IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AT NEW DELHI

NC/FA/13/2023

(Against the Order dated 18.10.2022 in Complaint Case No. 83/2015 of the U.P. State Consumer Disputes Redressal Commission)
WITH
IA-138-139/2023 (EXEMPTION)

1. Life Insurance Corporation of India
Through its Assistant Secretary (CRM) Department
Central Office, 5th Floor, Yogaskshema
Jeevan Bima Marg, Mumbai 400021

2. Senior Divisional Manager
Life Insurance Corporation of India
Divisional Office, Faizabad

3. Regional Office
Life Insurance Corporation of India
Kanpur, through Regional Officer

(through Central Office Legal Cell, H-39,
New Asiatic Building, Middle Circle,
Connaught Place, New Delhi 110001) … Appellants

versus

1. Smt. Reeta Srivastava
w/o Late Sh. Shachindra Kumar Srivastava
946, Gabhadiya, District Sultanpur

2. Sahara Hospital, Lucknow
Through its Director, Gomti Nagar
Lucknow (deleted by SCDRC) … Respondents

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

Appeared at the time of arguments:

For Appellants : Mr. Anoop K. Kaushal, Advocate

For Respondents : Mr. Jitesh Vikram Srivastava, Advocate
Mr. Prajesh Vikram Srivastava, Advocate

Pronounced on: 30th May 2025

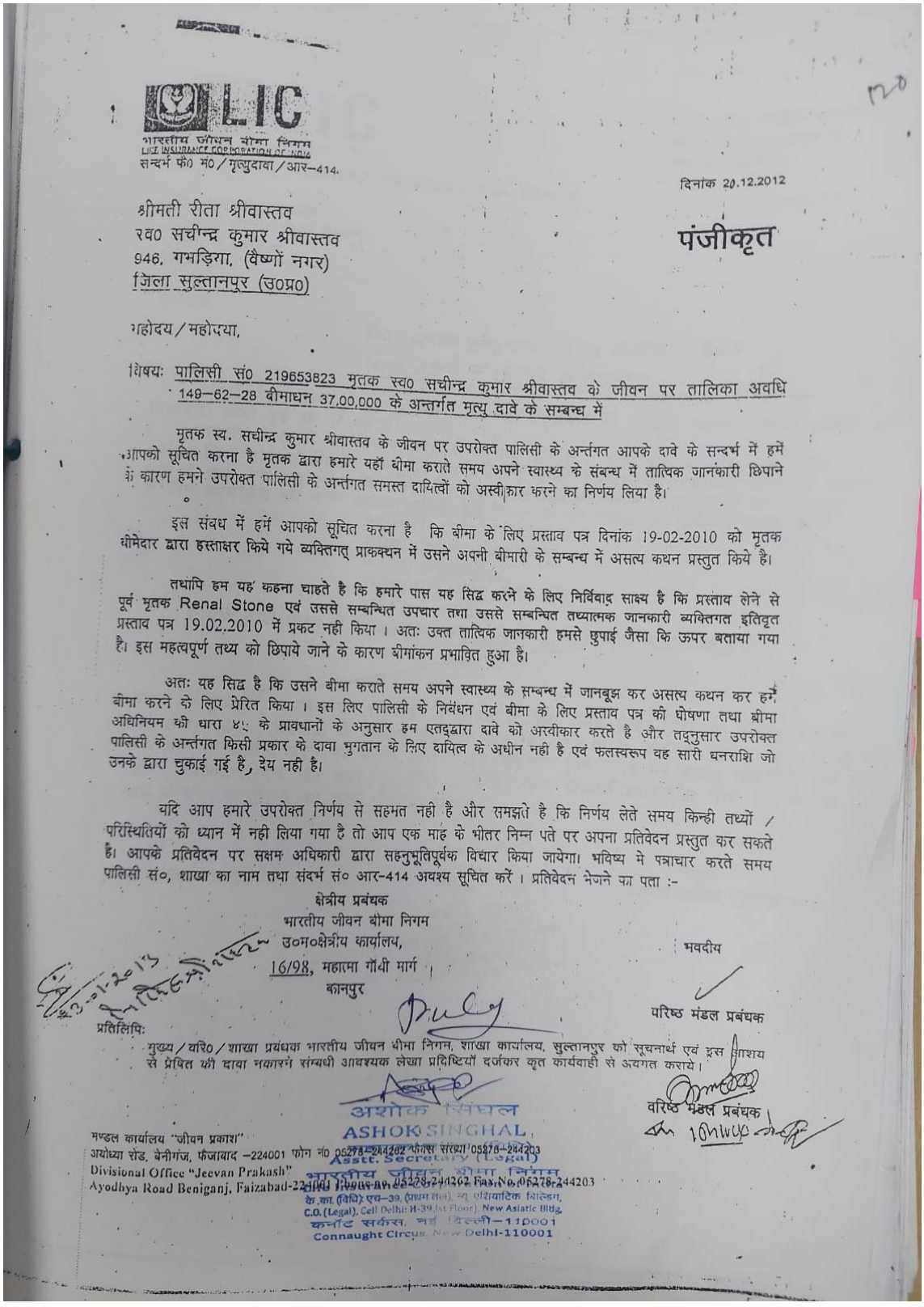
ORDER

JUSTICE A.P. SAHI, PRESIDENT

1. This Appeal has been filed by the Life Insurance Corporation assailing the Order of State Consumer Disputes Redressal Commission, Uttar Pradesh in CC No. 83 of 2015, whereby the Complaint of the Respondent for award of an indemnification of Rs. 37 lakhs along with 7% interest has been allowed with a further direction to pay Rs. 10,000/- as litigation costs.

2. The Complaint had been filed after the claim of the coverage under the Life Insurance Policy in respect of the late husband of the Complainant was declined, who died on 19.06.2011. It was repudiated by the Insurance Company on 20.12.2012. A departmental Appeal against the same was preferred before the Appellate authority of LIC that was also dismissed on 01.08.2013. The Complainant was the nominee and the duration of the policy was till 19.02.2037. The insured was about 38 years of age when the said policy was taken in 2010.

3. The repudiation recites that the insured had suppressed the fact of the pre-existing disease and the treatment taken for stone in the kidney which facts have emerged after going through the medical documents and, therefore, the claim was liable to be repudiated. The repudiation letter dated 20.12.2012 is extracted hereinunder:



भारतीय जीवन बीमा निगम
LIFE INSURANCE CORPORATION OF INDIA
सन्दर्भ फै0 सं0 / मृत्युदावा / आर–414.

दिनांक 20.12.2012

पंजीकृत

श्रीमती रीता श्रीवास्तव
स्व0 सचीन्द्र कुमार श्रीवास्तव
946, गभड़िया, (वैष्णों नगर)
जिला सुल्तानपुर (उ0प्र0)

महोदय / महोदया,

विषयः पालिसी सं0 219653823 मृतक स्व0 सचीन्द्र कुमार श्रीवास्तव के जीवन पर तालिका अवधि 149–62–28 बीमाधन 37,00,000 के अन्तर्गत मृत्यु दावे के सम्बन्ध में

मृतक स्व. सचीन्द्र कुमार श्रीवास्तव के जीवन पर उपरोक्त पालिसी के अन्तर्गत आपके दावे के सन्दर्भ में हमें आपको सूचित करना है मृतक द्वारा हमारे यहाँ बीमा कराते समय अपने स्वास्थ्य के संबन्ध में तात्विक जानकारी छिपाने के कारण हमने उपरोक्त पालिसी के अन्तर्गत समस्त दायित्वों को अस्वीकार करने का निर्णय लिया है।

इस संबध में हमें आपको सूचित करना है कि बीमा के लिए प्रस्ताव पत्र दिनांक 19-02-2010 को मृतक बीमेदार द्वारा हस्ताक्षर किये गये व्यक्तिगत् प्राकक्थन में उसने अपनी बीमारी के सम्बन्ध में असत्य कथन प्रस्तुत किये है।

तथापि हम यह कहना चाहते है कि हमारे पास यह सिद्व करने के लिए निर्विवाद साक्ष्य है कि प्रस्ताव लेने से पूर्व मृतक Renal Stone एवं उससे सम्बन्धित उपचार तथा उससे सम्बन्धित तथ्यात्मक जानकारी व्यक्तिगत इतिवृत प्रस्ताव पत्र 19.02.2010 में प्रकट नही किया । अतः उक्त तात्विक जानकारी हमसे छुपाई जैसा कि ऊपर बताया गया है। इस महत्वपूर्ण तथ्य को छिपाये जाने के कारण बीमांकन प्रभावित हुआ है।

अतः यह सिद्व है कि उसने बीमा कराते समय अपने स्वास्थ्य के सम्बन्ध में जानबूझ कर असत्य कथन कर हमें बीमा करने के लिए प्रेरित किया । इस लिए पालिसी के निबंधन एवं बीमा के लिए प्रस्ताव पत्र की घोषणा तथा बीमा अधिनियम की धारा ४५ के प्रावधानों के अनुसार हम एतद्द्वारा दावे को अस्वीकार करते है और तद्नुसार उपरोक्त पालिसी के अन्तर्गत किसी प्रकार के दावा भुगतान के लिए दायित्व के अधीन नही है एवं फलस्वरूप वह सारी धनराशि जो उनके द्वारा चुकाई गई है, देय नही है।

यदि आप हमारे उपरोक्त निर्णय से सहमत नही है और समझते है कि निर्णय लेते समय किन्ही तथ्यों / परिस्थितियों को ध्यान में नही लिया गया है तो आप एक माह के भीतर निम्न पते पर अपना प्रतिवेदन प्रस्तुत कर सकते है। आपके प्रतिवेदन पर सक्षम अधिकारी द्वारा सहनुभूतिपूर्वक विचार किया जायेगा। भविष्य मे पत्राचार करते समय पालिसी सं०, शाखा का नाम तथा संदर्भ सं० आर-414 अवश्य सूचित करें । प्रतिवेदन भेजने का पता :-

क्षेत्रीय प्रबंधक
भारतीय जीवन बीमा निगम
उ०म०क्षेत्रीय कार्यालय,
16/98, महात्मा गाँधी मार्ग
कानपुर

भवदीय

वरिष्ठ मंडल प्रबंधक

प्रतिलिपिः
मुख्य / वरि0 / शाखा प्रबंधक भारतीय जीवन बीमा निगम, शाखा कार्यालय, सुल्तानपुर को सूचनार्थ एवं इस आशय से प्रेषित की दावा नकारने संम्बधी आवश्यक लेखा प्रविष्टियाँ दर्जकर कृत कार्यवाही से अवगत कराये।

वरिष्ठ मंडल प्रबंधक

अशोक सिंघल
ASHOK SINGHAL
Asstt. Secretary (Legal)
भारतीय जीवन बीमा निगम
के.का. (विधि) एच–39, (प्रथम तल), न्यू एशियाटिक बिल्डिंग,
C.O. (Legal), Cell Delhi H-39,1st Floor), New Asiatic Bldg,
कनॉट सर्कस, नई दिल्ली–110001
Connaught Circus, New Delhi-110001

मण्डल कार्यालय "जीवन प्रकाश"
अयोध्या रोड, बेनीगंज, फैजाबाद –224001 फोन नं0 05278-244202 फैक्स संख्या 05278-244203
Divisional Office "Jeevan Prakash"
Ayodhya Road Beniganj, Faizabad-224001 Phone No. 05278-244202 Fax No. 05278-244203

4. As noted above, the repudiation was upheld even on an Appeal before the Senior Divisional Manager, vide a communication dated 29.03.2014.

5. It is questioning the said repudiation that the said Complaint was filed urging that the Insured had absolutely no knowledge of any such pre-existing disease nor he was suffering or had any treatment, as such there was no question of suppression of any such fact at the time of filling up of the proposal form.

6. The Complainant came-up with a case that the insured never had any such symptoms and for the first time on 10.02.2011, he consulted a Homeopathic doctor namely Dr. Anurag Shrivastav, who on that day diagnosed the presence of two stones, one of 4mm size and the other of 2 mm size in the kidney. The pain in the back side and lower abdomen etc. was also noted in the said prescription, which is Annexure – 6 on record. It is almost four months thereafter that the insured was admitted on 18.06.2011 in Sahara Hospital, Lucknow at about 7.00 am and he died the next day on 19.06.2011. The Complainant took a stand that the insured was treated for his ailment and the cause of death recorded by the hospital was cardio respiratory arrest. It was, therefore, also the contention of the Complainant which has been accepted by the State Commission that the cause of death had no connect with any stones in the kidney and the death not being on account of any excluded ailments in the policy, the claim was clearly indemnifiable and payable.

7. It was contended by the Complainant before the State Commission that the proposal form does indicate an answer in the negative against column no. 11(4) regarding any ailment of the kidney or existing ailment of the kidney, but

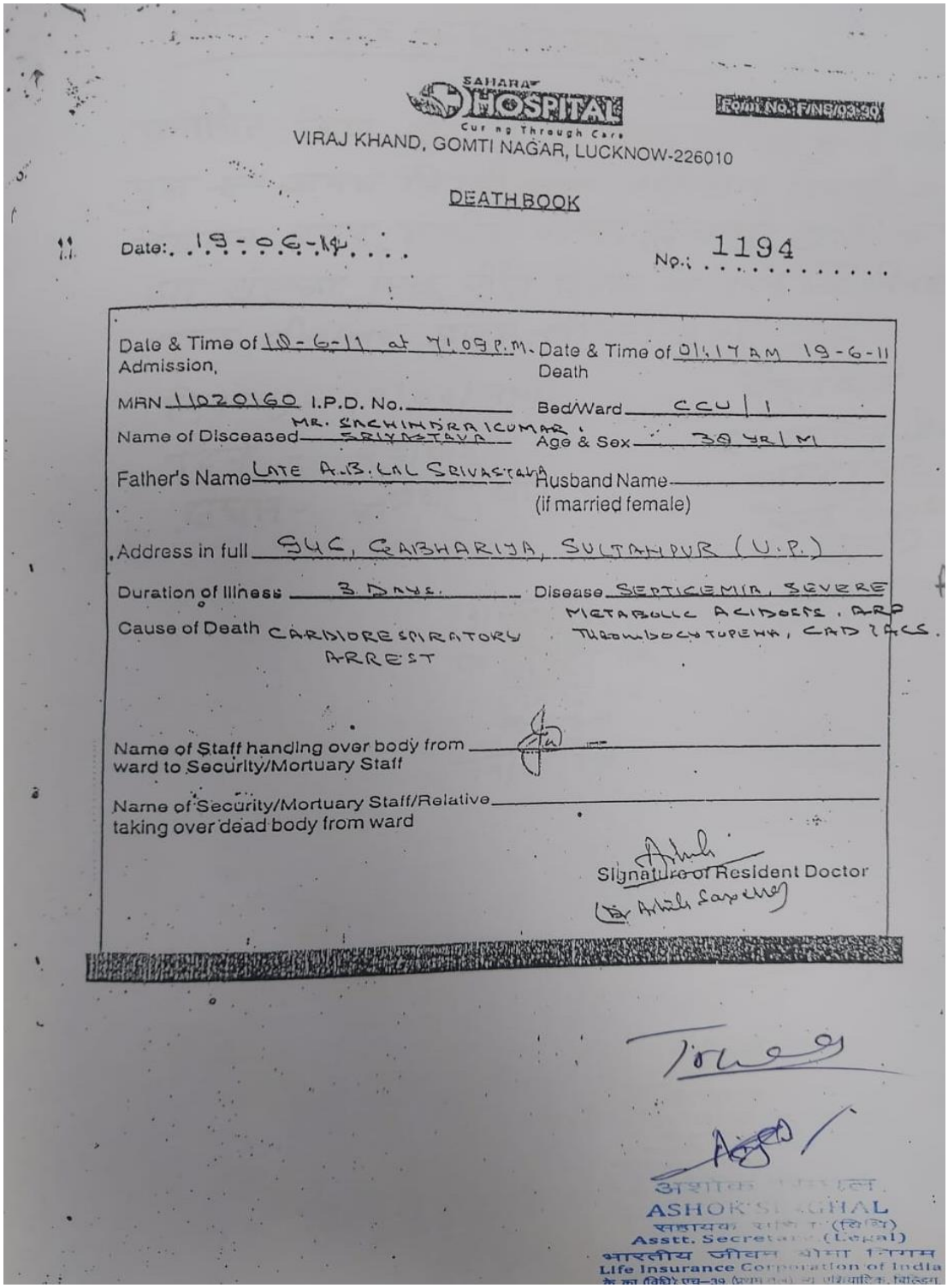
since there was no such ailment known to the Complainant or even diagnosed or treated, therefore, there was no suppression of any fact and hence, the repudiation is based on an erroneous consideration and against the weight of evidence on record. In short there was no evidence to substantiate a pre-existing or antecedent ailment.

8. The State Commission accepted this contention and recorded its finding that the documents relied on for the past ailment does not prove any past ailment at the time of the filling up of the proposal form and as mentioned above, the death certificate also indicates that the insured had died due to cardio respiratory failure, hence the repudiation was incorrect. The State Commission has gone further to say that the ailment of a renal stone cannot be said to be life threatening and, therefore, it was not material to repudiate the claim as the deceased insured had died of a sudden heart-attack.

9. Learned Counsel for the Appellant Insurance Corporation, Mr. Kaushal submits that all these documents pertaining to ailment of the insured had been filed by the Complainant herself and it is in this background that he urged that the crystallized stones of the size as indicated in the prescription dated 10.12.2011 clearly indicated that he was suffering from this kidney ailment for several years in the past as stones would not crystalize overnight or even in a few months of the size that had been indicated in the prescription dated 10.02.2011. He further submits that on admission at Sahara Hospital, the past history of the patient was recorded in a document which is at page 55 and this document was also filed by the Complainant. Against the heading ‘past

history', it has been recorded that renal stones had remained for "many yr." and a homeopathic treatment was being taken. Mr. Kaushal submits that the word "many" occurring does indicate that there was a considerable span of time, during which the insured had been suffering from this kidney ailment and existence of stones in his kidney that was disclosed by the insured himself or the complainant who is his wife at Sahara Hospital. This document has been produced by the Complainant and therefore, there is no reason to disbelieve the same. He then submits that the diagnosis recorded is of renal stones and renal colic symptoms apart from chest pain as well as pain in the urinary passage and other ailments that have been noted in the treatment sheet on record. The patient on the very same day was put on ventilator and in spite of all possible measures, the patient could not be revived and he was declared dead in the night at 1.07am on 19.06.2011.

10. Mr. Kaushal then invited the attention of the Bench to another document filed by the Complainant, which is the record of the death of the Complainant, which is extracted hereinunder:



SAHARA HOSPITAL
Curing Through Care
VIRAJ KHAND, GOMTI NAGAR, LUCKNOW-226010

FORM No.: F/NE/03:30

DEATH BOOK

Date: 19-06-11 No.: 1194

Date & Time of Admission: 10-6-11 at 7.09 P.M.
Date & Time of Death: 01.17 AM 19-6-11
MRN 11020160 I.P.D. No. ____ Bed/Ward CCU/1
Name of Diseased MR. SACHINDRA KUMAR SRIVASTAVA Age & Sex 39 YR/M
Father's Name LATE A.B.LAL SRIVASTAVA Husband Name (if married female) ____
Address in full 546, GARBHARIYA, SULTANPUR (U.P.)
Duration of Illness 3 DAYS. Disease SEPTICEMIA, SEVERE METABOLIC ACIDOSIS, ARD THROMBOCYTOPENIA, CAD ? ACS.
Cause of Death CARDIORESPIRATORY ARREST

Name of Staff handing over body from ward to Security/Mortuary Staff ____
Name of Security/Mortuary Staff/Relative taking over dead body from ward ____
Signature of Resident Doctor
Dr. Ashish Sarveriya

अशोक सिंघल
ASHOK SINGHAL
सहायक सचिव (विधि)
Asstt. Secretary (Legal)
भारतीय जीवन बीमा निगम
Life Insurance Corporation of India

11. It is submitted that the State Commission has erroneously read only the cause of death and had failed to advert towards the diagnosis recorded under the column “disease”, where it has been mentioned that the patient had

suffered from septicaemia, severe metabolic acidosis, acute renal failure (ARF), thrombocutupenia and cardiac arrest.

12. The contention of Mr. Kaushal is that the State Commission for reasons best known has deliberately omitted to note the aforesaid symptom which once again establishes acute renal failure having been recorded in the documents, apart from the other symptoms that developed ultimately resulting in the death of the patient. He, therefore, submits that with all these documents, the assumption of the State Commission that there was no suppression of any pre-existing disease or symptom by the Complainant is an erroneous finding against the weight of evidence on record.

13. He has relied on a decision of this Commission in ***Revision Petition No. 707/2022***, ***Branch Manager, LIC of India & Anr. Vs. T. Siva Naga Malleswari***, decided on 28.01.2025, to support his argument of suppression of an antecedent medical ailment.

14. Learned Counsel for the Respondent has once again advanced his submissions that were noted on earlier occasions and has urged that there was no evidence to confirm the existence of any antecedent ailment prior to the filling up of the form nor any evidence has been led to establish that the insured had any knowledge about any such pre-existing disease. In the said circumstances, the repudiation was invalid and the State Commission has on an appreciation of the evidence on record rightly arrived at the conclusion to uphold the claim. He also submits that the Insurance Corporation could have

led evidence of any positive nature, but having failed to discharge their onus, the impugned Order is vitiated.

15. He then submits that the document which has been filed as part of the treatment in Sahara Hospital recording past history of the insured and has been argued by learned Counsel for the Appellant, is neither signed nor authenticated, and therefore, no relevance can be placed on the phrase “many yr.”. He further submits that “many yr.” has nowhere been clarified and the proposal form was filled up on 19.02.2010, hence by no stretch of interpretation can the word “many” be employed to presume that the insured had been suffering from any such problem for the past several years or since long. The word “yr” at the most can be construed as 1 yr or it could have been intended as many months. It is not proved that the said duration was recorded on the information of the insured or complainant.

16. He submits that no evidence has been led by the Appellants to demonstrate the duration of the formation of the stones as recorded in the prescription dated 10.02.2011 to prove that they existed prior to the filling of the proposal form on 19.02.2010.

17. He further submits that even if there were stones, there might have been a possibility of the same having been washed away and therefore, their existence in the knowledge of the insured as on 19.02.2010 has not been proved. He, therefore, submits that even the indication of acute renal failure in the death summary does not corroborate the fact of any antecedent ailment as alleged by the Appellant as on the date of the filling up of the proposal form.

He, therefore, submits that the conclusions drawn by the State Commission are justified and perfect and such a finding of fact having not been dislodged by any evidence on record, the contentions raised on behalf of the Appellant are untenable and deserves rejection.

18. Learned Counsel has then invited the attention of the Bench to the written synopsis and also the judgments relied on by learned Counsel for the Respondent Complainant. The judgments relied on by him are as follows:

> *i.* ***Life Insurance Corporation of India vs. Badri Nageswaramma (deceased) & Ors****. dated 17.01.2005 as reported in II(2005) CPJ9(NC)*
> *ii.* ***Mahakali Sujatha vs. The Branch Manager, Future Generali India Life Insurance Co. Ltd. & Anr****., Civil Appeal No. 3821 of 2024, decided by the Apex Court on 10.04.2024*
> *iii.* ***Mavji Kanji Jungi & Anr. vs. Oriental Insurance Co. Ltd.****, CC No. 85 of 2014, decided by NCDRC on 22.12.2020*
> *iv.* ***Ram Naresh Singh & Ors. Vs. Executive Engineer****, Revision Petition No. 353 of 2021, decided by NCDRC on 04.08.2023*

19. We may point out that this Appeal was heard on previous occasions as well and notices had been issued on the delay condonation application that was condoned vide an Order dated 14.09.2023 and the Appeal was admitted after *prima-facie* recording the submissions raised. The Order dated 14.09.2023 is extracted hereinunder:

> *"Heard learned counsel for the appellants and the learned counsel for the respondents who has put in appearance opposing this appeal.*
>
> *Learned counsel for the appellants submits that the Uttar Pradesh State Consumer Disputes Redressal Commission at Lucknow (hereinafter referred to as the State Commission) has proceeded to award the claim which suffers from infirmities, inasmuch as the*

repudiation was carried out on the ground of the insured not having made a correct declaration of an existing disease from which he was suffering. The State Commission did not correctly appreciate the documents that were filed by the complainants, respondents herein, indicating the existence of renal stones and their proximity to the date of the proposal form. It is submitted that even further examination indicated that the said problem had been existing with the insured for the past many years. It is therefore contended that the conclusion drawn by the State Commission is erroneous.

On the other hand, learned counsel for the respondents invited the attention of the Bench to paragraph-12 of the complaint to urge that it had been clearly pleaded that after almost one year and two months of the issuance of the policy pain had occurred in the abdominal area of the insured and after medical examination it was diagnosed in all probability that such renal stones were embedded in the kidney of the insured.

The question therefore is as to whether the insured had knowledge of any such existence of disease on the date when the proposal form was filled up.

To buttress his submission, learned counsel for the respondents has also invited the attention of the Bench to the Medical Examiner's confidential report which was conducted at the time of the acceptance of the said proposal by the doctor of the Life Insurance Corporation of India to urge that no such indication is reflected in the said report.

Since the claim has been repudiated only on the ground that there was a suppression of relevant fact relating to a pre-existing disease by the insured and therefore the claim was not acceptable, it is appropriate that the matter is examined and the findings recorded by the State Commission are analysed in the light of the submissions raised hereinabove.

Prima facie in the facts of the present case, the conclusion drawn by the State Commission may not in any way be questionable or may be doubted keeping in view the facts that are on record,

nonetheless in order to finally determine the issue, the appeal deserves admission.

Admit.

Until further orders, the impugned order dated 18.10.2022 shall remain stayed provided the appellants deposit 50% of the decretal amount with the State Commission within one month from today.

List on 06.02.2024.

Amended memo of parties be provided in order to remove the defects as per the earlier directions of the Bench. Learned counsel may exchange affidavits in the meantime.

20. It was once again heard on 06.02.2024, recording the delay condonation that was allowed and also the submissions made by the rival sides, whereafter a direction was issued for obtaining an expert opinion from Dr. Ram Manohar Lohiya Hospital, New Delhi on the issues raised more particularly regarding the duration within which the kidney stones of the size indicated above, could have crystalized or shown symptoms of any such ailment. The Order dated 06.02.2024 is extracted hereinunder:

IA/140/2023

It appears that inadvertently orders were not passed on this application at the time of admission of this appeal on 14.09.2023. A delay of 46 days is stated to have occurred. On account of the cause as explained in the said application which is sufficient, the application is accordingly allowed.

APPEAL

Heard learned Counsel for the Appellants and learned Counsel for the Respondent.

The appeal was admitted on the basis of certain responses that were desired from the learned Counsel for the parties and today arguments have been advanced in furtherance of the claim as also in support of this appeal.

Prima facie, what can be gathered is that the contention of the Complainant / Respondent is that the deceased had absolutely no inkling or knowledge about the existence of any stones in his kidney as there were neither any symptoms nor any diagnosis nor any other source from which he could know about the existence of the stones in his kidney which were located and have been diagnosed for the first time in the prescription dated 10.02.2011 by Dr. Anurag Srivastava, a Homeopath who it seems clinically examined the deceased and also tendered a dietary advice that he should have more intake of water and should avoid consuming tomatoes, guavas, spinach etc. The case of the Complainant / Respondent is that this was discovered long after the proposal form for the insurance that the deceased had filled up, and therefore it cannot be said that the deceased had any prior knowledge of the existence of such stone in his kidney.

It appears that this problem of renal stone did get aggravated and the Complainant / Respondent was hospitalised on 18.06.2011 in Sahara Hospital, Gomti Nagar, Lucknow. The admission note and the other documents on record, particularly page 55 of the appeal paper book is stated to be one of the pages of the notings of Sahara Hospital where against the heading of past history there is a recital about "renal stone-many years" and Homeopathic treatment. According to the Appellant that this is the own document of the Complainant / Respondent that was filed along with the complaint, and seems to be based on disclosure made by the deceased at the time of admission. It is this document which is the bone of contention, inasmuch as, the Appellant contends that the aforesaid recital that these renal stones were existing for many years was known to the deceased, and this fact of ailment in the kidney was not disclosed in the proposal form dated 19.02.2010.

It is also the contention of the Appellant that the other document dated 10.02.2011, which is the prescription of the Homeopathic doctor also records the size of two stones of 4mm and 3mm respectively. This contention of the learned Counsel for the Appellant, that given the size of the stones, the same can be correlated to the disclosure of the

existence of the stones in the past years as recorded in the note sheet Sahara Hospital, inasmuch as, such stones cannot crystallize in a very short duration and consequently the crystallization of the said stones can be clearly related back to before 19.02.2010.

In addition thereto it is also on record that the note sheet dated 18.06.2011 records a history of renal stones and renal colic together with the complaint of pain in the urinary passage. The submission is that these symptoms as recorded in the note sheet confirms the existence of a prolonged ailment, and which can be presumed to be existing for the past several years, at least from before 19.02.2010. The submission is that the said evidence and documents have been brought on record by the Complainant / Respondent and consequently the inference which can drawn on the basis thereof is that the duration and period of existence of the stones was very much known to the deceased as he was suffering from the ailment at least on 19.02.2010.

It is on these grounds that it is urged that the deceased had knowledge about the said ailment that was not disclosed in the proposal form.

Learned Counsel for the Complainant / Respondent however submitted that the Complainant had clearly indicated that the ailment was discovered only on 11.02.2010, and as such it was just four months prior to the incident, and hence the assumption that the ailment had existed for many years, cannot be gathered from the documents that were placed on record. The contention is that the use of the phrase "many years" may be also on account of an incorrect description, and the status of the document has also been doubted in the complaint by saying that the same is undated and unsigned and without the stamp or letter head of Sahara Hospital. The contention is that the said recital is not by any medical practioner and therefore to presume that the deceased had made a disclosure of many years of kidney ailment is not correct. He submits it is for this reason that the State Commission after analysing the said documents has arrived at the correct conclusion.

In essence the submission is that knowledge cannot be attributed to the deceased before 19.02.2010 as he was not aware of

the said ailment, and even otherwise the 4mm and 3mm stones might have developed within a few months after the taking of the policy which possibility cannot be ruled out. It is on the strength of these arguments that it is urged that the order of the State Commission be upheld.

The moot question therefore which prima facie appears to be ascertained is as to whether the crystallization of the stones in the kidney of the deceased could have occurred even before 19.02.2010 or was it a crystallisation that may have occurred a few months before the death of the deceased.

To find out this possibility, learned Counsel for both the parties are at agreement that this issue can be referred to an expert of the Medical field to opine as to the period within which such stones crystallize of the size as referred to in the document dated 10.02.2011.

It is therefore directed that the Registry may send a request to the Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi for examining this issue as to the duration within which the two crystals of 4mm and 3mm as referred to in the document dated 10.02.2011 could be presumed to have crystallized in order to gauge the estimated or nearly exact life of the said crystals.

The copy of the appeal along with the aforesaid documents may be transmitted to the Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi within a week. The Superintendent is requested to preferably submit a report within two months of the receipt of the documents after getting it examined from an expert available in the Hospital in the field of urology/nephrology. The report may be submitted by the next date fixed.

List on 09.07.2024."

21. The expert opinion of the hospital dated 27.02.2024 was received on 29.02.2024, which is extracted hereinunder:

To

The Assistant Registrar

National Consumer Disputes Redressal Commission

Upbhokta Nyay Bhawan, F- Block
General Pool Office Complex
INA, New Delhi-110023

Subject: FIRST APPEAL NO. 13/2023 REG REETA SRIVASTAVA reg...

Sir/Madam,

In reference to above cited subject this is to submit that:

- ***It is very difficult to answer when exact time of crystallisation of stone was (as this is not defined).***
- ***3-4 mm renal stones are usually asymptomatic and patient may not be aware of these stones.***
- ***When these stones are obstructive in kidney / ureter, then mostly symptoms arise and only after that treatment is required.***
- ***Exact period / duration of renal stones can only be commented after looking serial ultrasound KUB*** *reports.*

Regards
Dr Hemant Kumar Goel
Professor and Head
Department of Urology & Renal Transplant
ABVIMS & Dr RML Hospital, New Delhi-110001

22. Accordingly, after the arrival of the report, the same was made available to the learned Counsel for the Parties vide an Order dated 09.07.2024 and no written objections have been taken to the contents of the said report. Learned Counsel for both the Parties have relied in their own way for interpreting the report to their advantage.

23. Mr. Kaushal submits that the report can be treated as inconclusive, but certainly it does not give any opinion on the issue of the duration of the

formation of the renal stone. The report states that it can only be commented after looking at serial ultrasound reports.

24. It was the argument of the learned Counsel for the Respondent Complainant that the burden lay on the Appellant to corroborate their contention regarding the existence of the antecedent ailment for the past several years in order to establish the duration which they are alleging. Since the Appellants have failed to discharge this burden, hence an adverse inference should be drawn against them and their contention should be rejected.

25. This argument has been vehemently opposed by Mr. Kaushal contending that this is a self-defeating argument in as much as it is the insured who had kidney stones and who had come to know of it in 2011 as per his contention when he got himself treated by a homeopathic doctor, who pointedly referred to the measurements of the stones. Mr. Kaushal submits that this could not have been possible without any radiological or ultrasonic assessment and, therefore, it is the Complainant who has withheld this most crucial evidence from the Commission and has failed to discharge their onus in producing the best piece of evidence that could have corroborated the contention of the Complainant or shed light on the duration of the formation of the renal stones or the knowledge to the insured about his kidney problem. The production of any report or prescription of the ultrasound conducted could have been done only by the Complainant. He, therefore, submits that having

failed to discharge their duty, there was no occasion for shifting the burden on the Appellant.

26. He further submits that had the insured disclosed any such pain or any such problem at the time of the filling up of the proposal form, it is quite possible that the examining doctor of the LIC could have recommended an X-ray or an Ultrasound for the said purpose, but since the proposal form clearly answers the relevant question no. 11(4) in the negative, there was no occasion for conducting any radiological examination at the time of the grant of the policy. There was, therefore, no obligation for the LIC to voluntarily get an ultrasound of the kidney conducted when the insured himself had categorically stated that he had no such problem. Mr. Kaushal submits that this was a clear suppression, which now stands established and, therefore, the claim had been rightly repudiated.

27. In rejoinder rebuttal, Mr. Kaushal has also urged, that the argument of learned Counsel for the Complainant regarding the document filed by him and obtained from the Sahara Hospital did not bear any sign or stamp, is a self-defeating argument, in as much as, learned Counsel cannot argue against the evidence adduced by the Complainant herself. He submits that it is not the case of the Complainant that this document did not exist or is otherwise manipulated or ingenuine. The oral argument advanced during hearing, therefore, cannot take away the impact of an admitted document which has been filed by the Complainant and which clearly records the past history disclosed by the insured. Mr. Kaushal submits that the LIC official was not

present when the said documents were prepared in the hospital and, therefore, the only presumption which can be drawn is that the documents were prepared at the instance of the insured or his family members who intimated the hospital about the past ailment of the insured. He, therefore, submits that given the entire background and the evidence on record, coupled with the expert opinion obtained from the Dr. Ram Manohar Lohiya Hospital, it is evident that the fact of the antecedent ailment is established and that there was a clear suppression of this material fact in the proposal form filled up by the insured. Consequently, the impugned Order is unsustainable and deserves to be set aside.

28. The main issue of disclosure in the proposal form is under contest between the parties. The question is as to whether the insured on 19.02.2010 while filling up the proposal form, had deliberately suppressed the material fact of any antecedent pre-existing ailment or not. According to the submissions of the Appellant and the documents in support thereof, the insured in spite of having an ailment of the kidney had deliberately suppressed this fact and had wrongly answered question no. 11(4) in the negative, which amounted to a false disclosure and a deliberate suppression regarding his ailment of the kidneys in spite of having knowledge of the same. This has been denied by the Respondent Complainant contending that the insured had neither any such ailment nor had the insured any knowledge about such ailment on 19.02.2010 or even thereafter till he had approached the

Homeopathic doctor. As such the contention of a deliberate suppression is without basis.

29. It is evident from the facts on record that all documents pertaining to the ailment of the kidney of the insured have been filed by the Complainant. The first document which requires reference is the prescription of the Homeopath Dr. Anurag Shrivastav dated 10.02.2011. A perusal of the said prescription indicates that the Complainant had been examined by him on 10.02.2011 and then on 18.03.2011 and medicines were prescribed. However, dietary instructions were also noted and besides it, there is an endorsement specifically about the right side kidney having two stones of 4mm and 3mm each. This document has not been denied or disputed by the Respondent Complainant. The argument of Mr. Kaushal, learned Counsel for the Life Insurance Corporation, that the said categorical description of the two stones in the kidney with clarity of size, could not have been possible on an external physical examination except with an ultrasonography or x-ray report. He is correct in his submissions that the precision of the stones as described could only have been possible with the aid of a Radiological report. It is therefore evident that there was in all probability the existence of some x-ray or ultrasound report when the insured was examined by the Homeopath. This radiological evidence has not been produced by the Respondent Complainant and learned Counsel during the course of submissions urged that he has taken instructions and he is informed that such a report is not available and it is also not possible to collect it from Sahara Hospital as it is a very old matter.

Consequently, this evidence which could have been indicative of the duration has not been produced by the Respondent Complainant even though its existence is highly probable and cannot be denied. Its relevance is also fortified by the report of Dr. Ram Manohar Lohiya Hospital that was requisitioned by this Commission and has been received on 27.02.2024, which recites that the exact period or duration of the stones can only be commented after looking to serial ultrasound reports. Consequently, the report of any X-ray or Ultrasonography not being available, in spite of its highly probable existence as discussed above, is a shortcoming on the part of the Respondent Complainant. This report could have helped in gathering the duration of the formation of the stones as per the Dr. Ram Manohar Lohiya Hospital expert opinion, which opportunity to assess seems to be lost on account of the said deficit on the part of the Complainant.

30. The second document reflecting upon this issue of knowledge about any ailment prior to 19.02.2010 has to be analysed keeping in view the note sheet, which is even though undated, but is part of the admission sheet of Sahara Hospital that has been filed by the Complainant. Even though, learned Counsel for the Respondent Complainant urged that it does not bear a seal or any date, it can be noticed without any extra effort that the insured had been admitted on 18.06.2011 at 7.00 am and he died in the night of 19.06.2011 at about 1.00am. The sheet which is stated to be undated has been written almost in the same hand writing of the person recording the symptoms as also the past history of the patient. It is categorically indicated that the patient had

a past history of renal stone – “many yr.”. The next endorsement is that the patient had homeopathic treatment. In our considered opinion, since the said document was provided by the Complainant, the same cannot be denied through oral submissions. Even if it does not bear a seal or signature, it is part of the hospital sheet of Sahara Hospital and it records a special information about the past history of homeopathic treatment. As discussed above, the insured admittedly had got himself treated by a homeopathic doctor, whose prescription dated 10.02.2011 stands admitted by the Complainant. This endorsement therefore clearly corroborates that it is a special information about no one else except the insured whose name appears at the top of the said hospital sheet. It is this documents which refers to the problem of renal stone “many yr.”

31. There has been a debate on the phrase “many yr”. As noted above, this evidence has been filed by the Complainant and, therefore, the presumption of the existence of such an evidence that has been filed by the Complainant cannot be doubted. Further the contents of the documents are an information regarding the renal trouble faced by the insured himself and known to his family members, which was in their special knowledge. There is no evidence to prove that the aforesaid endorsement in the hospital records are an interpolation or manipulation. The documents, having been filed by the Complainant without any allegation or proof to make it resemble something doubtful, therefore raises a positive presumption that the said information and the contents thereof were disclosed in the hospital by the insured or his family

members. There is also no evidence that the Life Insurance Corporation has engineered this document. Consequently, the probative value of the document cannot be disputed through oral arguments on behalf of the Respondent Complainant.

32. Having said that we may now venture upon to understand the meaning of the word “many” that prefixes the word “yr.” in the said document. The word “many” is an adjective which means numerous. It is also used as a common noun to depict a large number or a multitude. When one says “I have been there many times”, the word is an adjective, but when the same word is used in a sentence like “the voice of the many is not always to be trusted”, then it is a noun. It is, therefore, evident that the word “many” reflects a manifold or a multiplied number and therefore numerically it would certainly mean more than one. The use of this prefix before the word “yr.” in the document, therefore, cannot be construed to be singular in nature to mean only one year. There is no explanation coming forth from the Complainant about this and to the contrary, the oral argument is not to rely on the said document. We find no justification to treat the said word to be singular.

33. Admittedly the Complainant had taken advice from a homeopathic doctor on 10.02.2011, who noted this symptom of renal disorder and existence of two stones of the size referred to therein. The proposal form is of 19.02.2010 and therefore, the phrase “many yr.” used cannot be for just one year year between 19.02.2010 and 10.02.2011. Even otherwise the insured was admitted in the hospital on 18.06.2011 when the said document was

written, recording the phrase “many yr.”. This certainly does not connote the distance of time to be one year or less than a year. The word “many” as indicated above connotes multiplicity and, therefore, could possibly be two or more years. The word “year / years” seems to have been written in an abbreviated form “yr” after the word “many” in the said note sheet. The abbreviation is pre-fixed by the word many and therefore it would be reasonable to construe the phrase as many year(s). In our assessment, therefore, the phrase “many yr.” would reasonably relate back prior to 19.02.2010 and therefore, the insured can be assumed to be having knowledge of his renal problem, prior to 19.02.2010 for which there is a strong presumption in the light of what has been stated above. The preponderant probability of the insured having knowledge of his kidney ailment as on the date of the filling up of the proposal form therefore appears to be believable.

34. With the aforesaid facts, we find that the State Commission has nowhere adverted or investigated the evidence in the light of what has been stated hereinabove.

35. It is for the aforesaid reason that this Commission had called upon for an expert opinion that has been tendered by the Dr. Ram Manohar Lohiya Hospital on 27.02.2024 extracted hereinabove. A perusal of the said report does not clear our doubt regarding the duration of the renal stones as it states that it is difficult to answer the exact time of crystalisation as it is nowhere defined. It further states that it could be commented upon only after looking to serial ultrasound report. As noted above, the Complainant did not divulge the

information about the ultrasound reports, the existence whereof cannot be doubted in view of the endorsement made by the Homeopathic Dr. Anurag Shrivastav on his prescription dated 10.02.2011, who has mentioned the size of two stones measuring 4mm and 3mm with exactitude. This document or its content has not been disputed by the Respondent Complainant and therefore the precision of the description establishes that the description of the stones was made on the strength of a radiological / ultrasound report which has not been produced by the Respondent Complainant. The report of Dr. Ram Manohar Lohiya Hospital therefore cannot come to aid of the Respondent Complainant as the Respondent Complainant has failed to provide this information. The report remains inconclusive on the duration of stones.

36. However, there is an observation in the report that the size of the renal stone as reflected are usually asymptomatic and a patient may not be aware of these stones. The symptoms of pain or otherwise from such stones arise when they are obstructive either in the kidney or in the ureter, whereafter treatment is required. It is therefore probable that even if the stones existed, they might have been asymptomatic as on 19.02.2010, when the proposal form was filled up by the insured and therefore there can be a presumption that the insured had no knowledge of any such symptoms and therefore, he answered question no. 11(4) in the negative. However, this doubt stands negated, because of the disclosure of the information noted against the past history of the patient in the Sahara Hospital note sheet discussed

hereinabove. The phrase “many yr.” as observed above can be safely understood to mean many years.

37. Travelling back in time from 18.06.2011 which is the date on which the insured was admitted in Sahara Hospital, the period between 18.06.2011 and 19.02.2010 comes to an approximate calculation of 15 months which is 1 ¼ years i.e. almost over a year. The phrase “many yr.” occurring in the note sheet therefore as discussed does bring this period within its fold to presume that the insured had knowledge about his antecedent ailment of the kidney as on the date of filling up of the proposal form. Knowledge therefore to the insured is clearly attributable and cannot be disputed. Coupled with this is the failure of the Complainant to bring forward the radiological or any other medical report that could have shed further light on the duration.

38. We then come to the notings in the death discharge summary dated 19.06.2011 where even though the cause of death is recorded as Cardio Respiratory Arrest, yet one of the diseases prominently referred to is Acute Renal Failure (ARF) as is evident from a perusal of the same as extracted hereinabove. This also corroborates the fact that this disease seems to have been existing for long and the kidney problem was acute and therefore it can be presumed that it had a prolonged existence about which the insured had knowledge. It may be mentioned that the question posed in the proposal form that has been answered in the negative namely question no. 11(4) is as to whether the insured was suffering from any ailment of the kidney or even presently. The insured could have answered this and the reason for drawing

such inferences is also on account of all the discussions hereinabove and the fact that the Insurance Policy had been taken almost within a close proximity of almost one year before the death of the insured. It can be therefore presumed that the insured was having a failing health with problems acute enough that resulted in his death so soon which is almost on the completion of one year of taking of the policy.

39. There is yet another legal issue which needs to be discussed and that is the burden of proof being discharged by the respective parties. The question as to how would the burden be discharged or the onus be shifted is dependent on the material aspect of the fact which needs a disclosure. In contracts of insurance, the basic principle that governs the relationship of the contracting parties is that of *uberrimae fidei*. The Apex Court in the case of ***Mahakali Sujatha vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. & Anr., 2024 SCC OnLine SC 525*** has explained this principle in paragraphs 18 to 32, which are extracted hereinunder:

> ***18.*** *For a better appreciation of the controversy, it would be important to analyse the maxim of uberrimae fidei that governs the insurance contracts. It may also be observed that insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim uberrimae fidei. The plea of utmost good faith has also been taken by the respondent, for contending that the insured-deceased had a duty to disclose the details of the previous policies, as the same was sought in the application form. However, the insured failed in his duty to correctly answer the question about his previous policies. The law*

*relating to the maxim uberrimae fidei was dealt with by this Court in Manmohan Nanda v. United India Assurance Co. Ltd. [**Manmohan Nanda v. United India Assurance Co. Ltd., (2022) 4 SCC 582**, ("Manmohan Nanda"). The same could be discussed at this stage with reference to legal authorities as well as relevant provisions of law.*

***19. MacGillivray on Insurance Law (12th Edn., Sweet & Maxwell, London, 2012 at p. 477)**, has summarised the duty of an insured to disclose as under:*

"… the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms."

***20. Lord Mansfield in Carter v. Boehm [Carter v. Boehm, (1766) 3 Burr 1905** has summarised the principles necessitating disclosure by the assured in the following words :*

"… Insurance is a contract of speculation.

***The special facts upon which the contingent chance is to be computed, lie most commonly in the knowledge of the assured only**; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist …*

*The keeping back of such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the underwriter is deceived and the policy is void; because **the risk run is really different from the risk understood and intended to be run**, at the time of the agreement.*

The policy would be equally void against the underwriter if he concealed; …

Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary*."*

The aforesaid principles would apply having regard to the nature of policy under consideration, as ***what is necessary to be disclosed are "material facts" which phrase is not definable as such, as the same would depend upon the nature and extent of coverage of risk under a particular type of policy. In simple terms, it could be understood that any fact which has a bearing on the very foundation of the contract of insurance and the risk to be covered under the policy would be a "material fact"****.*

21. *Under the provisions of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 the Explanation to Section 2(d) defining "proposal form" throws light on what is* ***the meaning and content of "material"****. For an easy reference the definition of "proposal form" along with the Explanation under the aforesaid Regulations has been extracted as under:*

*"****2. Definitions****.—In these regulations, unless the context otherwise requires—*

x x x

(d) "Proposal Form" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted.

Explanation.—"Material" for the purpose of these regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer."

Thus, the Regulation also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the

context of guiding the insurer in deciding whether to undertake the risk or not.

22. *Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus,* ***the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above.*** *It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.*

23. The duty of the insured to *observe utmost good faith is enforced by requiring him to* ***respond to a proposal form which is so framed to seek all relevant information to be incorporated in the policy and to make it the basis of a contract. The contractual duty so imposed is that any suppression or falsity in the statements in the proposal form would result in a breach of duty of good faith*** *and would render the policy voidable and consequently repudiate it at the instance of the insurer.*

24. *In relation to the duty of disclosure on the insured,* ***any fact which would influence the judgment of a prudent insurer and not a particular insurer is a material fact****. The test is, whether, the circumstances in question would influence the prudent insurer and not whether it might influence him vide Reynolds v. Phoenix Assurance Co. Ltd.* ***[Reynolds v. Phoenix Assurance Co. Ltd., (1978) 2 Lloyd's Rep 440****] Hence, the test is to be of a prudent insurer while issuing a policy of insurance.*

25. *The basic test hinges on whether the mind of a prudent insurer would be affected, either in deciding whether to take the risk at all or in fixing the premium, by knowledge of a particular fact if it had been disclosed. Therefore,* ***the fact must be one affecting the risk. If it has***

no bearing on the risk it need not be disclosed and if it would do no more than cause insurers to make inquiries delaying issue of the insurance*, it is not material if the result of the inquiries would have no effect on a prudent insurer.*

26. *Whether a fact is material will depend on the circumstances, as proved by evidence, of the particular case. It is for the court to rule as a matter of law, whether, a particular fact is capable of being material and to give directions as to the test to be applied. Rules of universal application are not therefore to be expected, but the propositions set out in the following paragraphs are well established:*

(a) *Any fact is material which leads to the inference, in the circumstances of the particular case, that the subject-matter of insurance is not an ordinary risk, but is exceptionally liable to be affected by the peril insured against. This is referred to as the "physical hazard".*

(b) *Any fact is material which leads to the inference that the particular proposer is a person, or one of a class of persons, whose proposal for insurance ought to be subjected at all or accepted at a normal rate. This is usually referred to as the "moral hazard".*

(c) The materiality of a particular fact is determined by the circumstances of each case and is a question of fact.

27. If a fact, although material, is one which the proposer did not and could not in the particular circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty.

28. *Full disclosure must be made of all relevant facts and matters that have occurred up to the time at which there is a concluded contract. It follows from this principle that the* ***materiality of a particular fact is determined by the circumstances existing at the time when it ought to have been disclosed, and not by the events which may subsequently transpire****. The duty to make full disclosure continues to apply throughout negotiations for the contract but it comes to an end when the contract is concluded; therefore, material facts which come to the proposer's knowledge subsequently need not be disclosed.*

29. *Thus,* ***a proposer is under a duty to disclose to the insurer all material facts as are within his knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. Whilst the proposer can only disclose what is known to him, the proposer's duty of disclosure is not confined to his actual knowledge, it also extends to those material facts which, in the ordinary course of business, he ought to know. However, the assured is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to know at the material time.*** *The second aspect of the duty of good faith arises in relation to representations made during the course of negotiations, and for this purpose all statements in relation to material facts made by the proposer during the course of negotiations for the contract constitute representations and must be made in good faith.*

30. *The basic rules to be observed in making a proposal for insurance may be summarised as follows:*

(a) *A fair and reasonable construction must be put upon the language of the question which is asked, and the answer given will be similarly construed. This involves close attention to the language used in either case, as the question may be so framed that an unqualified answer amounts to an assertion by the proposer that he has knowledge of the facts and that the knowledge is being imparted. However, provided these canons are observed, accuracy in all matters of substance will suffice and misstatements or omissions in trifling and insubstantial respects will be ignored.*

(b) Carelessness is no excuse, unless the error is so obvious that no one could be regarded as misled. If the proposer puts "no" when he means "yes" it will not avail him to say it was a slip of the pen; the answer is plainly the reverse of the truth.

(c) An answer which is literally accurate, so far as it extends, will not suffice if it is misleading by reason of what is not stated*. It may be quite accurate for the proposer to state that he has made a claim*

previously on an insurance company, but the answer is untrue if in fact he has made more than one.

(d) Where the space for an answer is left blank, leaving the question unanswered, the reasonable inference may be that there is nothing to enter as an answer*. If in fact there is something to enter as an answer, the insurers are misled in that their reasonable inference is belied. It will then be a matter of construction whether this is a mere non-disclosure, the proposer having made no positive statement at all, or whether in substance he is to be regarded as having asserted that there is in fact nothing to state.*

(e) Where an answer is unsatisfactory, as being on the face of it incomplete or inconsistent the insurers may, as reasonable men, be regarded as put on inquiry, so that if they issue a policy without any further enquiry they are assumed to have waived any further information. *However, having regard to the inference mentioned in sub-para 37.4 above, the mere leaving of a blank space will not normally be regarded as sufficient to put the insurers on inquiry.*

(f) A proposer may find it convenient to bracket together two or more questions and give a composite answer. There is no objection to his doing so, provided the insurers are given adequate and accurate information on all points covered by the questions.

(g) *Any answer given, however accurate and honest at the time it was written down, must be corrected if, up to the time of acceptance of the proposal, any event or circumstance supervenes to make it inaccurate or misleading. [Source : Halsbury's Laws of England, Fourth Edn., Para 375, Vol. 25 : Insurance]*

31. *Sometimes the standard of duty of disclosure imposed on the insured could make the insured vulnerable as the statements in the proposal form could be held against the insured. Conversely, certain clauses in the policy of insurance could be interpreted in light of the contra proferentem rule as against the insurer. In order to seek specific information from the insured, the proposal form must have*

specific questions so as to obtain clarity as to the underlying risks in the policy, which are greater than the normal risks.

32. *From the aforementioned discussion, it is clear that* ***the principle of utmost good faith puts reciprocal duties of disclosure on both parties to the contract of insurance****. These reciprocal duties mandate that both the parties make complete disclosure to each other, so that the parties can take an informed decision and a fair contract of insurance exists between them.* ***No material facts should be suppressed, which may have a bearing on the risk being insured*** *and the decision of the party to undertake that risk. However, not every question can be said to be material fact and the materiality of a fact has to be adjudged as per the rules stated in the aforementioned judgment.*

40. While dealing with the issue, the Apex Court also referred to the earlier decision in the case of ***Reliance Life Insurance Co. Ltd. vs. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175***. It may be pointed out that the said case as well as the case of ***Mahakali Sujatha vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. & Anr.*** **(supra)** were both pertaining to repudiation of claims by Insurance Companies on account of non-disclosure of earlier policies taken by the insured. Nonetheless, the ratio on the question of *uberrimae fidei* as extracted above still governs the field.

41. In the present case, there was no disclosure about the existence of any Renal disease or problem relating to the kidney of the insured as on the date of filling up of the proposal form. However, the tests which have been laid down by the Apex Court still requires an assessment as to whether the fact was material which the insured could have been expected to know and further the impact of its materiality on the test of prudence of a reasonable man. The circumstances of this case did require an obligation on the part of the

Complainant to clear this doubt about medical investigations to locate stones in the kidney of the insured in the light of what has been observed by us while discussing the facts of the case and we find it equally applicable for the State Commission to have analysed the fact in the light of the propositions as spelt out by the Apex Court and explained in the case of ***Mahakali Sujatha vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. & Anr.*** **(supra)**

42. The Apex Court in the case of ***Mahakali Sujatha vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. & Anr.*** **(supra)** went further to dilate on the aspect of burden of proof. In paragraph 41 to 47, the Apex Court held as under:

> ***"41.*** *At this stage, we may also* ***dilate on the aspect of burden of proof.*** *Though the* ***proceedings before the Consumer Fora are in the nature of a summary proceeding. Yet the elementary principles of burden of proof and onus of proof would apply****. This is relevant for the reason that no corroborative evidence as to what has been deposed in the affidavit is let in by the insurance company in order to establish a valid repudiation of the claim in the instant case.* ***Section 101 of the Evidence Act, 1872 states that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. This section clearly states that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable*** *of proof. Simply put, it is easier to prove an affirmative than a negative. In other words,* ***the burden of proving a fact always lies upon the person who asserts the same. Until such burden is discharged, the other party is not required to be called upon to prove his case****. The*

court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Further, things which are admitted need not be proved. Whether the burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. The party on whom the burden lies has to stand on his own and he cannot take advantage of the weakness or omissions of the opposite party. Thus, the burden of proving a claim or defence is on the party who asserts it.

42. *Section 102 of the Evidence Act, 1872 provides a test regarding on whom the burden of proof would lie, namely, that the* ***burden lies on the person who would fail if no evidence were given on either side****. Whenever the law places a burden of proof upon a party, a presumption operates against it. Hence, burden of proof and presumptions have to be considered together. There are however* ***exceptions to the general rule*** *as to the burden of proof as enunciated in Sections 101 and 102 of the Evidence Act, 1872 i.e. in the context of the burden of adducing evidence: (i)* ***when a rebuttable presumption of law exists in favour of a party, the onus is on the other side to rebut it; (ii) when any fact is especially within the knowledge of any person, the burden of proving it is on him*** *(Section 106). In some cases, the burden of proof is cast by statute on particular parties (Sections 103 and 105).*

43. *There is an essential distinction between burden of proof and onus of proof;* ***burden of proof lies upon a person who has to prove the fact and which never shifts but onus of proof shifts****. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, in a suit for possession based on the title, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title vide R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple [****R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752]*** *.*

44. *In a claim against the insurance company for compensation, where the appellants in the said case had discharged the initial burden regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under the insurance policy, it was for the insurance company to disprove such claim with evidence, if any, vide Shobika Attire v. New India Assurance Co. Ltd. [**Shobika Attire v. New India Assurance Co. Ltd., (2006) 8 SCC 35**]*

45. *Section 103 of the Evidence Act, 1872 states that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. This section enlarges the scope of the general rule in Section 101 that the burden of proof lies on the person who asserts the affirmative of the issue. Further, Section 104 of the said Act states that the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. The import of this section is that the person who is legally entitled to give evidence has the burden to render such evidence. In other words, it is incumbent on each party to discharge the burden of proof, which rests upon him.* ***In the context of insurance contracts, the burden is on the insurer to prove the allegation of non-disclosure of a material fact and that the non-disclosure was fraudulent. Thus, the burden of proving the fact, which excludes the liability of the insurer to pay compensation, lies on the insurer alone and no one else****.*

46. *Section 106 of the Evidence Act, 1872 states that* ***when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him****. This section applies only to parties to the suit or proceeding.* ***It cannot apply when the fact is such as to be capable of being known also by persons other than the parties.*** *(Source : Sarkar, Law of Evidence, 20th Edn., Vol. 2, LexisNexis.)*

47. *In light of the aforesaid discussion on burden of proof, it has to be analysed if the respondent in the present case has adequately discharged*

his burden of proof about the fact of suppression of previous life insurance policies of the insured."

43. On the facts of the present case, in our opinion, the Complainant was under an obligation to have disclosed the source and the foundation regarding the precise description of the stones as recorded in the prescription of the Homeopathic doctor which is the document of the Complainant. As noted above, the failure to produce the radiological supporting document, which could have been helpful in calculating the duration of the stones as expressed by the expert opinion of Dr. Ram Manohar Lohiya Hospital, casts a doubt on the discharge of obligation by the Complainant, and the failure to discharge the burden may not shift the onus on the Insurance Company. Apart from this, the documents from the Sahara Hospital as discussed above which was also produced by the Complainant indicated the existence of the disease for a considerable period. There is no explanation coming forth from the Complainant and neither has the State Commission delved into the same.

44. The State Commission therefore on the parameters above as laid down by the Apex Court has not analysed and assessed the evidence in the correct perspective nor has the evidence been appreciated to arrive at the correct conclusion. We may point out further that this was a necessary and a material fact that was required to be made the basis of the findings regarding the knowledge of the pre-existing disease to the insured. Explaining as to what are material facts and what may amount to a material suppression, the Apex Court once again delved into this issue in the case of ***Mahaveer Sharma vs.***

Exide Life Insurance Co. Ltd. & Anr., 2025 SCC OnLine SC 435, paragraphs 10 to 16 thereof.

45. It may be mentioned that the judgment by the Apex Court in the case of ***Mahakali Sujatha vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. & Anr.*** **(supra)** referred to the opinion of Lord Mansfield in the classic decision of Carter vs. Boehm (supra), but now the position of law as developed in the field of insurance law emphasises on the impact of any suppression of "material facts". It is for this reason that the 2002 Regulation of IRDA explained the word "material" and the judgments cited above have also explained the same.

46. This also requires a consideration of the issue relating to knowledge possessed by the insured about his pre-existing disease on the date of the filling up of the proposal form. In our opinion, in the present case, the matter ought to have been probed deeper by the State Commission on the basis of material available and therefore we find that the impugned Order cannot be sustained in view of the observations made by us hereinabove. We, therefore in the light of the discussions made hereinabove, allow this Appeal and set aside the impugned Order dated 18.10.2022 passed in CC No. 83 of 2015 by the State Consumer Disputes Redressal Commission, U.P.

47. Accordingly for what has been held by us hereinabove, we allow the Appeal and remand the matter to the State Commission for a decision afresh, keeping in view the legal principles that have been indicated hereinabove and

decide the matter upon an appreciation of the facts on record once again afresh as expeditiously as possible.

48. Parties to appear before the State Commission on 01.07.2025. The State Commission shall proceed to dispose of the matter expeditiously after fixing date at its convenience.

49. It may be pointed out that while entertaining the Appeal on 14.09.2023, an interim Order was passed staying the impugned Order dated 18.10.2022 directing to deposit 50% of the decretal amount with the State Commission within one month of that date. A compilation vide Diary No. 4315 dated 30.01.2024 was filed intimating the Commission of a deposit of a Demand Draft before the State Consumer Disputes Redressal Commission, Lucknow for a sum of Rs. 28,21,000/-. Apart from this, the Appeal seems to have been filed with statutory pre-deposit of Rs. 35,000/- as this was a case arising out of a Complaint that had been instituted under the 1986 Act. The 50% amount deposited as indicated above before the State Commission shall be retained by it till its final disposal. The statutory deposit of Rs. 35,000/- made by the Appellant at the time of the institution of this Appeal shall be refunded to the Appellants by the Registry of this Commission alongwith any interest accrued thereon within 15 days from today.

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(A.P. SAHI, J.)
PRESIDENT

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(BHARATKUMAR PANDYA)
MEMBER

Pramod / Reserved