

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2019

PRONOUNCED ON : 15.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.102 of 2012

and

M.P.No.1 of 2012

M/s. Royal Sundaram Alliance Ins. Co. Ltd.
No.46, Whites Road
Royapettah, Chennai 600 014 ...Appellant

Vs.

1. M. Govindan
2. Radha Govindan (deceased)
3. Sunal Govind
4. Sajish Govind
5. Sujatha
6. Sujay Govind ...Respondents

R3 to R6 and R1 (already on record in A.S.No.102/2012 are brought on record as LRs of the deceased second respondent vide order of this Court dated 06.02.2018 made in CMP No.920/2018 in A.S.No.102/2012 by ASJ & PK.J

Prayer: First Appeal filed under Order XLI Rule 1 of Civil Procedure Code r/w Section 96 of Civil Procedure, against the judgment and decree dated 20.06.2011 made in O.S.No.12606 of 2010 on the file of the Additional District & Sessions Judge, Fast Track Court-V, Chennai.

For Appellant : Mr.N. Vijayaraghavan.

For Respondents : Mr. K. Venkatakrisnan.

JUDGMENT

Aggrieved over the judgment and decree dated 20.06.2011, passed in O.S.No.12606 of 2010, on the file of the Additional District & Sessions Judge, Fast Track Court-V, Chennai, the defendant has preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for recovery of a sum of Rs.3,62,637.91 incurred by the plaintiffs towards the hospitalisation expenses paid to The Apollo Hospital, Chennai, while discharging the second plaintiff on 06.09.2003 together with interest at the rate of 18% per annum from 06.09.2003 till the date of payment and a sum of Rs.5,00,000/- for the harassments the first plaintiff had undergone during the period the defendant and the Medicare / third party agency were driving the first plaintiff from pillar to post under the guise of processing the cashless claim and a sum of Rs.10,00,000/- for the mental agony and the turmoil undergone by the plaintiffs and their family members and further a sum of Rs.10,000/- towards the cost of the notice and for the costs.

4. Shorn of unnecessary details, according to the plaintiffs, they availed health shield Insurance from the defendant for the period from 21.06.2002 to 20.06.2003 and also for the period from 10.07.2003 to 09.07.2003 and as the abovesaid insurance cover provides for reimbursement of medical expenses arising out of hospitalisation by reason of any accident or illness upto the limit of Rs.3,00,000/- in respect of the second plaintiff and according to the plaintiffs, the second plaintiff was admitted in Malar Hospital on 26.06.2003 complaining of chest pain and the same was informed to the defendant by the plaintiffs by way of the letter dated 09.07.2003 that the second plaintiff requires angioplasty on a future date and requested for necessary claim form and thereafter, as per the advice of the Cardiac Specialist attached to the Apollo Hospital, the second plaintiff was admitted at Apollo Hospital on 01.09.2003 for carrying angioplasty for which the first plaintiff paid a sum of Rs.1,00,000/- at the time of admission of the second plaintiff at Apollo Hospital and after treatment on the advice of the Cardiac Specialist, the second plaintiff was discharged on 04.09.2003 and when the plaintiffs approached the defendant to reimburse the medical expenses incurred by them, as above pointed out, for the heart ailment suffered by the second plaintiff, according to them, they were directed to get in touch with the Medicare Agency, a franchise appointed by the defendant for processing the claim under the policy and though the plaintiffs had submitted the necessary certificates and the other documents, the medicare agency informed the first plaintiff that their claim could not be approved and advised the first plaintiff to make the claim in the prescribed form and thereafter, after the discharge of the second plaintiff, when the claim for reimbursement was made in the prescribed form enclosing all the necessary documents, despite the same, the defendant having disowned its liability to pay the claim of reimbursement put forth by the plaintiff on the contention

that the second plaintiff being chronic renal failure patient on CAPD (Continuous Ambulatory Peritoneal Dialysis) and the same had been suffered by the second plaintiff since 2001 much prior to the insurance cover and as the same was the contributory factor for the coronary artery disease sustained by her and despite the medical information furnished by the plaintiffs that the chronic renal failure is not the cause for the artery disease, it is put forth that the defendant failed to settle the claim made by the plaintiff and after the issuance of the legal notice, according to the plaintiffs, they had been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant did not dispute the insurance cover of medi claim with it by the plaintiffs as pleaded in the plaint and also not disputed the claim made by the plaintiffs towards the medical reimbursement for the heart ailment sustained by the second plaintiff particularly for the angioplasty done on her at Apollo Hospital. According to the defendant, the heart ailment sustained by the second plaintiff had not occurred independently but contended that the same has resulted only due to the chronic renal failure suffered by her much prior to the insurance cover and accordingly contended that treatment for such ailments having been clearly excluded from the terms of the policy cover and accordingly put forth the case that the claim of reimbursement made by the plaintiffs has been rightly turned down by the defendant as not having been covered by the insurance policy and accordingly contended that the plaintiff is not entitled to seek and obtain the reliefs prayed for and sought for the dismissal of the plaintiffs' suit.

6. On the basis of the abovesaid pleas set out by the by the respective parties, the following issues were framed by the trial court for consideration.

- 1) Whether the repudiation by the defendant of the medi-claim made by the plaintiffs is valid and justified?
- 2) Whether the plaintiffs are entitled to the reimbursement of the medical expenses of Rs.3,62,637.91 together with interest at 18% per annum from 06.09.2003?
- 3) Whether the defendant is liable to compensate the plaintiffs in a sum of Rs.5,00,000/- for the alleged harassment to the plaintiffs?
- 4) Whether the defendant is liable to compensate the plaintiffs in a sum of Rs.10,00,000/- by way of compensation?
- 5) Whether the plaintiffs are entitled to interest and if so, at what rate? And
- 6) To what other reliefs, the plaintiffs are

entitled to?

7. In support of the plaintiffs case P.W.1 was examined and Exs.A1 to A27 were marked. On the side of the defendant, D.Ws.1 and 2 were examined and Exs.B1 and B4 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the plaintiffs' suit in part and held that the plaintiffs, in all, are entitled to a sum of Rs.3,00,000/- the contractual claim towards the medical expenses along with 12% simple interest from 06.09.2003 till realisation and further held that the plaintiffs are entitled to a sum of Rs.10,00,000/- towards the harassments met out by the first plaintiff and the mental agony suffered by the plaintiffs forcing them to initiate the legal proceedings and accordingly disposed of the suit with costs. Aggrieved over the judgment and decree of the trial court, the defendant has preferred the first appeal.

9. The following points arise for determination in this first appeal.

1. Whether the plaintiffs are entitled to a sum of Rs.3,00,000/- towards the reimbursement of the medical expenses with interest as per the terms of the medi-claim policy put forth by them?
2. Whether the plaintiffs are entitled to obtain a sum of Rs.10,00,000/- towards the harassment and mental agony suffered by them in realising the medi-claim reimbursement and also for the necessity to initiate the legal proceedings against the defendant?
3. To what relief the plaintiffs are entitled to?
4. To what relief the defendant/appellant is entitled to?

Point Nos. 1 and 2

10. That the plaintiffs have taken the health shield insurance from the defendant for the relevant period is not in dispute. The health shield insurance certificates taken by the plaintiffs have been marked as Exs.A2 and A4 / Exs.B3 and B4. Now according to the plaintiffs, as per the terms of the insurance cover taken by them from the defendant, they are entitled to be reimbursed with the medical expenses sustained by them. Further according to the plaintiffs, the second plaintiff sustained coronary artery disease and on complaining of chest pain, was admitted in the hospital and as per the advice of the specialist attached to the hospital, it is put

forth that the second plaintiff was done angioplasty and accordingly, it is the case of the plaintiffs that after the discharge of the second plaintiff from the hospital, though they had made the claim for the reimbursement for the medical expenses sustained by them, according to them, the defendant had not processed their claim with earnest and in a proper manner and on the other hand, had driven them to approach their agency and their agency had also not properly considered the lawful claim of the plaintiffs for the reimbursement and after driving the plaintiffs from pillar to post, finally informed that their claim could not be approved and thereafter, when the plaintiffs had also made the claim in the prescribed form with necessary documents, their request had been turned down by the defendant on the footing that the chest pain and the artery disease complained by the second plaintiff had not occurred independently and on the other hand, the same had occurred as the contributory factor due to the chronic renal failure sustained by her much prior to the insurance cover and accordingly it is the case of the defendant that the claim for reimbursement for such disease having been excluded under the terms of the policy, the plaintiffs are not entitled to the reimbursement.

11. Considering the materials placed on record, the only defence taken by the defendant for declining the claim of reimbursement made by the plaintiffs is that as the second plaintiff was suffering from chronic renal failure, as according to the defendant, such claims having been excluded under the policy, the plaintiffs are not entitled to obtain the reimbursement. That the second plaintiff had been suffering from chronic renal failure even prior to the insurance cover could be gathered from the discharge report marked as Ex.B1 and though it is found that the second plaintiff had been on regular CAPD (Continuous Ambulatory Peritoneal Dialysis) for chronic renal failure, however, considering the materials placed on record, it is found that the other parameters of the health condition of the second plaintiff are found to be normal and in such view of the matter, when the defendant disowned their liability to reimburse the plaintiffs under the insurance cover on the ground that the chronic renal failure contributed to the artery problems sustained by the second plaintiff and when the same has been challenged by the plaintiffs, it is for the defendant to establish that the chronic renal failure sustained by the second plaintiff has been the cause for the heart ailment sustained by her subsequently and therefore, the plaintiffs are not entitled to obtain the reimbursement.

12. The plaintiffs had produced the Doctor's certificate issued by a specialist, whereunder it has been stated that the coronary artery disease sustained by the second plaintiff has not been caused by chronic renal failure which she has been suffering. The abovesaid certificate has been marked as

Ex.A20. The abovesaid certificate has been issued by Madras Institute of Nephrology. The defendant would disown the claim made under Ex.A20 certificate contending that the doctor who had issued the said certificate has not been examined in support of the plaintiffs' case. No doubt, the plaintiffs had not endeavoured to examine the doctor who had issued the abovesaid certificate. Be that as it may, when it is only the defendant who is seeking the exclusion clause for disowning the reimbursement claim made by the plaintiff contending that the artery disease sustained by the second plaintiff is the result of the chronic renal failure which she had been suffering already, the burden is only upon the defendant to establish the same by placing acceptable materials pointing to their version. Despite the plaintiffs having produced the medical certificate Ex.A20 describing that the coronary artery disease sustained by the second plaintiff has not been caused by the chronic renal failure which she had been suffering and when the defendant, as such, has not disputed that the abovesaid certificate had not been issued by the competent doctor and on the other hand would only contend that the abovesaid certificate cannot be accepted in the absence of the oral evidence of the doctor who had issued the same, however, when the burden is upon the defendant to establish its defence version of invoking the exclusion clause under the insurance cover, it is for the defendant to establish that the claim made under Ex.A20 certificate is not true. In this connection, the defendant has examined its own doctor available in its panel as D.W.2. D.W.2 is found to be not a specialist in coronary artery disease and furthermore, though he would claim that the artery disease sustained by the second plaintiff has been caused by the chronic renal failure which she had been suffering, however, admitted that despite the chronic renal failure, the second plaintiff was able to survive with her other health parameters in the normal condition and in such view of the matter and furthermore, when D.W.2 has also clearly admitted that he has not adduced evidence that the certificate produced by the plaintiffs marked as Ex.A20 is not true, in such view of the matter, when Ex.A20 certificate has not been established to be a false certificate on the part of the defendant and when though it is found that the second plaintiff had been suffering from chronic renal failure since 2001, however, she had complained of chest pain only during 2003 and accordingly been admitted in the hospital and undergone angioplasty and when the materials placed on record go to show her other health parameters are normal and she had not been suffering from Blood Pressure, diabetes, etc., in such view of the matter, merely from the evidence of D.W.2, it cannot be held that the artery disease sustained by the second plaintiff is caused due to chronic renal failure which she had been suffering and when the abovesaid claim of the defendant has been belied by Ex.A20 and Ex.A20 certificate has not been declared to be a false one

by D.W.2, the defendant's doctor himself during the course of evidence, in all, it is found that the link attributed by the defendant of the chronic renal failure with the artery disease sustained by the second plaintiff not based on any acceptable and reliable material, in such view of the matter, it is found that the abovesaid defence had been taken by the defendant mainly for the purpose of disowning the reimbursement claim made by the plaintiffs without any justification and in such view of the matter, when the plaintiffs are found to be entitled to get the reimbursement for the medical expenses sustained by them under the policy cover and when the chest pain complained of by the second plaintiff and the subsequent angioplasty conducted on her with reference to the same not established to be the result of the chronic renal failure suffered by her, in all, it is found that the trial court is found to be justified in determining that the abovesaid defence version is untenable and made only for the sole purpose of avoiding the claim of reimbursement put forth by the plaintiffs and in such view of the matter, the repudiation of medi-claim on the part of the defendant is found to be not valid and justified and the abovesaid point had been rightly determined by the trial court in favour of the plaintiffs, accordingly, it is found that the trial court is justified in holding that the plaintiffs are entitled to the reimbursement of medical expenses as covered in the policy in a sum of Rs.3,00,000/- with interest at the rate of 12% on the same from 06.09.2003 and the abovesaid determination of the trial court do not warrant any interference.

13. As regards the claim of Rs.10,00,000/- towards the mental agony and turmoil said to have been undergone by the plaintiffs and the family members in processing the reimbursement claim, the only evidence adduced by the plaintiffs is that they had been forced to run from pillar to post by the defendant and its medicare agency and finally both had turned down their lawful claim and hence put forth the case that they are entitled to a sum of Rs.10,00,000/- towards the mental agony and turmoil. However, the abovesaid case of the plaintiffs has been resisted by the defendant contending that, in any event, the plaintiffs would, utmost, be entitled to the amount covered under the policy and not beyond that and therefore, the plaintiffs cannot be allowed to seek any other claim from the defendant beyond the terms of the policy and sought for the rejection of the same.

14. From the materials placed on record, it is found that the plaintiffs had been directed by the defendant to approach its agency for processing the claim of reimbursement and the same had been turned down by the agency and subsequently, the plaintiffs had been forced to make the claim in the prescribed form with necessary documents and the same had come to be rejected by the defendant, by invoking the exclusion clause of the insurance policy, on the footing that the coronary artery

disease sustained by the second plaintiff is the result of the chronic renal failure suffered by her. However, considering the abovesaid discussions, when the defendant is found to be not entitled to avoid the policy under the exclusion clause on having failed to sustain its defence version, in such view of the matter, it is found that the plaintiffs had been put to some mental agony and turmoil in the process of reimbursement claim made by them to the defendant. However, the trial court is found to have awarded a sum of Rs.10,00,000/- in favour of the plaintiffs for the harassment and the mental agony and turmoil said to have been suffered by them in the process of the reimbursement claim. As regards the determination of Rs.10,00,000/- in favour of the plaintiffs under the abovesaid headings, there is no acceptable materials placed on the part of the plaintiffs with reference to the same. In such view of the matter, the determination of the trial court in granting a sum of Rs.10,00,000/- infavour of the plaintiffs under the abovesaid headings, in my considered opinion, cannot be sustained as per law. Even if the medical insurance cover had been taken by the plaintiffs, for processing the same, as rightly contended, the plaintiffs should approach the defendant with necessary documents and only after processing of the same on the side of the defendant, the same would be considered for further action on the part of the defendant. Accordingly, it is found that the agency appointed by the defendant and thereafter the defendant having considered the claim put forth by the plaintiffs and however, decided to repudiate the claim by invoking the exclusion clause as above pointed out, finally turned down their request and thereafter, the plaintiffs had preferred the present lis. No doubt, the repudiation of the medi-claim policy on the part of the defendant is found to be untenable and the plaintiffs had been, to some extent, forced to struggle in the process of the same. However, the claim of Rs.10,00,000/- by the plaintiffs under the abovesaid heading cannot be sustained and in my considered view, the grant of Rs.1,00,000/- under the abovesaid headings would serve justice. Accordingly, the determination of the trial court granting Rs.10,00,000/- in favour of the plaintiffs for the harassment and mental agony sustained by them and their family members is set aside and instead a sum of Rs.1,00,000/- is awarded under the abovesaid headings. The trial court has not considered the claim of Rs.10,000/- prayed for by them towards the notice cost and thereby found to have declined the abovesaid reliefs. Challenging the same, the plaintiffs had not filed any appeal or cross objection in the present appeal.

15. In support of his contentions, the counsel for the defendant placed reliance upon the decision reported in 2010-2-L.W.90 (Star Health and Allied Insurance Co. Ltd., vs. A. Chokkar and another), which has also been cited before the trial court. The principles of law outlined in the abovesaid decision are taken into account and followed as applicable to

the case at hand.

16. In the light of the abovesaid discussions, the plaintiffs are entitled to obtain a sum of Rs.3,00,000/- towards the mediclaim expenses from the defendant with interest at the rate of 12% per annum from 06.09.2003 till the date of payment as determined by the trial court. Further, the plaintiffs are entitled to a sum of Rs.1,00,000/- towards harassment and mental agony suffered by them from the defendant. Accordingly, the point numbers 1 and 2 are answered.

Point Nos. 3 and 4

17. In the light of the abovesaid discussions, the judgment and decree of the trial court in granting a sum of Rs.10,00,000/- in favour of the plaintiffs for the harassment and mental agony undergone by them and their family members is set aside and instead the plaintiffs are held entitled to receive only a sum of Rs.1,00,000/- under the abovesaid headings and in other aspects, the judgment and decree of the trial court are confirmed. Accordingly, the first appeal is disposed of. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bga

Copy to

1.Additional District & Sessions Judge,
Fast Track Court-V, Chennai,

2.The Section officer,
V.R. Section, High Court, Madras.

+2cc to Mr.K.Venkatak Krishnan, Advocate SR.86036

+1cc to Mr.N.Vijayaraghavan, Advocate SR.86566

A.S.No.102 of 2012

SSV(CO)
CB(07/02/2020)