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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22223 of 2016
Date of decision:07.12.2016

The Oriental Ins. Co. Ltd. and another ...Petitioners

Versus

Kailash Rani Kakkar and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajneesh Malhotra, Advocate,
for the petitioners.

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Rakesh Kumar Jain, J.

This petition is filed against the order passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana, whereby an application filed by Kailash Rani Kakkar (respondent No.1 herein) under Section 22(1)-C of the Legal Services Authorities Act, 1987 (hereinafter referred to as the "Act") for settlement of her medical claim of ₹3,86,229/- along with interest has been allowed.

In brief, Anil Kumar Kakkar S/o Kailash Rani Kakkar purchased the insurance policy under the scheme "Happy Family Floater Policy Schedule" bearing Policy No.233902/48/2012/173 dated 23.04.2011 for himself as well as his five dependents, namely, Geeta Kakkar, Himanshu Kakkar, Priyanshu Kakkar, Deeputy Ram Kakkar and Kailash Rani Kakkar for a sum of ₹5,00,000/-, which was valid upto 22.04.2012. The said policy

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was renewed w.e.f. 23.04.2012 to 22.04.2013. On 07.04.2012. Respondent No.1 was admitted in Dayanand Medical College & Hospital, Unit-Hero DMC Heard Institute, Ludhiana and was discharged on 27.12.2012. She lodged the claim with the petitioners for her medical expenses and also submitted the requisite documents. The petitioners, through their third party agent i.e. Medicalim TPA Pvt. Ltd., sought certain information and rejected the claim vide letter dated 01.04.2013, which was challenged by respondent No.1 before the Permanent Lok Adalat and has been allowed vide the impugned order.

The stand taken by the petitioners in their reply to the application was that respondent No.1 was admitted in the DMC Hospital for hypertension, diabetes mellitus Type II and coronary artery disease with acute coronary syndrome, AWMI, double vessel disease, RHD with severe MR, mild MS, mild AR, mild TR and concentric LVH. Surgery of respondent No.1 was conducted on 14.12.2012 and she was discharged on 27.12.2012 but she did not respond to the letters to provide information about her treatment taken in the past one year for DM, HTN, CAD and RHD.

While deciding the application, the Permanent Lok Adalat made the following observations:-

> “9. The main point for determination in this case is as to whether Kailash Rani-applicant was suffering from DM, HTN, CAD, RHD one year prior to the surgery and had concealed the aforesaid facts at the time of the purchase of the policy and whether the respondent-Ins. Co. was justified in repudiating her claim as `No Claim'. The answer to this question is in negative. Admittedly, the applicant along with her other family members

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firstly purchased `Happy Family Floater Policy' No.233902/48/2012/173 dated 23.04.2011 w.e.f. 23.04.2011 to 22.04.2012 for Rs.5 lacs. This policy was again renewed w.e.f. 23.4.2012 to 22.4.2013. On 7.12.2012 she was admitted in DMC Hospital, Ludhiana, where the surgery was conducted upon her on 14.12.2012. She submitted her claim of Rs.3,86,229/- with respondent-Ins. Co. but the same was declined by third party agent of respondent-Ins. Co. namely Medicalim TPA Pvt. Ltd. as `No Claim' on the ground that she was suffering from DM, HTN, CAD, RHD prior to one year of her operation. When the first policy was purchased by Anil Kumar son of the applicant, he gave proposal form Ex.R7 wherein it is mentioned that the applicant was not suffering from hypertension and diabetes. This proposal form was filled on 23.4.2011 whereas the operation was performed upon the applicant on 7.12.2012. The discharge summary Ex.R4 dated 27.12.2012 show that the patient had hypertension and diabetes mellitus type II. In the said discharge summary, it is not mentioned that when the applicant had suffered the aforesaid diseases namely hypertension and diabetes mellitus type II. Ex.A10 is the certified dated 1.2.2013 issued by the DMC, Ludhiana wherein it is mentioned that she was suffering from the aforesaid diseases since one year as per their record. If the discharge summary Ex.R4 and the certificate Ex.A10 are believed to be correct then she contacted the aforesaid diseases after the continuation of the second policy i.e. 23.04.2012 to 22.04.2013. At the time of purchase of the second policy, no proposal form was got signed or filled up either from the applicant or from her son Anil Kumar. Kailash Rani-applicant has specifically denied that she has no knowledge about the aforesaid diseases and she never took any treatment from any hospital or the doctor during the past one year regarding the aforesaid diseases. In rebuttal, the respondent-Ins. Co. led no evidence to disprove the aforesaid contention of the applicant. It is also the case of the applicant that she submitted all the documents called from her by the respondent-Ins. co. but in spite of this they repudiated her claim as `No Claim'. Therefore, the evidence adduced by the applicant sufficiently prove that she had no knowledge about the hypertension and diabetes mellitus type II

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before the surgery was conducted upon her."

Counsel for the petitioners basically repeated the same stand which was taken before the Permanent Lok Adalat but has failed to make a dent in the finding recorded against it, which has already been reproduced here-in-above.

Consequently, there is hardly any merit in the present petition for the purpose of interference by this Court and hence, the same is hereby dismissed.

December 07, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No