hypertension and diabetes do not occur over a short time, they check the medical history of the deceased with the relevant medical centers.
24. In the present case, the medical reports disclosed that the deceased had a pre-existing medical condition. If he had disclosed that condition, the defendant would not have issued him the policy. The defendants' decision to decline was based on the medical reports obtained from Wainibokasi hospital. The deceased had a chronic pre-existing medical condition. The witness was unaware whether the deceased had medical issues in 2006.

25. It was put to DW2, that the defendant took a big risk in not checking the medical background of applicants for insurance. He replied that insurance is managing risks.

26. The witness said that he could not respond to the question posed that answers are provided by an insured to queries in the proposal form on the position at that time.

The determination

27. The question for determination in this case is whether the defendant was entitled to avoid the life insurance policy of the deceased.

28. The case for the plaintiff is that prior to the issue of the policy in 2006, the deceased did not have a pre-existing condition nor a history of chronic disease or disorder .

29. The defence states that the deceased made false and incorrect representations that he was in good health, when he had a pre-existing medical condition.

30. In his application form for the policy of 22nd November, 2006, the deceased had answered the following questions in the negative:

- 10. Have you suffered from or received advice, treatment or medication on or experience any symptom or sign of any of the following from a health professional or an institution: If you answer 'YES', please complete a Supplementary Personal Statement Form.*
- a) Have you suffered from or received advice, treatment or medication on or experience any symptom or sign of any of the following from a health professional or an institution: If you answer 'YES', please complete a Supplementary Personal Statement Form.*
- b) Chest pain or discomfort, abnormal palpitation of the heart, heart attack, shortness or breath, fainting episodes, high blood cholesterol or any other heart complaint or disease.*
- c) Epilepsy, neurological diseases, mental or nervous disorders e.g. Scierosis, paralysis, anxiety, depression, stress?*

- d) Diabetes, gout, thyroid disorders, high blood pressure, low blood pressure, hypertension or rheumatic fever/heart disease.
- e) Arthritis, rheumatism or disorder or diseases or injury to muscles, bones or joints.
- f) Any other illness, injury, operation, disability or physical abnormality.

Have you ever had any medical examination, advice, treatment, surgical operation, x-ray, electrocardiogram (ECG), CT Scan, MRI or any other test or investigation not disclosed in Questions 10 or 11, or have taken any medication or drug by mouth or injection other than cough, colds or influenza? If you answer "YES", please complete the Schedule below

31. The death certificate states that the date of death was 11th August, 2008. The cause of death was "ACUTE MYOCARDIAL INFARCTION, CARDIAC FAILURE, HYPERTENSION".

32. In the aftermath of his death, the defendant had obtained the following three medical reports from DW1.

- a. The report of 4th February, 2009, reads:
The above patient had been attending Medical Special Clinic at Wainibokasi Hospital prior to his death. He is a known case of Hypertension. Type 2 Diabetes and Ischemic Heart Disease. He was suffering from Congestive Cardiac failure with complication from the above conditions before he died....
(emphasis added)
- b. The report of 25th September, 2009, reads:
The above patient was first diagnosed with Ischemic Heart Disease on 15/11/2004 at CWM Hospital. His Diabetes and Hypertension must have been with him prior to that admission. He started attending clinic at Wainobokasi since 2005. He takes Frusemide 40mg bd, Aspirin 100mg od, Enalapril 10mg bd, Digoxin, 250mg od, TNT with PRN. He also takes Glipizide, metformin for his Diabetes. He had five (5) admission at Wainibokasi between 2005 and 2008 until his date of demise. His admission were for Congestive Heart Failure as a complication of his Hypertension and Diabetes and Ischemic Heart Disease. The late Imam Ali was first diagnosed with Ischemic Heart Disease in 2004. He progressively deteriorated with the next three years until his demise.(emphasis added)

- c. The report of 2nd November, 2011, addressed to the defendant provides:
The above patient had been attending Special Out-Patient Clinic at Wainibokasi Hospital prior to his death. He is a known case of Hypertension, Type 2 Diabetes and Ischemic Heart Disease. He was admitted for Heart Attack on 05/11/07 to 10/11/07 at Wainibokasi Hospital. He developed Congestive Heart Failure as a result of his Heart Attack. The cause of death as per diagnosis or Death Certificate was Congestive Cardiac Failure.
33. The defence also produced a medical report from Dr Bakani, Consultant Physician/ Cardiologist of 24th August, 2012, which provides that the deceased was admitted to CWM hospital with “ 3hours history of chest pain. He was in shock BP 85/66, with very rapid heart rate-190/minute. History of hypertension for 3 years and found to be diabetic on admission”. The report concludes as follows:
The chest pain, rapid cardiac arrhythmia and shock on admission on 2/11/04 were all due to an acute episode of severe heart disease. The chest pain alone would suggest in the presence of hypertension and diabetes mellitus that he would have suffered an acute heart attack. The recorded ECG tracings are all faded and cannot be interpreted.
34. DW 1 testified that heart disease and diabetes were non-communicable diseases (NCDs) that generally progressed slowly and persisted for life.
35. The plaintiff did not call any medical evidence to prove the contrary.
36. In my judgment, the medical reports I have referred to establish that the deceased suffered from a serious medical heart condition prior to 22 November, 2006. He was diagnosed with ischemic heart disease in November, 2004, at CWM hospital. He was attending clinic at Wainobokasi hospital since 2005, and on medication. He was admitted on five occasions to Wainibokasi hospital between 2005 and 2008, for congestive heart failure, as a complication of his hypertension, diabetes and ischemic heart disease.

37. Section 13 (1) of the Insurance Law Reform Act, 1996, provides that “ *an insured has a duty to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that:-*

- (a) the insured knows to be matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or*
- (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant.”*

38. Section 20 (2) states that the insurer may avoid the contract, if the failure to comply with the duty of disclosure “*was fraudulent or the misrepresentation was made fraudulently*”.

39. The FCA in *Blueshield(Pacific)Insurance Ltd v Wati*, [1997] FJCA 25 as referred to in the closing submissions filed on behalf of the plaintiff, stated:

The duty of disclosure is distinct from the requirement not to misrepresent facts. It arises out of the fact that a contract of insurance is a contract uberrimae fidei. A person seeking to be insured must disclose to the intended insurer any facts within his or her knowledge that are material, that is to say which would affect the mind of a prudent insurer in deciding whether or not to provide cover. (Mayne Nickless Ltd v. Pegler [1974] 1 NSWLR 228). Facts are material if the person seeking the insurance knows that the intended insurer regards them as so, even though he or she might otherwise not regard them as material (Glicksman v. Lancashire and General Insurance Co. Ltd [1925] 2 KB 593). (emphasis added)

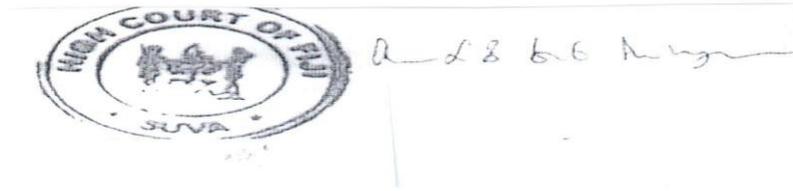
40. In the present case, I find that there was material non-disclosure by the deceased, which induced the defendant to accept the proposal.

41. The form contains a declaration made by the insured stating his duty to disclose “*every matter that (he) know(s) or could reasonably be expected to know which is relevant to its decision whether to accept the risk of the Insurance*”. It is further provided that in the event of non-disclosure, the insurer may cancel and void the insurance policy. There follows the customary clauses that the insured has understood the contents, the replies have been correctly recorded and the statements are true and complete to the best of his knowledge.

42. In my judgment, the failure of the deceased to disclose his pre-existing medical condition was fraudulent and constitutes a breach of section 13 of the Insurance Law Reform Act, 1996, and the common law duty of good faith. It follows that the defendant was entitled to avoid the policy, in terms of section 20(2).

43. **Orders**

- (a) The plaintiff's claim is declined
- (b) The plaintiff shall pay costs of this action, to be taxed, if not agreed by the parties.

The image shows a handwritten signature in black ink that reads "A.L.B. Brito-Mutunayagam". To the left of the signature is a circular official seal. The seal features a central emblem with a figure and the text "HIGH COURT OF FIJI" around the top edge and "SUVA" at the bottom.

A.L.B. Brito-Mutunayagam
Judge
29th March, 2017