IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 23857 of 2014
Date of decision : August 28, 2018

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Tarinderjit Kaur and another
...........Petitioners

Versus

Union of India and others
..........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate for the petitioners.

Mr. R.C Gupta, Advocate for the respondents.

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RITU BAHRI, J.

The petitioners are seeking writ of certiorari for quashing of impugned order dated 5.9.2013 (Annexure P-9) and further directions directing respondents to renew the medi-claim policies of the petitioners.

The petitioners had taken two health insurance policies (Annexure P-1 colly.) of respondents no. 2 & 3. The said policies were renewed every year. The petitioners have been claiming medi-claim policies since the year 1990 & 2007/08. The Instructions with respect to renewal of policies as notified by the Government read as under:-

"f. Renewal of Policies.

i. A health insurance policy shall ordinarily be renewable except on grounds of fraud, moral hazard or misrepresentation or non-cooperation by the insured.

ii. The renewal of a health insurance policy sought by the insured shall not be denied arbitrarily. If denied, the insurer shall provide the policyholder with cogent reasons for such denial of renewal.

iii. A insurer shall not deny the renewal of a health insurance policy on the ground that the insured had made a claim or claims in the previous or earlier years, except for benefit based policies where the policy terminates following payment of the benefit covered under the policy like critical illness policy following payment of the critical illness benefit, the policy terminates.

iv. The insurer shall provide for a mechanism to condone a delay in renewal up to 30 days from the due date of renewal without deeming such condonation as a break in policy. However, coverage need not be available for such period.

v. The promotion material and the policy document shall explicitly state the conditions under which a policy terminates, such as on the payment of the benefit in case of critical illness benefits policies."

For renewal of the policy from 4.1.2011 to 3.1.2012, the petitioners remitted the premium through cheque No. 555024 dated 5.1.2011 for Rs.12658/- and cheque No. 555025 for Rs.7564/- in favour of the New India Assurance Company Limited. The policies were cancelled by the Insurance Company on the ground that the cheques which were issued for payment of premium have been dishonoured by the Bank. Information regarding cancellation of the policies was received by the petitioners vide letter dated 17.2.2011 (Annexure P-2). The Canara Bank with whom the petitioners had accounts and the cheques were issued from the said account also informed the petitioners for the first time vide letter dated 24.2.2011 (Annexure P-3). There was huge amount lying in the bank accounts of the petitioners. Vide letter dated 2.3.2011 (Annexure P-5), the petitioners informed respondents no. 2 and 3 that the policies could not be cancelled by the Insurance Company as no information with regard to the dishonour of the cheques was given to them and as per the IRDA Guidelines, the information with regard to the dishonouring of the cheques has to be given within 15 days so that the policy holder can give another cheque or pay in cash. Vide letter dated 21.3.2011 (Annexure P-6), respondents no. 2 & 3 expressed their disability to represent the cheques again. The petitioners filed a complaint dated 25.7.2012 (Annexure P-7) before the Ombudsman at Chandigarh. Vide award dated 5.9.2013 (Annexure P-9), a direction was given to the Insurance Company to renew both the policies from the current date by restoring the cumulative bonus earned by the petitioners. The grievance of the petitioners is that the

Ombudsman made a mistake by holding that the same would be renewed from the current date and not renewed the same from the date when the policy stood lapsed. The petitioners sent representation dated 12.10.2013 (Annexure P-11) requesting the Insurance Company to renew the old policies from the backdate and for revival of old policies. The said request of the petitioners was rejected vide order dated 23.10.2013 (Annexure P-12).

On notice of this writ petition, a written statement has been filed by the respondents no. 2 & 3. The stand taken by the respondents in the written statement is that as per letters dated 12.10.2013 (Annexure P-11) and letter dated 23.10.2013 (Annexure P-12), the Insurance Company in the right earnest and in compliance with the order dated 5.9.2013 passed by the Ombudsman sent the documents and formats to the petitioners for compliance and submission complete in all respects in its office so as to enable the Insurance Company to issue polices of Insurance as per the directions given by the office of Ombudsman. It was further submitted that the petitioners have waived their right by not complying with the requirement and therefore the answering respondents did not issue fresh policies. Even otherwise the petitioners have shown their willingness not to accept the offer made by the Insurance Company in compliance of the order of the Ombudsman. Moreover, even the bankers have not been made a party in the present petition and the writ petition is liable to be dismissed on a non joinder of the Bank as necessary party. On merits, a plea has been taken that as per the provisions of Section 64 VB of the Insurance Act, 1938, there shall be no insurance contract between the parties unless the premium is received in advance. In the case of the petitioners, a cheque was represented and dishonoured and hence as per the terms and conditions of the contract and insurance, the petitioners' insurance policies have come to an end. The cheques of premium were dishonoured by the Bankers of the petitioners and the Insurance Company cannot be made liable for the fault committed by their Bank. The respondents are not denying the Instructions issued by the Insurance Regulatory and Development Authority of India.

Counsel for the petitioners, at the outset, while referring to the conditions of the renewal of the policy has argued that as per the conditions of the policy, the insurer shall provide for a mechanism to condone a delay in renewal up to 30 days from the due date of renewal without deeming such condonation as a break in policy. However, coverage need not be available for such period. In the present case, when the cheques were dishonoured, the first information was received by the petitioner vide letter dated 17.2.2011 (Annexure P-2) from the Insurance Company and even if 30 days has to be taken from 17.2.2011 as per the conditions of renewal of policy, period of 30 days would expire on 17.3.2011. Before 17.3.2011, the petitioner had informed the respondents no. 2 & 3 vide letter dated 2.3.2011 (Annexure P-5) that they received no information with regard to the dishonour of the cheques and that as per IRDA Guidelines, it was the duty of the Insurance Company to inform within 15 days time regarding dishonouring of the cheques so that a policy holder is able to either issue fresh cheques or to pay in cash.

Counsel for the petitioners has referred to the judgment in the case of ***Valliammal vs. Sivakumar and another 2014 (24) RCR (Civil) 792*** to contend that when a cheque through which the premium is paid is dishonoured, Section 105 of the Motor Vehicles Act puts conditions upon the Insurance Company to notify the registering authority regarding the cancelation or suspension of the policy. Policy once issued cannot automatically become void because the cheque bounced. If the Insurance Company was cheated and was made to issue such a policy, the Company is not without remedy to mitigate its grievances, but it cannot be exempted from its liability under the policy. As the appellate-Insurance Company has not intimated the fact of cancellation of the policy to the transport authorities within the time prescribed under Section 105 of the Motor Vehicles Act, it cannot be absolved of its obligation to third parties under the policy only on the ground that it did not receive the premium. Insurance company need not indemnify the insured, but to pay the compensation amount to the victim and thereafter recover the same from the owner of the vehicle.

Counsel for the respondent has vehemently argued that once the information was sent to the petitioners vide letter dated 17.2.2011 (Annexure P-2), the petitioners should have paid the premium within next 30 days instead of making the payment of the premium, he chose to write a letter dated 2.3.2011(Annexure P-5) and this cannot be made a ground for renewing the policy on 5.1.2010.

Heard counsel for the parties. At the outset, the respondents are not controverting the conditions of the renewal of the policy as reflected in paragraph 3 of the petition. The renewal of the policy can be denied only on the grounds of fraud and misrepresentation. Further it cannot be denied ordinarily and cogent reason has to be given for denial of the renewal. In the facts of the present case, first of all information regarding dishonouring of the cheques and cancellation of policies was received by the petitioners vide letter dated 17.2.2011 (Annexure P-2) which was received by the petitioners on 25.2.2011. Thirty days time ought to have been granted to the petitioners for renewal of the policy. The petitioners informed the bank that they had sufficient amount in their accounts vide letter Annexure P-4. The petitioners also informed the Insurance Companies vide letter dated 2.3.2011 (Annexure P-5) that the policies could not be cancelled by the Insurance Company as no information regarding dishonouring of the cheques was given to them. Once the letter dated 2.3.2011 (Annexure P-5) was sent by the petitioner, it was the duty of the Insurance Company to present the cheques again before the Bank. Moreover as per the IRDA guidelines, once the Insurance Company came to know that the cheques had been dishonoured they had to inform the petitioner within 15 days for issuing fresh cheques or for payment in cash. The Insurance Company was bound by the conditions of renewal of the policy to give thirty days time for renewal of the policies.

In view of all that has been discussed above, the present writ petition is allowed and the order dated 5.9.2013 (Annexure P-9) is being modified to the effect that the Insurance Company will renew both the insurance policies from the date it became due i.e on 5.1.2011

August 28, 2018 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	Yes