IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.19425 of 2012 (O&M)
Date of decision: July 20, 2017

The Oriental Insurance Co. Ltd. ...Petitioner

Versus

Permanent Lok Adalat (Public Utility Services), Gurgaon & another ...Respondents

CORAM: **HON'BLE MR. JUSTICE RAJAN GUPTA**

Present: Mr. Vinod Khunger, Advocate for the petitioner.
Mr. Ashish Gupta, Advocate for respondent No.2.

Rajan Gupta, J.(oral)

Petitioner company has posed a challenge to the order passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon, whereby it has been directed to pay Rs.3.00 lacs as reimbursement for the medical treatment undergone by respondent No.2. It has been urged before the court that the insurance company is not liable to indemnify the patient in view of the exclusion clause contained in the policy. Same provides that Osteoarthritis is treatable only after lapse of four years of issuance of the policy.

However, counsel for respondent No.2 submits that he was not aware of any such exclusion clause. He took a mediclaim policy as he was assured that in case he requires any medical treatment due to an ailment disease or surgery, he would be reimbursed by the company.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It is evident that petitioner along with his wife took a mediclaim policy for the period from 29.6.2009 to 28.6.2010. He got the policy renewed twice thereafter. Admittedly, he paid the requisite premium. In July, 2011, his wife developed some complication in her hip joint and found it difficult to move. As a result, she was taken to hospital and a surgery was performed on her at Vardhman Trauma & Laparoscopy Centre (P) Ltd., Muzafarnagar. She remained admitted in the hospital from 3.7.2011 to 10.7.2011. Petitioner thereafter raised a claim before the insurance company and submitted all documents. She was diagnosed as a case of Osteoarthritis hip, which finds mention in clause 4.3 (xxiii) of the policy. On failure on part of the company to reimburse the claim, she filed an application before the Legal Services Authority. Matter was referred to Permanent Lok Adalat (Public Utility Services). Said authority tried for conciliation in terms of the provisions of the Act. However, no settlement could be arrived at. It, thus, proceeded to adjudicate upon the issue. Placing reliance on judgment of this court in ***IFFCO TOKIO General Insurance Company Ltd. Vs. Permanent Lok Adalat (Public Utility Services), Gurgaon and others, 2012 (1) R.C.R. (Civil) 901***, it held that respondent No.2 was entitled to Rs.3.00 lacs as reimbursement. This amount was to be paid within 45 days, failing which it would carry interest @ 9% from the date of institution till payment. Relevant para of judgment in *Iffco Tokio's case (supra)* reads as under:-

> "**5.** Having heard learned counsel for the petitioner appellant we are of the considered view that no interference of this Court would be warranted in the view taken by the learned Single Judge as well as the Lok Adalat. The law is well settled with regard to the exclusion clauses in standard forms of contracts. When the bargaining powers of the parties is unequal and a consumer has no real freedom to contract then such a power may be considered unfair. The principle deducible from various precedents is that the Courts would not enforce and when called upon to do so, strike down such an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. For instance, the above principle would apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It would also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. The types of contract to which the principle formulated above applies to terms which are so unfair and unreasonable that they shock the conscience of the Court. They are opposed to public policy and require to be adjudged void. In that regard we may place reliance on the judgment of Hon'ble the Supreme Court rendered in the case of *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, AIR 1986 SC 1571.*

I am of the considered view that present case is covered by the ratio of the aforesaid judgment. Inequality of bargaining, power is writ large on the facts of the case. The plea of respondent No.2 that insured is not expected to be aware of these exclusion clauses which are included in the contract in fine print, has substance. While subscribing to such a policy, insured is in fact left with no choice but to sign on the dotted line. Besides, it is known fact that it is the insurance companies which lure the general public assuring prompt service and certain ancillary benefits. If a consumer has to invoke the policy, the company tries to wriggle out by banking on loopholes and exclusion clauses. Finding himself in lurch, the consumer has to knock at the doors of the court to seek legal redress. This requires considerable effort and expense on his part. He is pitted against a corporate body, which has huge resources and expertise at its command. This situation arises when unequals enter into a contract. A duty is, thus, cast upon the courts to interfere wherever necessary and to safeguard the interest of common man, even impose exemplary costs in appropriate case. I, thus, find no ground to interfere in writ jurisdiction. The plea that the Forum erred in deciding the issue in favour of respondent No.2, is without any merit. Petition is hereby dismissed.

The amount deposited by the petitioner at the time of issuance of notice of motion, be remitted to Arun Kumar Jain, respondent No.2 by way of demand draft.

(RAJAN GUPTA)
JUDGE

July 20, 2017
'Rajpal'

Whether speaking / reasoned Yes / No

Whether Reportable: Yes / No