

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4599 of 2017**

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Dr. Shiva Shanker Sharma, Son of Late Mahendra Singh, Resident of  
Pakka Kuna Lane (Babhan Toli) Mahendru, P.S.- Sultanganj, District-  
Patna.

... .. **Petitioner/s**

**Versus**

1. The National Insurance Company Ltd. Through Its Chairman.
2. Senior Divisional Maneger, The National Insurance Company Ltd.,  
Arunachal Bhawan, Exhibition Road, Patna.
3. The Branch Manager, The National Insurance Company Ltd, Arunachal  
Bhawan, Exhibition Road, Patna.
4. Genins India TPA Ltd, Through Director.
5. The Director, Genins India TPA Ltd, Having its corporate office at D-34,  
ground floor, Sector- II, Noida-201301, U.P.
6. The Branch Manager, Genins India TPA Ltd, B/3 Patrakar Nagar,  
Kankarbagh, Patna.
7. The Union of India through the Ministry of Finance , Govt. of India,  
South Block New Delhi.

... .. **Respondent/s**

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**Appearance :**

For the Petitioner/s : Mr. Sanjeet Kumar Singh, Adv.

For the Respondent/s : Mr. S.D Sanjay Addl. Soc. Gen.

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**ORAL JUDGMENT**

**Date : 09-12-2019**

Heard Mr. P.N. Sahi, learned Senior Advocate  
for the petitioner and Mr. Ashok Priyadarshi for the  
Insurance Company (Respondent No.3). The counsel for  
the third party Administrator, namely, respondent nos.4, 5



& 6, viz., Mr. Sanjay Verma has also rendered his assistance in this matter.

2. The petitioner has come to this Court for a direction to annul Clauses 2.1,2.2 and 2.3 of the Medi-claim Insurance proposal which prescribe that the insured shall only get 50% of the claim amount in case of hospitalization in a non-network hospital and shall be reimbursed fully only if treatment is obtained in a network hospital.

3. Apart from this, the other prayer is that at the time of entering into the contract for such Medi-claim, the aforesaid clauses were not made available/known to the petitioner.

4. In that event, it has been submitted that even though a claim based on insurance is a contractual claim which has to be determined on the basis of terms of contract but in this case, the Insurance Company, being a stronger party, the principle of *contra proferentem* would apply and in the absence of specific knowledge having



been provided to the insured with respect to such clauses which could permit the Insurance Company to reimburse 100% of the expenses incurred in only the network hospital, ought to have been made known to the insured.

5. Apart from this, it has been submitted that medical claim is a part of right to life which is mandated under the Constitution of India. In a policy governing Medi-claim, the Clauses which are contrary to the principle of the right to life cannot be sustained. Though an Insurance Company has a right to frame its clauses in a particular insurance proposal but considering the fact that it is a Government Insurance Company, no Clause which takes away the valuable right of a person could be sustained.

6. In support of the arguments raised on behalf of petitioner, Mr. Sahi learned Sri advocate has urged that the policy was subscribed by the petitioner sometimes in the year 2001 when he was only made to sign in the space provided, without affording him a copy of the brochure



which contained the offending clauses. He further submits that any renewal of such policy, which is on an yearly basis, would be deemed to be a continuation of the earlier policy and therefore if the petitioner was not made known about the aforesaid offending clauses which had led to the non-payment of the 50% of his claim, the Insurance Company or the respondent nos.4,5 & 6 be directed to make full payment of the insured amount/the amount incurred in treatment.

7. The last of the arguments advanced by Mr. Sahi is that even assuming that the contents of the policy were made known to the petitioner, the rationale behind enacting those clauses is inscrutable. As a doctor, the petitioner chose a hospital which provided better medical facilities but on a lesser cost. It was quite fortuitous that the hospital where the petitioner received his treatment was not in the network of the Insurance Company. There is no justification, it has been argued, for denying the reimbursement of the expenses incurred by the petitioner



in a hospital which provides better treatment to a patient but at a lesser cost.

8. The possible rationale behind the insertion of the aforesaid clauses could be to provide convenience to the Insurance Company and to the insured for a smooth procedure in case of treatment in a network hospital with a tie-up with the Insurance Company.

9. In the present case, as urged by Mr. Sahi, the strict interpretation of the clauses have only resulted in perpetuating a situation where inferior quality service is provided at a higher cost. By choosing a hospital where lesser cost was charged the petitioner has only shown his *bona fides* and therefore he should not be penalized for the same.

10. As opposed to the aforesaid contentions raised on behalf of the petitioner, Mr. Priyadarshi, learned advocate for the Insurance Company has submitted that every renewal of a medi-claim is in the nature of a fresh contract for a limited period of time. Every renewal is a



new contract and it was incumbent upon the petitioner to have proved/demonstrated before raising the plea that he was not provided with the contents of the brochure/proposal of insurance. If a person of letters signs a contract, it is normally to be presumed that he knew or was aware of the contents thereof.

11. In the present case, It has been urged, the claim of the petitioner can be repelled on two grounds, (1) that the petitioner is himself a doctor, who cannot say that he was made to sign in the blank space without his understanding the terms of the agreement and (2) there is no specific proof of the fact that he was made to sign on a separate sheet of paper and was not provided with the insurance proposal.

12. The petitioner may have been a policy holder since 2001, but since the treatment was received by him in the year 2015, for the purposes of reimbursement of the expenses incurred, the case of the petitioner would be governed by the policy of the year which covers the



period of treatment. It was, therefore, necessary for the petitioner to have brought on record the positive indicators of his not being provided with the contents of the policy.

13. The claim of the petitioner was referred to the private administrator, viz, respondent nos.4,5 and 6 who have found that the petitioner is only entitled to 50% reimbursement of the expenses incurred by him in the treatment of oral cancer.

14. Thus, the decision of the Insurance Authority cannot be faulted with.

15. With respect to the two judgments cited by Mr. Sahi, learned Senior Advocate, viz, **Ms. Modern Insulators Ltd. V/S The Oriental Insurance Co.Ltd. AIR 2000 SC 1014** and **L.I.C. of India & Anr. vs Consumer Education & Research Centre &Ors. AIR 1995 SC 1811**, Mr. Priyadarshi submits that the ratio of the aforementioned judgments would not apply to the case of the petitioner. In the **Modern Insulators Ltd.** (Supra), it was demonstrated before the National Consumer



Commission that only the cover note of the policy was made available to the insured and in that case, the Supreme Court was of the view that since a claim under insurance cover is regulated by a contract between the parties, there has to be an observance of utmost good faith on part of both the contracting parties and in the absence of the same, the benefit has to go to the weaker party.

16. It has not been proved rather is disputed that the year in which he got treatment for which he had an insurance cover, he was not supplied with the entire policy proposal.

17. In the **L.I.C. of India & Anr.** (Supra), the issue before the Supreme Court was of denial of the proposal of the respondent for being included as a person who could be insured under a particular Table of the insurance company. While deciding the issue whether a term in a policy of an insurance company in which the government had a stake could be in the realm of the



decision making of the Insurance Company only and is not subject to any caveat of any kind whatsoever.

18. In the aforementioned context, the Supreme Court was of the view that no doubt an Insurance Company has the liberty to incorporate, as part of its business principle, a term of its choice but it cannot be un-channelized. Every action of a public authority acting in public interest gives rise to a public element and therefore is required to be guided by public interest. It cannot remain unfair and be allowed to remain so.

19. In the aforesaid context, the Supreme Court found that there was an untenable and irrational Clause in not making available the policy of insurance with respect to a particular class of person.

20. Both the decisions, it has been urged on behalf of the Insurance Company, do spell out the powers of the courts to regulate certain terms and conditions even in a contractual agreement but it does not lay down any principle of law regarding repudiating/rejecting anyone of



the terms of the Clauses in a medi-claim agreement between the Insurance Company and the Insured. It has to be tested whether such a clause is absolutely arbitrary and offending in terms of public interest or even in terms of the Insured being a weaker party.

21. Since in a writ jurisdiction, the relief sought for is an equitable relief and any alternative relief can dissuade a court of law in issuing any *mandamus* in such matters, Mr. Priyadarshi, learned advocate urges that this court, in the aforesaid circumstances, ought not to interfere with the decision making of the Insurance Company, specially in view of the fact that the claim has properly been assessed and 50% of the claimed amount has been reimbursed.

22. The only issue which therefore, in the estimation of this Court, requires to be adjudicated is whether the petitioner was made known the contents of the policy when he had entered into the agreement.



23. Apart from one statement in the writ petition that he was only provided with a sheet of a paper on which he had signed and the entire brochure of the policy was not provided to him, and its non-denial in a specific manner in the counter affidavit, there is no other material which would lend credence to the stand of the petitioner.

24. Whether the petitioner was provided with the policy or not is a matter of fact which is required to be adjudicated.

25. This aspect of the matter having been noted, Mr. Sahi learned Senior Advocate for the petitioner seeks permission to withdraw this petition, at this stage, without any assessment of the claim of the petitioner on the basis of facts which are before this Court, to enable the petitioner to approach the Ombudsman for the purposes of the determination whether the petitioner was made known the contents of the Clauses of the policy under which he rests his claim of 100% reimbursement of



medical expenses during the covered period of the insurance policy.

26. Should the petitioner approach the Ombudsman, it shall also, apart from the aforesaid issue, look into the fact that if treatment has been received in a hospital which has provided good medical care at a lesser cost, the petitioner be denied the benefits of the aforesaid policy under which he rests his claim.

27. The petitioner is permitted to withdraw this writ petition for him to agitate the issues referred to above before the Ombudsman. The Ombudsman shall pass a reasoned order and communicate to the petitioner. The decision be taken within eight weeks of the production of a copy of this order by this Court.

**(Ashutosh Kumar, J.)**

Prakash Narayan

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