

GAHC010127302014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5124/2014

BABLU DEY
S/O LT. NARAYAN DEY, DAILY BAZAAR ROAD, W/NO.2, NEAR SHIV
MANDIR, P.O. and P.S. DERGAON, DIST- GOLAGHAT, ASSAM, PIN-785614

VERSUS

THE UNION OF INDIA and 5 ORS
MINISTRY OF FINANCE DEPTT. OF ECONOMIC AFFAIRS INSURANCE
DIVISION, REP. BY ITS SECY., NEW DELHI, GOVT. OF INDIA

2:INSURANCE OMBUDSMAN
GUWAHATI CENTRE
O/O THE INSURANCE OMBUDSMAN
JEEVAN NIVESH
5TH FLOOR
S S ROAD
PANBAZAR
GHY-01 ASSAM

3:ICICI LOMBARD GENERAL INSURANCE CO. LTD.
ICICI BANK TOWERS
BANDA KURLA COMPLEX
MUMBAI-81
INDIA
REP. BY THE DIVISIONAL MANAGER

4:ICICI LOMBARD GENERAL INSURANCE CO. LTD.
MAYUR GARDEN
ABC BUS STOP
G.S. ROAD
GHY-5

5:THE MANAGER

P.A. CLAIMS
SMS CLAIMS
IL HEALTH CARE
ICICI LOMBARD GENERAL INSURANCE CO. LTD.
ICICI BANK TOWER
PLOT NO.12
FINANCIAL DISTRICT
NARAKRAMGUDA
GACHIBOUL
HYDERABAD-32

6:THE MANAGER
HEALTH CARE
ICICI LOMBARD GENERAL INSURANCE CO. LTD.
ICICI INTERFACE BUILDING
NO.11 401/402
4TH FLOOR
NEW LINK ROAD
MALAD W
MUMBAI-6

Advocate for the Petitioner : MR.T C CHUTIA

Advocate for the Respondent : MR.R GOSWAMI

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

18.07.2023

The case of the petitioner herein is that the petitioner opened a critical care policy from the ICICI Lombard General Insurance Company Ltd. The said policy was valid for the period from 28.03.2012 to 27.03.2013. It has been stated in the petition that all the material information was supplied at the time of taking the policy.

2. It has been alleged in the writ petition that while the policy was in force, the petitioner suffered CVA (Ischemic) in right side Hemis paresis on 04.10.2012. The petitioner took treatment at Jorhat initially and thereupon

the petitioner was admitted at Assam Medical College on 06.10.2012. The petitioner, thereupon, continued to undergo treatment at Assam Medical College till 09.10.2012. Thereupon, the petitioner lodged a claim before the Manager P.A. Claims/respondent No.4 for Rs.6 lakh being claim No.GEN 000075681. The said claim was repudiated by the respondent ICICI Lombard Insurance Company Ltd. on the ground of concealing preexisting disease. The petitioner being aggrieved approached the Insurance Ombudsman. However, the Insurance Ombudsman vide an order 01.11.2013 observed that the petitioner suppressed the materials information regarding his illness at the time of filling his proposal form and as such was guilty of non-disclosure of material facts and thereby violated the principle of contract of insurance by not maintaining utmost good faith. It is under such circumstances that the Insurance Ombudsman held that the insurer had rightly repudiated the claim of the above policy and no interference was called for.

3. It is against the said order dated 01.11.2013 that the instant writ petition has been filed for setting aside the order dated 01.11.2013 and for a direction upon the Insurance Company to pay an amount of Rs.6 lakh as compensation to the petitioner.

4. It appears from the record that the Insurance Company, i.e. the respondent Nos.3, 4, 5 & 6 have jointly filed an affidavit stating inter-alia that the writ petition involves disputed question of facts, and as such, the same cannot be adjudicated by way of a proceedings under Article 226 of the Constitution. It has also been mentioned that the insurance claim was rightly repudiated in view of the suppression of preexisting disease. It further appears that the respondent No.2 had also filed an affidavit

supporting the decision dated 01.11.2013.

5. A perusal of the materials on record, therefore, reveals that the question as to whether the petitioner had disclosed the preexisting disease at the time of filling up the proposal form is a question of fact or for that matter as to whether the petitioner had a preexisting disease at the time of taking critical care insurance policy is also a pure question of fact. These aspects of the matter cannot be adjudicated by way of a writ petition, and accordingly, this Court is of the opinion that the instant writ petition cannot be entertained. However, this Court is also of the opinion that if the petitioner is aggrieved, the petitioner can very well approach the Consumer Forum or the Civil Court claiming entitlement on the basis of the said policy wherein the facts could be adjudicated on the basis of the evidence.

6. In view of the above, this Court is not inclined to entertain the instant writ petitioner, and accordingly, the instant writ petition stands dismissed.

7. However, liberty is given to the petitioner to approach the appropriate forum and in the event of approaching the appropriate forum, the period during which the instant writ petition was pending, i.e. from 22.09.2014 till date, shall be excluded while computing the period of limitation by the concerned forum.

JUDGE

Comparing Assistant