**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.**

CWP No.25675 of 2017
Date of decision: November 10, 2017

Oriental Insurance Company Limited ...Petitioners

Versus

Ramesh Lal Nijhara and others ...Respondents

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

Present: Mr. Satpal Dhamija, Advocate for the petitioner.

**Rajan Gupta, J.**

Petitioner company has posed a challenge to the order dated 04.05.2015, passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon, whereby it has been directed to pay Rs.4,44,231/- to respondent No.1 within 40 days from the date of order. 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. Further the Permanent Lok Adalat had no jurisdiction to settle the dispute, as petitioner never submitted itself to the jurisdiction of the said Forum.

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

It is evident that respondent No.1 took a cashless mediclaim policy namely, PNB-Oriental Royal Mediclaim Policy dated 27.12.2012 from the petitioner insurance company, which was valid upto 26.12.2013. It was further renewed on 11.12.2013 upto 26.12.2014 for a sum of Rs.5.00 lacs. Admittedly, he paid the requisite premium. In September, 2013 wife of respondent No.1, who was also covered under the said policy, felt pain in her shoulder. In MRI some sort of cancer problem was revealed. She was also admitted in Medicity Hospital, Gurgaon on 03.02.2014. In this way, applicant/ respondent No.1 spent Rs.4,44,231/- on the treatment of his wife. Petitioner thereafter, raised a claim before the insurance company and submitted all documents. On failure on part of the company to reimburse the claim, he 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 provisions of the Act. However, no settlement could be arrived at. It, thus, proceeded to adjudicate upon the issue. The said Forum, vide order dated 4.5.2015, accepted the application and directed insurance company to pay Rs.4,44,231/- to the applicant/respondent No.1. This amount was to be paid within 40 days, failing which it would carry interest @ 9% per annum from the date of application till payment. I find no ground to interfere in writ jurisdiction. In a judgment of this court reported as ***IFFCO TOKIO General Insurance Company Ltd. Vs. Permanent Lok Adalat (Public Utility Services), Gurgaon and others, 2012 (1) R.C.R. (Civil) 901***, it has been 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. 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. It is evident that instant writ petition has been filed after a lapse of about 2½ years from passing of the order by the Permanent Lok Adalat. The Forum has, thus, rightly directed the petitioner company to make payment of the aforesaid amount to respondent No.1, as the insurance company has wrongly declined the claim of respondent No.1 with the help of exclusion clause. I, thus, find no ground to interfere in writ jurisdiction. Petition is hereby dismissed.

**(RAJAN GUPTA)**
**JUDGE**

November 10, 2017
'Rajpal'

Whether speaking / reasoned Yes / No

Whether Reportable: Yes / No