IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP 9522 of 2014

Date of Decision: May 24, 2017

Apollo Munich Health Insurance Company Limited

.....Petitioner

Vs.

Permanent Lok Adalat and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Sandeep Suri, Advocate for the petitioner.

Mr. Prateek Rathee, Advocate for respondent No.2.

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M.M.S. BEDI, J.

The present writ petition has been preferred against the order dated February 12, 2014 passed by Permanent Lok Adalat (PUS), Gurgaon directing the petitioner to pay a sum of Rs.3 lacs along with interest @ 9% per annum in case of failure to pay the amount within a period of 45 days from the date of the order i.e. February 12, 2014.

Briefly the facts of the case are that respondent No.2 had taken Easy Health Standard Two Years policy w.e.f. August 19, 2011 to August 18, 2013 from the petitioner Insurance Company. The Insurance policy included medical coverage of the hospitalization etc. to the extent of Rs.3 lacs. Petitioner has charged Rs.19068/- including service tax as yearly

premium from respondent No.2 which had been duly paid. Respondent No.2 claimed in the petition that she suffered from shortness of breath or chest discomfort as such approached Medanta The Medicity, where respondent No.2 was advised some tests as such she was admitted on May 1, 2013 and discharged on May 13, 2013. At the time of admission, respondent No.2 had supplied all the relevant documents including the policy etc. for getting medical benefits from the petitioner Company to the hospital. The hospital had asked respondent No.2 to pay a sum of Rs.6,06,135/- regarding the treatment and hospitalization expenses etc. Respondent No.2 paid the entire amount to the hospital on account of petitioner informing that respondent No.2 was not entitled to the said amount from her policy. Subsequently respondent No.2 applied to the petitioner Company for the entire expenditure incurred on treatment and hospitalization. On petitioner's failing to settle the claim, respondent No.2 filed an application before Permanent Lok Adalat (PUS) Gurgaon against the petitioner.

The petitioner contested the claim on the grounds of Permanent Lok Adalat having no jurisdiction involving disputed questions of law and facts; respondent No.2 having not come to the Adalat with clean hands; and application being an abuse of the process of the Court. The disease of respondent No.2 was alleged to be included in the exclusion clause being congenital internal disease, as per the policy. In the reply on merits, it was pleaded that in April 2013 request for cashless treatment was received for Cholecystitis, Cholelithiasis and it was approved as the treatment was admissible under the terms and conditions of the policy and was settled with

the hospital for Rs.13753/- but the cashless request made by respondent No.2 from Medanta the Medicity, Gurgaon for treatment of Severe Aortic Stenosis (which is heart disease) with complaint of Dysponea of Exertion (DEO) for one and half years, giddiness and gall bladder stones along with discharge summary of Columbia Asia Hospital were diagnosed to be the cause of acute Cholecystitis with Severe Aortic Stenosis. The proposed line of treatment was Coronary Angiography followed by Aortic Valve Replacement (AVR). The petitioner took up the plea that since in the pre-authorization form as well as medical documents respondent No.2 was stated to be suffering from Hypertension and Diabetes and as such vide Additional Information Request Form dated May 2, 2013, the treating hospital was required to the following:-

i) Treating doctor certificate for exact history and duration of present ailment (heart disease, HTN, DM) with first consultation note when the disease was first diagnosed.

ii) All past treatment record;

iii) All relevant investigation reports with detailed treatment and vital charts."

In response to the said query, the treating hospital sent a response by mentioning on the query letter that hypertension and Severe Aortic Stenosis were recently diagnosed but did not provide first consultation papers for hypertension and diabetes, therefore again a query vide letter dated May 2, 2013 was sent to the treating hospital to provide first consultation note when the disease was first diagnosed (HTN, DM). In

response thereto, a certificate dated May 3, 2013 was received from the treating hospital certifying that hypertension and diabetes had been recently diagnosed in the said hospital and Severe Aortic Stenosis was diagnosed in Columbia Asia Hospital. In the said circumstances, the petitioner claimed that the application was liable to be dismissed.

The Permanent Lok Adalat (PUS) Gurgaon, allowed the claim of respondent No.2 directing the petitioner to pay a sum of Rs.3 lacs vide impugned order dated February 12, 2014. The said order has been vehemently challenged in view of clause 6 (e) (vi) of the terms and conditions of the Health Insurance Policy which has been strongly relied upon by the counsel for the petitioner which is reproduced as follows:-

> "6 (e) We will not make any payment for any claim in respect of any Insured Person directly or indirectly for, caused by arising from or in any way attributable to any of the following unless expressly stated to be contrary in this Policy.
>
> (i) to v) xxx xxx xxx xxx
>
> (vi) Psychiatric, mental disorders (including mental health treatments and, sleep apnoea), Parkinson and Alzheimer's disease, general debility or exhaustion ("run-down condition"); congenital internal or external diseases, defects or anomalies, genetic disorders; stem cell implantation or surgery, or growth harmone therapy."

I have heard Mr. Sandeep Suri at length in context to the above said condition who has referred to the discharge summary which contains "The Diagnosis and Co-morbidities" in which diagnosis have been mentioned as Acyanotic Congenital Heart Disease, Calcific Bicuspid Aortic Valve, Severe Aortic Stenosis, Type II Diabetes Mellitus Recent, Hypertension Recent. Learned counsel has vehemently urged that the treatment which was given to respondent No.2 was for congenital heart disease which stands excluded in the proposal form and policy. He vehemently urged that Acyanotic Congenital Heart Disease and Bicuspid Aortic Valve referred to in the treatment plan, as per Wikipedia, are the diseases whose cause is not completely clear and the two-leaflet valve develops in early stages of pregnancy and the defect is present at birth. He argued that about 2% of the population has got said disease i.e. BAVD. He also referred to the symptoms and signs of BAVD as per the information derived from the internet and suggested that as per Harrison's Internal Medicine and the Medical Reference Book, annexure P-10, BAVD is treated in severe cases by surgical repair of the valve and in other cases people can go their whole life without knowing they are suffering from BAVD.

I have heard learned counsel for the petitioner and carefully considered the medico legal arguments in context to the terms of the medical policy. The disease of respondent No.2 has been considered by me in context to the documents referred to by the petitioner's counsel. Whether the disease of respondent No.2 on account of respondent No.2 being a patient suffering from Acyanotic Congenital heart disease which is Calcific Bicuspid Aortic Valve, Severe Aortic Stenosis, Severe Con. LVH, would be

of such a nature as mentioned in the progress sheet, annexure P-11 to be a congenital in nature covered under the exclusion clause disentitling respondent N.2 for the medical claim under the insurance policy and I am of the opinion that the ground put-forth by the insurance Company to deny the medical claim merely on the ground that the disease could be congenital is not acceptable.

In the present case, respondent No.2 at the time of taking the policy was 43 years of age, implying thereby that she did not suffer from any of the symptoms of the alleged heart disease. The discharge summary dated May 13, 2013 indicates that she had undergone coronary angiography on May 1, 2013. Aortic valve replacement was done by using #19 mm perimount magna Aortic Valve on May 7, 2013. No doubt congenital diseases have been excluded in the medical policy which are mentioned in the policy in cases of congenital external/ internal diseases and the genetic disorders but if the meaning of said terms is extended to an unreasonable extent, the insurance companies can avoid all the claims as majority of the diseases have got genetic origin i.e. these are carried from one generation to another in the jeans. The symptoms of every disease could be inherited or acquired and it is not possible for any ordinary person to make a distinction whether a particular disease is an acquired character or inherited.

I have gone through annexure P-11, the literature downloaded by the petitioner from U.S. National Library of Medicines NIH National Institute of Health wherein a reference has been made to Bicuspid Aortic Valve which is a aortic valve which has got only two leaflets which regulates blood flow from the heart into the aorta, which is major blood

vessel that brings blood to the body. Aortic valve allows oxygen-rich blood to flow from the heart to the aorta, into the heart when the pumping chamber relaxes. Bicuspid aortic valve is present at birth in all the beings but an abnormal aortic valve develops during the early weeks of pregnancy, at the time of development of baby's heart. The medical literature specifically mentions in annexure P-17 that cause of this problem is unclear, but it is most common congenital heart disease. It often runs in families. It is mentioned in the said literature that bicuspid aortic valve may not be completely effective at stopping blood from leaking back into the heart. This is called aortic regurgitation. The aortic valve may also become stiff and not open up as well, causing the heart to have to pump harder than usual to get blood pass the valve for which the scientific term is used as aortic stenosis. The aorta may become enlarged in this condition. This may result in enlarged heart also. As per the medical literature appended, most of the time bicuspid aortic valve is not diagnosed in infants or children because it causes no symptoms. However, the abnormal valve can leak or become narrow which may show complications and symptoms of chest pain, difficult breathing, rapid and irregular heartbeat, fainting, pale skin etc. It appears that the arguing counsel is under a misconception that existence of bicuspid aortic valve is congenital, as per literature in annexure P-17 (Page 149) whereas as a matter of fact the bicuspid aortic valve is present since birth in every human being. It is the abnormal aortic valve which is symptomatic. It is the defect developed in the bicuspid aortic valve which affects pumping of the blood in the aorta through aortic valve which is the reason for the disease.

I have heard counsel for the petitioner at length in context to his concept of the existence of bicuspid aortic valve and its functions in context to the structure of the heart and I am of the opinion that merely on the basis of observations in annexure P-17, the word congenital used for the existence of the bicuspid aortic valve present since the time of the birth has been misconstrued as the disease of bicuspid aortic valve to be a congenital disease. The judicial notice has been taken of the medical literature produced on the record as well as to the structure and functions of the bicuspid aortic valve in the heart.

On the basis of the above said discussion, this Court is of the considered opinion that since respondent No.2 had not shown any symptoms of any defective bicuspid aortic valve for a period of more than 43 years as such the claim of respondent No.2 could not have been discarded by merely saying that respondent No.2 was suffering from such a congenital disease falling under the exclusion clause of the medical insurance policy. If the narrow meaning is given to the word congenital disease for depriving an insured of the insurance benefit, all the diseases like hypertension, renal diseases, eye diseases, brain diseases, heart diseases, diseases of blood could be placed under the congenital diseases being genetic. Such a narrow scientific interpretation cannot be permitted to give the benefit of technical terms used in the medical policy which are signed by the insured before entering into the agreement of the medical insurance policy. Any narrow meaning given would bring the contract within the definition of unconscionable contract under Section 26 of the Contract Act as per the law laid down in the judgment of **Central Inland Water Transport**

Corporation Limited Vs. Brojo Nath Ganguly and another, AIR 1986 SC 1571 as the bargaining powers of the insurance company and the consumer is unequal and the insurance Company stands at higher pedestal when the insured is required to sign the policy. It is observed here that this Court has not held the terms of the medical policy annexure P-1 as unreasonable, unfair or unconscionable but has held that in case a narrow interpretation, as suggested by the counsel for the petitioner is accepted, in that situation clause in the contract would be unreasonable and unconscionable and liable to be exercised to the disadvantage of the insured. Circumstances of each case are to be seen in individual cases. Respondent No.2 has not played any fraud with the petitioner and her claim appears to be bonafide and rightly allowed by the Permanent Lok Adalat.

So far the jurisdiction of the Permanent Lok Adalat (PUS) is concerned, it squarely falls within the ambit of its jurisdiction as per Section 22 (e) of the Legal Services Authority Act.

The petition is dismissed.

May 24, 2017 (M.M.S.BEDI)
sanjay JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.