

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.12651 of 2016 (O&M)
Date of decision:11.01.2017

Max Bupa Health Insurance Company Ltd. ... Petitioner

Vs.

Priyanka Verma and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjeev Goyal, Advocate
for the petitioner.

Mr. Bhupender Partap Singh, Advocate
for respondent No.1.

AMIT RAWAL J.

C.M.No.13517 of 2016

The application for early hearing is dismissed as infructuous.

CWP No.12651 of 2016

The petitioner - Insurance Company has knocked the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India by challenging the order dated 4.11.2015 (Annexure P-1) passed by Permanent Lok Adalat (Public Utility Services), Gurgaon by entertaining the application of respondent No.1 under Section 22-C(8) of the Legal Service Authority Act, 1987 (hereinafter referred to as 1987 Act).

Mr. Sanjeev Goyal, learned counsel appearing on behalf of the petitioner – Insurance Company submits that respondent No.1 filed the application under the aforementioned provisions claiming compensation of ₹4,00,000/- towards the expenses on her treatment as she had got life insurance, ₹1,00,000/- each as individual cover and ₹3,00,000/- as floater

cover, vide policy no.30118749201200 dated 26.06.2012. She concealed the factum of previous ailment as abscess was removed from her breast way back in the month of February, 2007, i.e., 05 years back. In fact, there was suppression of material information for the reason that the patient was suffering from a breast tenderness and had got consultation on 28.06.2012 for difficulty in passing urine and advised for ultrasound USG KUB but the same was not disclosed in the proposal form. The Insurance Company carried out the investigation and it was also discovered the factum of abscess in the year 2007. There was intricate question of facts and law, therefore, the settlement could not have been arrived at under the aforementioned provisions. The jurisdiction lied elsewhere, in essence, Lok Adalat had no jurisdiction to entertain and try the claim. The impugned order of Permanent Lok Adalat is wholly and arbitrary on the premise that there was violation of the terms and conditions of the Insurance Policy, much less non-disclosure of the previous disease. The contract of the Insurance Company is based on good faith and insured was duty bound to give the correct information diligently and without any malafide intention. The suppression of the previous treatment was very vital for adjudication of claim. Had the same been disclosed, the Insurance Company would not have given the insurance policy or indemnified respondent No.1. There was a violation of Clause 5 of the terms of the policy extracted at page 19 to 23 of the paper book. The Lok Adalat did not have the jurisdiction to entertain the aforementioned claim. No procedure prescribed under sub-sections 4, 5, 6 and 7 of Section 22(1) of 1987 Act has been followed.

Per contra, Mr. Bhupender Partap Singh, learned counsel

appearing on behalf of respondent No.1 submits that umpteen number of documentary evidence has been placed on record to falsify the alleged defence of the Insurance Company. In fact, removal of the abscess was not attributable to the development of cancer in the year 2012. As per certificate dated 3.7.2014, the doctor Kanchan Kaur, a Senior Consultant and Specialist of Medanta Hospital, Gurgaon, with regard to past history of right breast abscess in February 2007, found that there was no connection/co-relation with regard to diagnosis of breast cancer in October 2012. The Insurance Policy is of June, 2012. Such a disease can occur at any point of time, thus, there was no intentional or willful concealment. The certificate dated 02.07.2015 noticed by the Lok Adalat only indicated the mild episode of urine infection which is normally common in the women. In fact, breast cancer was actually detected on 26.10.2012 on the basis of FNAC report, whereas, insurance policy was issued for the period from 26.07.2012 to 25.07.2013 and the proposal form was submitted on 25.07.2012. Clause 2.2, 2.3 and 2.4 of the policy entitled to the expenses of hospitalization, medical expenses incurred upto 30 days immediately before hospitalization and expenses incurred upto 60 days immediately after discharge from the hospital. Having withheld the aforementioned amount, respondent No.1 was compelled to move an application before the Lok Adalat and thus, urges this Court for dismissal of the writ petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book, order under challenge and of the view that there is no force and merit in the submissions of Mr. Sanjeev Goyal. The issuance of insurance policy for the period from 26.07.2012 to 25.07.2013 is not disputed. The

ground taken by the petitioner is that there was suppression of information with regard to removal of some abscess from the breast in February, 2007, has been belied by the certificate of doctor noticed above which clearly indicated that there was no co-relation or connection between the surgery conducted for removal of the abscess, detection of malignancy regarding the breast cancer was in October 2012. The human body is a carrier of many diseases and disease is just like a “Time Bomb” which can be explode at any point of time. It is unfortunate that respondent no.1 suffered such a dreaded disease. The curing affect is minimal. It is incumbent upon the Insurance Company to verify everything. Normally, the Insurance Policy for such an amount is not issued without getting examination of insured from the doctor. The Insurance Company allures the insured for insurance and thereafter, withhold by coming out with one excuse or the other, compelling other party to approach the consumer forum or to move an application as indicated above.

Things do not rest here. The orders are also challenged upto the Highest Court, resulting into deprivation of the compensation, much less entailing of incurring of interest which is a public money, cannot be played with impunity. In my view, Lok Adalat had discussed the entire evidence on record, based on the certificate of the doctor which was a sufficient piece of evidence. The Civil Court was not the forum for adjudication of such controversy and decision is based on documents.

For the reasons aforementioned, I am in agreement with the findings rendered in the impugned order. No ground is made out for interference. The order is perfectly legal and justified. The writ petition does

not fall within the doctrine akin to judicial review for interference under Article 226 of the Constitution of India.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2017
savita