

CS DEEPAK P. SINGH

Mobile: +91 9920830041

Mail ID: [cs.deepakpsingh@gmail.com](mailto:cs.deepakpsingh@gmail.com)

[Ask.csdeepakpsingh@gmail.com](mailto:Ask.csdeepakpsingh@gmail.com)

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## **ANALYSIS OF PROVISIONS GOVERNING MISSTATEMENT/CONCEALMENT/FRAUD UNDER AN INSURANCE POLICY.**

Dear Friends,

*We know that an insurance contract is a legal agreement that spells out the responsibilities of both the insurance company and the insured, as well as the specific conditions of coverage and the policy term and cost. Standard features of an insurance contract include the offer and the acceptance, consideration, legal capacity and purpose, and indemnification.*

*An Insurance Contract is a contract of “uberrima fides” i.e. one requiring utmost good faith. Both insured and the insurance company expected to deal with each other fairly and honestly through all phases of their relationship. The insured is required to share or provide all pictures /details /information required to the insurance company to underwrite the policy. In case of life/health insurance policies an insured has to declare all his/her existing and pre-existing medical conditions ,medical history of his/her family members etc. An insurance company expects true and fair disclosure of all material terms on which risk will be insured for the insured.*

**WIKIPEDIA DEFINES;** “In insurance, the **insurance policy** is a contract (generally a standard form contract) between the insurer and the policyholder, which determines the claims which the insurer is legally required to pay. In exchange for an initial payment, known as the premium, the insurer promises to pay for loss caused by perils covered under the policy language.

*Insurance contracts are designed to meet specific needs and thus have many features not found in many other types of contracts. Since insurance policies are standard forms, they feature boilerplate language which is similar across a wide variety of different types of insurance policies.”*

*Insurance contracts are contracts of adhesion, which means they are offered on a "take it or leave it" basis. The insurance company draws up the contract,*

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*which only becomes mutually binding when the buyer makes an offer by accepting the terms or mailing in the first payment.*

*Consideration is the part of the insurance contract that defines how much the insured will pay in premiums for the coverage offered, and how the insurance company will reimburse the insured in the event of a loss. Consideration spells out the financial obligations of both parties.*

*In order to enter into an insurance contract, both parties must be legally capable of delivering what is promised. The insured must be of sound mind and of legal age, and the insurance provider must conform to any licensing requirements of the state in which the insurance is offered. Legal purpose means that the contract is invalid if it insures or encourages illegal activities.*

*Most insurance contracts operate on the principle of indemnity, which means the insurance company agrees to make the insured whole after a specified loss, but no more and no less. The principle of indemnity states an insured cannot profit from an insurance contract and the payout must closely equal the actual amount lost.*

*An insurance contract is generally based on trust between the contracting parties i.e. the insured and insurance companies. An insurance company on the basis of disclosures made by the insured in proposal forms and the questioners at the time of applying insurance policy decide whether it will carry risk of insured or not and the amount of premium it is going to charge in case of insuring perils or risks of the insured. It is duty of person /prospects to declare all material facts related to risk insured to the insurance company. Misstatement of material facts may affect his claim at the time of happening of insured peril.*

**MISREPRESENTATION**— *a false or misleading statement that, if intentional and material, can allow the insurer to void the insurance contract. Some insurance policies and state laws that govern insurance contract provisions vary on the exact details of the conditions under which coverage may be voided; these variations are usually denoted in state amendatory endorsements.*

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*Misrepresentations or concealments of material facts made by an insured prior to a loss will typically provide the insurer with a right to rescind the policy. Whereas, those made after a loss will typically provide the insurer with a right to deny coverage for the submitted claim.*

*The applicable policy provision respecting the insurer's right typically provides as follows:*

**Concealment or Fraud.** *The entire policy will be void if, whether before or after a loss, an "insured" has:*

- i) Intentionally concealed or misrepresented any material fact or circumstance;*
- ii) Engaged in fraudulent conduct; or*
- iii) Made false statements; relating to this insurance.*

**Merriam Webster online defines** *material as having real importance or great consequences; something that is material is not just an overlooked detail, but a significant fact that can affect the outcome of a claims decision. Misrepresent is defined as to give a false or misleading representation, usually with an intent to deceive or be unfair.*

***It means a material misrepresentation is a statement made by someone with an intent to deceive or mislead another party, with information that is significantly important to the issue at hand.***

*It is a general and well known principle that Insurance coverage is not provided if an insured has, before or after a loss, intentionally concealed or misrepresented any material fact or circumstance, engaged in fraudulent conduct or made false statements. It also states that if a material misrepresentation was made that would have caused the insurer not to issue the policy, the policy may be canceled.*

**Please note that;**

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- i) ***An insurer is not allowed to question an insurance policy in case of fraud also even after a period of 3(three) years from date of inception of insurance policy.***
  
  - ii) ***An insurer within a period of three years can cancel or repudiated and insurance policy on the basis of fraud and it has to prove the fraud on the part of insured with substantiation evidences.***
  
  - iii) ***No Insurer shall repudiate a life insurance Policy on the ground of Fraud, if the Insured / beneficiary can prove that the misstatement was true to the best of his knowledge and there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of material fact are within the knowledge of the insurer.***

### **LET'S ANALYSE PROVISIONS OF INSURANCE ACT,1938**

#### ***Section 45 - Policy shall not be called in question on the ground of mis-statement after three years***

1. No Policy of Life Insurance shall be called in question **on any ground whatsoever** after expiry of 3 yrs from;
  - the date of issuance of Policy or
  - the date of commencement of risk or
  - the date of Revival of Policy or
  - the date of rider to the Policy

*whichever is later.*

2. On the ground of fraud, a Policy of Life Insurance may be called in question within 3 years from
  - the date of issuance of Policy or
  - the date of commencement of risk or
  - the date of Revival of Policy or
  - the date of rider to the Policy whichever is later.

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For this, the insurer should communicate in writing to the insured or legal representative or Nominee or Assignees of insured, as applicable, mentioning the ground and materials on which such decision is based.

**EXPLANATION I:** Fraud means any of the following acts committed by insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance Policy:

- The suggestion, as a fact of that which is not true and which the insured does not believe to be true
- The active concealment of a fact by the insured having knowledge or belief of the fact;
- Any other act fitted to deceive; and
- Any such act or omission as the law specifically declares to be fraudulent.

**EXPLANATION II:** Mere silence is not fraud unless, depending on circumstances of the case, it is the duty of the insured or his agent keeping silence to speak or silence is in itself equivalent to speak.

3. No Insurer shall repudiate a life insurance Policy on the ground of Fraud, if the Insured / beneficiary can prove that the misstatement was true to the best of his knowledge and there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of material fact are within the knowledge of the insurer.

**Provided that in case of fraud;** Onus of disproving is upon the Policyholder, if alive, or beneficiaries.

**EXPLANATION:** A person who solicited and negotiates a contract of insurance shall be deemed for the purpose of the formation of contract, to be the agent of the insurer.

4. Life insurance Policy can be called in question within 3 years on the ground that any statement of or suppression of a fact material to expectancy of life of the insured was incorrectly made in the proposal or

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other document basis which Policy was issued or revived or rider issued.

**Provided that :** For this, the insurer should communicate in writing to the insured or legal representative or Nominee or Assignees of insured, as applicable, mentioning the ground and materials on which decision to repudiate the Policy of life insurance is based.

**Provided That :** in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of 90 days from the date of such repudiation.

**NOTE THAT:** for the purpose of Section 45(4) of the Act, 1938 the misstatement of or suppression of fact shall not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the **Onus** is on the insurer to show that had the insurer been aware of the said fact on life insurance policy would have been issued to the insured.

5. The insurer can call for proof of age at any time if he is entitled to do so and no Policy shall be deemed to be called in question merely because the terms of the Policy are adjusted on subsequent proof of age of life insured. So, this Section will not be applicable for questioning age or adjustment based on proof of age submitted subsequently.

### **LET'S CONSIDER SOME JUDGEMENTS;**

1. **LIC Vs. Ambika Prasad Pandey ,AIR 1999 MP 3-** in this case the insured was suffering from pulmonary tuberculosis before the date of filing of questionnaire for the insurance policy. The doctor has not examined to prove the fact. There is no supporting evidence of it. The claim of the applicant for recovery of policy amount from the insurance company was rightly decreed on its failure to discharge burden of proof.

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2. **LIC Vs. Narmada Agarwala ,AIR 1993 Orissa 103-** there was non-disclosure of material facts in a policy which covered the risk of life. The policy was repudiated. The assured died after two years due to cardio-respiratory arrest. It was shown from the hospital documents that the deceased was diabetic patient for the last 15 years and this fact was not disclosed by the deceased. Even the confidential report given to the doctor , at the time of taking the policy , did not mention it. It was held that the deceased was not guilty of withholding material facts and the repudiation of the policy was not proper.

**CONCLUSION:** In the event of a fraud the policy shall be cancelled immediately and all the premiums paid till date shall be forfeited, subject to fraud being established as per Section 45 of the Insurance Act, 1938. In the event of a misstatement or suppression of a material fact, not amounting to fraud, by the insured, the policy shall be declared “Null and Void” and premiums paid shall be refunded after deducting applicable charges, if any, subject to misstatement or suppression of fact being established, in accordance with Section 45 of the Insurance Act, 1938, as amended from time to time. (Please refer to the simplified version of the provisions of Section 45. So it is utmost important to declare all material facts and information to the insurance company at the time of taking insurance policy or after some time in case not able to declare earlier. This will affect your claim at the time of happening of insured peril.

**DISCLAIMER;** the present article is only for the knowledge and information of readers. Please do consult with expert before takin any step. It will not be considered as professional advise of the author and author will not be responsible for any type of loss or damage caused to any one acting on the basis of this write up.