



Non-disclosure of material facts: a good ground for insurance company to repudiate claims

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PUBLISHED 14 November 2014

Introduction

Insurance is nothing but a promise or assurance on the part of the insurer to pay an insured's claim to the insured in return of receipt of the premium amount paid by the insured. People buy life insurance policy for various reasons, but the fundamental underlying reason is to ensure that the funds are available in the event of unexpected death of the insured who has financial responsibility to someone else. In most cases people take out life insurance to ensure that their family can continue to maintain their standard of living in the event of an unexpected death of the insured. Therefore, insurance gives a comfort that if something disastrous happens to the insured then the insurer will financially support the dependant of the insured through settlement of the claim.

Generally, claims settlement constitutes the largest cost for any insurer. Out of every premium amount of Rs. 100, the insurer is likely to pay out Rs.65 or more to settle the claims.[1] All other expenses like administration, commission etc. are managed out of the remaining Rs.35 [2] So, there is dichotomy between the insurers attempting to reduce their claims costs, improve their bottom line and satisfy their shareholders and at the same time ensuring that the best possible service are offered to the customers, ensuring that the insured is fully indemnified within the policy wording and at the lowest possible cost. Any failure to this dichotomy can cause irreparable damage to the insurer's reputation; lead to loss of valued customers and even lead to law suits being filed against the insurer.

The insurer manages its funds in a manner that genuine claims are paid; sound profits are distributed as bonus to the surviving policyholders on maturity and the fraud claims are repudiated. The insurer ensures this, through appropriate selection of lives at the proposal stage and investigation of early or suspicious claims as per the applicable laws. Whenever a claim is repudiated or refused by the insurer, the claimant assumes that the company has not honoured its contract and promise. This issue is faced when the claim arises during early stages of the contract or immediately after revival of the policy. The primary reason for dishonor of insurance claim is non-disclosure or misstatements of material facts at the time of the contract itself.

Insurance: A form of Contract

Insurance Contract falls under the category of a special contract i.e. a contract wherein, in addition to the provision of the Indian Contract Act, 1872, some additional conditions will apply for establishing the validity of the contract. The additional conditions include the presence of an insurable interest and the duty of utmost good faith. The Supreme Court in *Life Insurance Corporation of India & Ors. Vs Asha Goel (Smt.) & Anr.*[3] held that the contracts of insurance including the contract of life insurance is contracts *Uberrimae fides* that means contract based on 'utmost good faith' hence each and every material facts must be disclosed and the concealment of any material information or providing any false or incorrect information in the policy is a violation of the insurance contract. Concealment of any material fact will entitle the insurer to deprive the assureds' benefits of the contract. For example: If the life assured or proposer is suffering from tuberculosis then he is legally bound to declare this material fact to the insurer at the time of taking the insurance policy.

There are many cases wherein the insured suppresses material facts or provide false and untrue information regarding the pre-existing disease, correct age, income and occupation and insurance policy. In such cases, the insurer is within its rights to repudiate the claim, arising after the death of the insured, on the ground that the insured did not disclose material facts at the time of entering the contract. The life assured or proposer is under solemn obligation to make full, complete, true and correct disclosure of the material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted. If the life assured or proposer failed to disclose the true and correct material facts to the insurer, then the policy obtained by the life assured or proposer stands vitiated and the life assured or any person claiming under the policy is not entitled for any benefits under the said policy. [4] *The Supreme Court in United India Insurance Company Limited Vs Harchand Rai Chandan Lal* [5] and in *Vikram Greentech (I) Ltd. & Anr. Vs New India Assurance Co. Ltd.* [6] held that an insurance policy is to be construed strictly as per the terms and conditions of the policy document which is a binding contract between the parties and nothing can be added or subtracted by giving a different meaning to the words mentioned therein. Therefore, violation of any terms and conditions mentioned in the policy document by the insured (such as suppression of material facts or intentional non-disclosure or rendering of wrong and misleading statements by the insured) lead to discharge of the insurer from his liability to approve the claim.

Generally, the claimant is not responsible for non-disclosure of information or rendering wrong information by the insured. Hence, it often seems unfortunate when the claim is rejected on the ground of nondisclosure by the insured. The claimant has no remedy

to correct the omission made by insured at the time of entering into the contract. Therefore, at the time of entering into the insurance contract, the policyholder should always keep in mind the following:

- Proposal form should be correctly answered
- Disclose all material facts.
- Terms and conditions must be understood thoroughly

Further, in case of any discrepancy or complaints in the proposal form, renewal premiums amount or if the features of the issued policy are different from the one explained to him then the policyholder shall, within the Free Look Period [7] i.e. 15 days after the issue of the policy, bring the same to the notice of the insurer and get the record corrected. Otherwise, the policy will continue to remain with the discrepancy and the policyholder cannot ask for the cancellation of the policy. [8]

Points to be noted at the time of repudiation of a claim

The onus of proof is on the insurer to prove that the claim is repudiated on the ground of non-disclosure or mis-statement of material facts. Therefore the insurer should always arrange all documentary evidence prior to repudiation of any claim. In the absence of the same, the District Forum or State Commission will reject the repudiation of claim. In the case of repudiation of claim on ground of mis-statement of age, the insurance company should not rely on the date of birth mentioned in Voter ID Card or Pension card as same is not sufficient to prove that the policyholder has understated his or her age under Indian Evidence Act, 1872. The Supreme Court in *Baboo Pasi vs. of Jharkhand and Anr.*,[9] held that “in the absence of evidence to show on what material the entry in the Voters List in the name of the accused was made, a mere production of a copy of the Voters List, though a public document, in terms of Section 35, was not sufficient to prove the age of the accused.” Further in *Ram Kripal alias Chirkut & Another vs. Deputy Director of Consolidation & Ors.*,[10] the Allahabad High Court held that the voter-list is prepared on the statement and particulars furnished by person himself. Hence, it is in the nature of self serving evidence and hence it is not safe to place much reliance on the information mentioned upon it. Therefore, it’s the duty of the insurer to verify the true and correct age of the insured before repudiating the claim on the ground of mis-statement of age.

Conclusion

The dichotomy of insurer will continue to remain. The fine balance for the insurer will be to settle genuine claims, distribute insurance amount on eventuality and at the same time repudiate the false and spurious claims on the basis of insufficient and unreliable material evidence.

Insured should also understand that obtaining an insurance policy does not guarantee distribution of policy amount on eventuality. They shall disclose all the material facts to the insurer at the time of taking the insurance. Otherwise, the insurer has no liability to settle the claim amount and the dependant of insured will be left in the lurch.

[1] V. Sai Kumar, H. Ananth Krishnan, *Regulation of Insurance Business, Insurance Institute of India, Reprint 2014.*

[2] *Ibid*

[3] (2001) SCC 160

[4] Section 45 of the Insurance Act, 1938

[5] (2004) 8 SCC 644

[6] (2009) 5 SCC 599

[7] Circular Ref. No. CIR/41/IRDA/Health/SN/09-10/32 Dated 2.09.2009 issued by IRDA

[8] *Shrikant Murlidhar Apte Vs. Life Insurance Corporation of India III(2013) CP J 536 (NC)*

[9] (2008) 13 SCC 133

[10] 2012 (2) ADJ 13