IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22722 of 2016
Date of decision: 22.11.2016

Life Insurance Corporation of India and others

... Petitioners

Vs.

Permanent Lok Adalat and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Nitin Thatai, Advocate
for the petitioners.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the award dated 13.07.2016 (Annexure P-7) passed by learned Permanent Lok Adalat (Public Utility Services), SBS Nagar (Nawanshehar), whereby application of the insured-respondent No.2 moved under Section 22-C of the Legal Services Authorities Act, 1987, claiming medical reimbursement, was allowed.

It is not in dispute that respondent No.2 was insured with the petitioner-Insurance Company. It is also not the pleaded or argued case on behalf of the petitioners that the insured did not pay the premium in time. The first premium was paid by the insured on 21.02.2013. After about one and half years of getting the insurance policy, the insured suffered a medical problem and she had to undergo the treatment for uterovaginal prolapsed. She was

admitted, operated and treated in the IVY Hospital, Chandigarh Road, Nawanshahar.

The insured was admitted in the hospital on 10.08.2014, operated on 11.08.2014 and discharged on 13.08.2014. The insured had to spend Rs.70,000/- on her medical treatment. She made a request to the petitioner-Insurance Company to reimburse for the abovesaid medical expenses incurred by her on the medical treatment. All the relevant documents were supplied to the petitioner-Insurance Company at the asking of learned Permanent Lok Adalat, but the petitioner-Company tried to repudiate the claim of the insured.

After hearing learned counsel for both the parties and going through the material brought on record, learned Permanent Lok Adalat rightly allowed the application moved by the insured by way of impugned award dated 13.07.2016 (Annexure P-7), which deserves to be upheld.

The only argument raised by learned counsel for the petitioners with regard to waiting period has been found wholly misplaced, for the reason that the insured suffered the medical problem after about one and half years of getting the insurance cover. Petitioners have not placed any relevant material on record to show that Clause 6 regarding the waiting period, was explained to the insured at the time of issuing the insurance policy in her favour. Learned counsel for the petitioners also places reliance on the three orders and judgments in **M/s Suraj Mal Ram Niwas Oil Mils (P) Ltd. Vs. United India Insurance Co. Ltd. and another, 2010 (10) SCC 567,** order dated 10.02.2016 passed in **CWP No.2658 of 2016 (Gaurav Sharma Vs. Permanent Lok Adalat and another)** and the order dated 05.08.2016 passed in **CWP No.11542 of 2015 (Vijay Pal Verma Vs. Permanent Lok Adalat and others),** to

contend that the petitioner-Insurance Company was well within its jurisdiction to repudiate the claim of the insured.

Having heard the learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the impugned award passed by learned Permanent Lok Adalat has since not been found suffering from any patent illegality or perversity, the same deserves to be upheld. The writ petition is liable to be dismissed with costs, for the following more than one reasons.

So far as the abovesaid judgments relied upon by learned counsel for the petitioners are concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner-Insurance Company, being distinguishable on facts. It is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

As noticed hereinabove, the medical disorder from which the insured had suffered and had to go under medical treatment, is not covered under the diseases pointed out in Clause 6 (iv), reproduced at page 16 of the paper book. None of these diseases cover the disease of uterovaginal prolapsed from which the insured was suffering. Having said that, this Court is of the considered opinion that the petitioner-Insurance Company proceeded on a

wholly misconceived and perverse approach, while trying to repudiate the genuine claim of the insured. These facts were rightly appreciated by learned Permanent Lok Adalat in the correct perspective, before passing the impugned award and the same deserves to be upheld, for this reason also.

The learned Permanent Lok Adalat recorded its cogent findings on factual as well as legal aspects of the matter, before passing the impugned award. The relevant observations made in para Nos.6 and 7 of the impugned award, which deserve to be noticed here, read as under: -

> *"We find no merit in the submission of the ld. Counsel for the respondents. The respondents had relied upon the report of the TPA for rejection of the claim of the applicant. Waiting period of two years was stated bar to the payment of the claim in question. The applicant had suffered ailment of uterus after about one year and a half of commencement of the insurance cover. The applicant had nowhere consented to the period of two years of waiting for claiming reimbursement of cost of medical treatment. Annexure/schedule if any annexed with the insurance policy had not been supplied to the insured. Insurance card of health insurance supplied to the applicant by the respondents nowhere states that she had to wait for two years for getting reimbursement of cost of medical treatment of uterus. Hence, question of strict interpretation of the contract of insurance does not arise for consideration. The applicant had not been suffering from ailment of uterus at the time of getting insurance cover. It is not case of the respondents that the applicant had suppressed information*

relating to her health at the time of getting insurance cover. The applicant had paid the first premium on 21.02.2013. She had paid the second premium on due date and it was much there after that she had suffered the ailment in question. As such it is held that the applicant is entitled to recover the cost of medical treatment.

Question arises for determination of amount payable to the applicant. We examined the bills and vouchers support of the claim. The hospital had charged for operation and doctors/surgeon claim as wel. Bed head charges of 13.08.2014 had also been claimed. The applicant stood discharged on 13.08.2014 and she could not have been charged for the whole day. Ward visiting charges of consultant and doctor had been separately claimed by the hospital. The applicant had been examined and treatment by only one medical officer as per the record produced. After taking into consideration the fact and circumstances of the case and the record, we find that the applicant in any case is entitled to Rs.50,000/- on account of her medical insurance claim relating to her treatment of ailment of uterus. The respondents are directed to pay the amount of Rs.50,000/- to the applicant within 45 days from today failing which they shall pay interest at the rate of 9% p.a. from today till payment. The application is accordingly allowed. A copy of this award be supplied to the parties."

Although the insured put up a claim for Rs.70,000/-, spent by her on the medical treatment, yet learned Permanent Lok Adalat proceeded on a

very balanced approach and granted only an amount of Rs.50,000/- to the insured. Thus, the impugned award deserves to be upheld, for this reason as well.

It is also pertinent to note here that it has been experienced in the recent past that the insurance companies would always try to absolve themselves from their liability, denying even the most genuine claim of the insured, proceeding on wholly misconceived and perverse approach, including technical and super-technical objections. Such an approach can hardly be appreciated by the Courts of law. This would never be the object of getting one insured. This is one of the strong reasons that the Courts are flooded with avoidable litigations. Present case is one such glaring example. The poor insured is dragged to the Courts, whose financial capacity cannot be compared with the insurance companies. The very object and purpose of the insurance policies is being defeated.

The abovesaid observations made by this Court also finds support from a celebrated judgment of the Hon'ble Supreme Court in **Brojo Nath Ganguly and another Vs. Central Inland Water Transport Corporation Limited and another, 1986 (3) SCC 156.** It is not very uncommon that the insurance companies would issue repeated advertisements in the newspapers and through electronic media, highlighting very many financial and other benefits, inviting general public to go for insurance policies. However, whenever any claim, including most genuine claim, is put by the insured for disbursement of the due amount, most of the insurance companies would start finding fault with the insured on one pretext or the other, raising even the technical and totally unwarranted objections. That is how, this kind of approach

adopted by the insurance companies, gives rise to wholly unwarranted and avoidable litigation.

Coming to the fact situation obtaining on the record of the present case, had the competent authority of the petitioner-Insurance Company appreciated the genuine claim of the insured-respondent No.2, in the correct perspective, instant litigation would have been easily avoided. It is also equally pertinent to note here that the insurance companies would spend more amount on litigation than the actual amount sought by the insured. In the present case, learned Permanent Lok Adalat awarded only an amount of Rs.50,000/- to the insured-respondent No.2. However, in spite of the factually correct and legally sustainable award passed by learned Permanent Lok Adalat, petitioner-Insurance Company did not feel satisfy, in view of the fact that plea raised on behalf of the petitioner-Insurance Company was wholly misplaced. In such a situation, instant writ petition is liable to be dismissed with costs.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned award passed by learned Permanent Lok Adalat deserves to be upheld. Ordered accordingly. Since the instant writ petition has been found wholly misconceived, bereft of merit and without any substance, it must fail. No case for interference has been made out.

Keeping in view the peculiar facts and circumstances noticed hereinabove, present writ petition is dismissed with costs of Rs.30,000/-, which shall be paid by the petitioner-Insurance Company to the insured-respondent No.2 within a period of one month from today. In view of the abovesaid

background of the case, imposition of any lesser amount of costs would be wholly unjustified.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands dismissed with costs, as indicated above.

[RAMESHWAR SINGH MALIK]
JUDGE

22.11.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No