IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.472 of 2017 (O&M)
Date of decision: 29.03.2017

Max Bupa Health Insurance Company Limited
....Appellant

Versus

Priyanka Verma and another
....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. R.S. Cheema, Sr. Advocate, with
Mr. A.S. Cheema, Advocate, for the appellant.

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RAMENDRA JAIN, J.

In the present Letters Patent Appeal filed under Clause X of the Letters Patent, challenge has been laid to the order dated 11.01.2017 passed by learned Single Judge dismissing CWP No.12651 of 2016 filed by the appellant.

2. Put pithily, respondent No.1 along with her family members obtained Floater Health Policy from the appellant-Insurance Company for one year w.e.f. 26.07.2012 to 25.07.2013 covering the individual risk to the extent of ₹ 1,00,000/- each and total floater cover up to ₹ 3,00,000/- which comes to ₹ 4,00,000/- for one person in a given year. During the subsistence of policy, respondent No.1 felt some pain and on clinical examination breast cancer was detected to her on 26.10.2012. Consequently, she remained admitted in Medanta Hospital, Gurgaon from

26.10.2012 to 29.10.2012 and a surgery was conducted to remove the breast cancer. Thereafter, she went through eight chemotherapy successively and 31 sessions of radiotherapy. Though respondent No.1 had spent ₹ 5,35,811/-on surgery as well as chemotherapy, but she restricted her claim to ₹ 4,00,000/- as the said policy covered a risk upto ₹ 4,00,000/- only. The claim of respondent No.1 was rejected by the appellant on 20.12.2012 on the ground of suppression of material information. Resultantly, respondent No.1 approached the Permanent Lok Adalat (Public Utility Services), Gurgaon (for short 'the Lok Adalat') under Section 22C(1) of the Legal Services Authority Act, 1987 for acceptance of her claim. The Lok Adalat vide award dated 04.11.2015 accepted the claim of respondent No.1 in toto for ₹ 4,00,000/- along with interest @ 9% per annum from the date of her application till actual payment. Aggrieved against the award dated 04.11.2015, appellant approached this Court by way of CWP No.12651 of 2016, which has been dismissed vide impugned order dated 11.01.2017. Hence, this appeal.

3. Learned counsel for the appellant taking aid of the judgment of the Apex Court in ***Satwant Kaur Sandhu v. New India Assurance Company Limited**, (2009) 8 Supreme Court Cases 316*, urged that learned Single Judge has erred in recording the finding that suppression of information with regard to removal of some abscess from the breast in the year 2007 had no connection with breast cancer in 2012. Learned counsel for the appellant contended that before obtaining the insurance policy, it was paramount duty of respondent No.1 to disclose about her breast tenderness. Non-disclosure of above fact has dis-entitled respondent No.1

to claim any compensation, because had this fact been disclosed by respondent No.1 before obtaining the insurance policy, some extra tests would have been carried out or additional information would have been sought. Learned Single Judge has failed to appreciate that appellant as well well as respondent No.1 are bound by a contract and since material information was suppressed by respondent No.1, the same amounted to commitment of fraud by her which has vitiated the contract.

4. We have given our thoughtful consideration to the arguments made by learned counsel for the appellant.

5. It is not disputed that the appellant had issued Floater Health Policy to respondent No.1 and her family members covering a total risk of ₹ 4,00,000/- for each person effective from 26.07.2012 to 25.07.2013. It is further not disputed that during this period respondent No.1 got operated herself for breast cancer on 26.10.2012 and remained admitted in hospital as indoor patient upto 29.10.2012 and spent more than ₹ 4 lakh, but claimed only ₹ 4 lakh for which she was entitled to under the said policy. Perusal of the award dated 04.11.2015 (Annexure P-1) passed by the Lok Adalat as well as the impugned order passed by learned Single Judge shows that abscess from the breast of respondent No.1 was removed somewhere in the year 2007 and, thus, the Lok Adalat as well as the learned Single Judge have rightly observed that non-disclosure of the removal of abscess in the proposal form filled up on 25.07.2012 is hardly relevant, when the abscess had been removed about five years back in 2007 and respondent No.1 did not feel any problem thereafter till the submission of the proposal form. That apart, the treating doctor Kanchan Kaur, a Senior Consultant had

certified that there was no connection or correlation between the past history of right breast abscess in February, 2007 of respondent No.1 with the surgery of breast cancer in October, 2012 as they were totally unrelated events and have no bearing or consequences to each other. The Lok Adalat has very meticulously gone into each and every aspect of the matter and has even discussed the relevant Clauses and their impact while deciding the claim of respondent No.1. Learned Single Judge has also rightly affirmed the findings recorded by the Lok Adalat. The facts and circumstances of the judgment cited by learned counsel for the appellant are not identical to the facts of the present case, therefore, no benefit of the same can be given to the appellant.

6. Hence, the present appeal being meritless is hereby dismissed.

7. However, the general observations recorded in the impugned order by the learned Single Judge against the appellant would not be construed as an expression of opinion on the conduct of the appellant.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

March 29, 2017
R.S.

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No