Relevance of Uberrimae Fidei in Life Insurance in the present day

written by Chandni Arora | May 21, 2019

*Uberrimae Fidei* refers to a Latin phrase meaning “utmost good faith” and is the cornerstone of insurance contracts. The doctrine of *uberrimae fidei* is applicable equally on the insurer as well as the insured and requires the declaration of all facts material to the insurance contract by all the parties to the contract.

*Uberrimae Fidei* in Life Insurance contracts in India:

Section 45 of the Insurance Act, 1938 pertaining to life insurance policies stated that life insurance policies could not be called into question by the insurer after a period of two years from the commencement of the policy unless the insured at the time of making such misrepresentation did so fraudulently suppressing information which he knew to be vital to the insurance contract. This clause allowed the insurer to conduct an investigation even after the expiry of two years and repudiate the claim if the material suppression was found to be deliberate.

However, with the passing of The Insurance Laws (Amendment) Act, 2015, the Section 45 has been amended to the extent that a policy can be called into question by an insurer only for a period of 3 years after the issuance of the policy on any ground including that of fraud. This amendment has put a noose around the necks of life insurance companies with the effect that all future contracts entered into will be required to be investigated at the time of issuance of the policy and not at the time of processing of the claim as has been the established practice in the field of life insurance.

The amendment in Section 45 also raises a question on the relevance of the doctrine of *Uberrimae Fidei* in modern insurance contracts as the focus for policyholders will shift to suppression of material facts for a period of 3 years rather than disclosure at the proposal stage itself to avoid payment of higher premiums and for ease of issuance of policies.

Judgments in the post Insurance Laws (Amendment) Act, 2015 world:

There has been a spate of judgments favouring the Insured post the 2015 amendment in Section 45 side-lining the age old *Uberrimae Fidei* doctrine. Some of the landmark judgments are discussed below:

Sulbha Prakash Matalgaoker Vs. Life Insurance Corporation of India (Civil Appeal No. 8245 of 2015)

The insured in the instant case had suppressed the fact that he was suffering from lumbar spondylitis with PID with sciatica at the time of filling the Proposal Form. The insured subsequently passed away due to ischaemic heart disease and myocardial infection. Since there was

suppression of pre-existing disease, the insurer repudiated the death claim. The Hon'ble Supreme Court however, held that that since the undisclosed disease had nothing to do with the cause of death, the alleged concealment was not of a nature which would disentitle the deceased from getting his life insured and hence, the repudiation of the claim was unjustified.

Life Insurance Corporation of India Vs. Jyotsana Rawal

The Hon'ble National Commission has reiterated the principles laid down in *Sulbha Prasad Matalgaonker* discussed above. The insurer had alleged that the insured was suffering from tuberculosis prior to filling up of Proposal Form. The insured had died due to heart attack, and it was held that since there is no co-relation between tuberculosis and heart attack, the order passed by both the District Consumer Disputes Redressal Forum and State Consumer Disputes Redressal Commission was upheld and the Revision Petition filed by Life Insurance Corporation of India was dismissed.

Neelam Chopra Vs. Life Insurance Corporation of India (Revision Petition No. 4461 of 2012)

The Revision Petition was filed challenging the order passed by the State Consumer Disputes Redressal Commission allowing the appeal filed by Life Insurance Corporation of India. The insurer had repudiated the death claim on the ground that the insured had concealed the fact that he was suffering from diabetes and for the last five years and also suffering from LL Hansen disease at the time of filling the Proposal Form.

The Hon'ble National Commission, in the instant case has observed from the judgment passed by the Hon'ble High Court of Delhi in Hari Om Aggarwal Vs. Oriental Insurance Co. Ltd. WP(C) No. 656 of 2007 that insurance claim cannot be denied on the ground of common lifestyle diseases such as hypertension, diabetes mellitus etc. However, the Hon'ble National Commission has furthered the observation of the High Court of Delhi by stating that the insured cannot suppress common lifestyle ailments as a matter of right and the claimants may suffer the consequences of such suppression in terms of the reduced claims. This raises several questions such as the proportion by which the death claim should be reduced and who will decide in what circumstances the death claim is liable to be reduced. A sweeping observation such as the above without any statutory legislation or established legal principles may result in a plethora of unscrupulous litigants knocking the doors of various courts seeking relief for their fraudulent claims.

The Hon'ble National Commission goes on further to discuss *Sulbha Matagaonkar* and has held, *"it is clear that suppression of any information relating to pre-existing disease, if it has not resulted in death or has no direct relationship to the cause of death, would not completely*

*disentitle the claimant for the claim*". It was further held that suppression of a disease having no relationship to the cause of death such as in the instant case when the insured died due to "Cardio Respiratory Arrest", it cannot be treated as material information and cannot be a ground for total denial of the claim.

The above-discussed judgments seem to be creating a new grey area in insurance contracts which were earlier completely black and white. *Uberrimae Fidei* required the insured to disclose all information asked for by the insured in a true and correct manner irrespective of the same seeming to be material or not at that time. The fact of whether the information was material or not was left at the discretion of the insurer in order to enable the insurer to decide whether and on what terms to issue the policy in question or not. The present trend of selective disclosure may discourage complete honesty from the potential insured leading to greater number of false claims and distrust in the mind of the insurer.

Conclusion:

The contract of insurance has since its inception been governed by the principle of *uberrimae fidei*. The concept of slight or discretionary good faith seems to be an upcoming trend in the Indian insurance industry. This raises a question mark on the future of the Indian insurance industry. There is a strong probability that the number of fraudulent policyholders would increase, selectively suppressing material facts, which is already a plague being faced by the insurers. Such a practice would cause inconvenience and suffering to the most genuine of potential policy customers. The insurers will now be required to be more stringent at the underwriting stage itself and the cost of issuance of policies would increase as well leading to higher premiums. This would lead to less affordability which ultimately might even causing a downfall of the insurance industry, simply by creation of an algorithm for supressing just the right amount of material information for exactly the right amount to time in order to defraud the insurers.

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