

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 14631 of 2013
RESERVED ON : 09.07.2019
PRONOUNCED ON : 02.08.2019**

**TATA AIA Life Insurance Company Limited
and another**

.....Petitioners

versus

Permanent Lok Adalat and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Nitin Thatai, Advocate,
for the petitioners.

Mr. Sandeep Goyal, Advocate,
for respondent No.2

ARUN MONGA, J.

The writ petition is directed against the impugned Award dated 24.08.2009 (Annexure P-8) rendered by Permanent Lok Adalat, Hisar, whereby the complainant before it (respondent No.2 herein) was held entitled to an amount of ₹2,50,000/- in respect of the insurance policy purchased by him from the petitioner-company.

2. It would be apposite to set out brief factual background leading to the passing of Award and the filing of this writ petition. Vide an application dated 26.04.2005 (Annexure P-2), the complainant applied for an insurance policy known as "Health First" from the petitioner company. At the time of selling the said insurance policy, the petitioner company/its agent only

gave the application form/insurance cover note to the complainant. The insurance policy dated 30.04.2005 (Annexure P-3) containing the detailed terms and conditions, was issued and given to the complainant on a later date. The petitioner company states that in the said policy under the head note "**General Provisions**" expression "**the Policy Contract**" has been defined which, *inter-alia*, states as under :

*" This contract is made in consideration of your application and payment of the require premium. The policy, application for it and any attached endorsements, constitute the entire contract. The terms and conditions of this policy cannot be changed or waived except by endorsement or rider duly signed by our duly authorized officer. The said policy under the heading "Basic Definitions" also, inter-alia, defines "covered illness, critical illness, covered injury, confinement and hospital etc." The said policy also specifically states under the Clause "**Daily Hospital Benefit**" as follows :*

While this Policy is in force and during the lifetime of the insured, if the insured is admitted to a Hospital in India as an in-patient under the recommendation and professional care of a Registered Medical Practitioner for Medically necessary treatment of a covered injury or covered illness, we will pay the Daily Hospital Benefit for each day of confinement in the Hospital (except for the insured's first three (3) days of confinement) but not exceeding ninety (90) days for any one covered injury or covered illness in respect of the same confinement."

4. The complainant got admitted in the hospital from 30.04.2006 to 02.05.2006 and had to undergo Angioplasty by adopting a procedure, which in medical terms is known as "CAG+PTCA to LAD RCA". After getting discharged from the hospital, the complainant applied for insurance claim vide intimation dated 30.05.2006 and the same was declined by the insurance company vide its letter dated 03.07.2006, *inter-alia*, stating as below :

"As per the terms and conditions of the contract, the said claim does not fall within the cover of the above policy :

It is not a confinement of more than 3 days in a pre-approved hospital.

From the medical information available, the condition suffered does not meet the criteria defined in the Critical illness benefit of the Health First Plan.

The operation/surgical procedure performed is not a condition covered under the Surgical Benefit.

We therefore regret to advise that there is no liability for the claim under the said contract."

5. In the aforesaid premise, the complainant approached the Permanent Lok Adalat by filing his complaint which lead to the passing of Award dated 24.08.2009 (Annexure P-8).

6. In the return filed by the complainant, dismissal of the writ petition has been sought on the ground that the petitioner company has not approached this Court with clean hands and has suppressed material facts from this Court.

7. I have heard rival contentions of learned counsel for the parties and have gone through the pleadings.

8. Learned counsel for the petitioner company essentially relies on the "**Daily Hospital Benefit**" policy clause *ibid* and submits that the same being a matter of contract between the insurer and the insured, the insured cannot wriggle out of the same and therefore, the fact that any operation/surgical operation being not covered by the contractual terms of the policy, no claim was admissible to the insured. Apart from that, learned counsel argues that even in the application form which was duly signed by the complainant, there is specific clause under the heading "**Declaration and Authorization**" which states as follows:

"I/We hereby declare and agree that (a) I/We have read the application or the same was interpreted to me/us and the answers entered in the application are mine/ours; (b) I/We hereby certify, on behalf of myself/ourselves and behalf of any person who may have or claim any interest in the said policy, that each of the above answers is full, complete and true and I/We undersigned that Tata AIG Life Insurance Company Limited (hereinafter called "the Company") believing them to be such, will rely and act on them, otherwise the proposed application may be void."

9. Relying on the above, learned counsel for the petitioner company argued that the complainant had signed the above undertaking after reading and understanding the contents

thereof and that it is not believable that the insured/ complainant ever signed any proposal without understanding the expected benefit under the proposed policy. He further argued that it was based on the information/particulars filled in by the complainant in his application form/insurance cover note that the insurance company issued the policy later on. After receiving the policy, the insured never approached the petitioner company for cancellation of the policy and refund of the premium. He, therefore, contends that the complainant was fully aware of the terms and conditions contained in the policy right from the date of its issuance. He further submits that the insured is not entitled to claim any benefit and the Award suffers from legal infirmity of being against the exclusions and cover provided under the policy as set out in the terms and conditions contained thereof, which are very simple and clear in language and can be easily understood by even a layman.

10. Apart from the above contentions, on merits certain preliminary objections were also raised by learned counsel for the petitioner, *inter-alia*, complaint being not maintainable before the Permanent Lok Adalat, as under the Insurance Regulatory and Development Authority Act, 1999, the complainant ought to have approached the insurance company.

11. Per contra, learned counsel for the complainant/ insured relies on the reasoning adopted in the impugned Award and submits that the same being just, fair and legal, does not

warrant any interference by this Court and the writ petition is therefore liable to be dismissed.

12. The findings of Permanent Lok Adalat are summarized in para 22 which is reproduced herein below :

i) The supply of prospectus by the Insurance Company to the petitioner before preparation and filling up of the proposal form was a mandatory condition for Insurance Company which has not been done in this case.

ii) The petitioner insured is therefore not bound by those conditions or rider which were not explained to him prior to his filling up of form or deposit of the premium.

iii) Policy document incorporates terms and conditions in violation of rules and law.

iv) Proper opportunity for review of terms and conditions in violation of rules and law.

v) Policy document is vague and incomplete and also unreasonable."

13. Having perused the Annexures filed along with the writ petition, I do not find any fault with the finding that at the time of insuring the complainant, the application form/cover note dated 26.04.2005 did not contain the detailed clause as mentioned in the prospectus/insurance policy which was concededly of a later date i.e 30.04.2005. In the premise, there

was no occasion for the complainant/insured to know the nuances and hidden meanings contained in the terms and conditions of the prospectus/policy. At the time of insurance, invariably the insured is guided and led by the agents of insurance company and do not have access to the prospectus/policy.

14. As regards complainant not having opted to cancel the policy within 15 days of its being forwarded, I do not find any merit in the argument of learned counsel for the petitioner company as the same is not in accordance with the Rules framed by the Insurance Regulatory and Development Authority (hereinafter referred to as "IRDA"), the same being contrary to the letter and spirit of the wording contained in the Regulation 6 of the Insurance Regulatory and Development Authority (Protection of Policy holders' Interests) Regulations, 2002. For ready reference, Rule 6 thereof is reproduced herein under :

"(2) While acting under regulation 6 (1) in forwarding the policy to the insured, the insurer shall inform by the letter forwarding the policy that he has a period of 15 days from the date of receipt of the policy document to review the terms and conditions of the policy and where the insured disagrees to any of those terms or conditions, he has the option to return the policy stating the reasons for his objection, when he shall be entitled to a refund of the premium paid, subject only to a deduction of a proportionate risk premium for the period on cover and the expenses

incurred by the insurer on medical examination of the proposer and stamp duty charges."

15. A perusal of sub-Rule 2 of Rule 6 *ibid* clearly reflects that in the forwarding letter to be sent by the insurer to the insured, the insured has to be given an option to return the policy stating the reasons for his objection within a period of 15 days from the date of receipt of policy. As against this, the petitioner company wrote a letter to the insured, relevant whereof is reproduced herein below :

" We wish to inform you that you have the right to cancel this policy by giving a written notice to us within fifteen days of receipt of the enclosed document. Please refer to the "Cancellation Right and Refund of Premium" provisions in the copy of your application for insurance which is attached with the policy contract."

16. The complainant was thus informed that he has a right to cancel this policy by giving a written notice, instead giving him the option to return the policy. I am, therefore, in agreement with the finding given by the Permanent Lok Adalat that a document issued by the insurance company could not be unilaterally cancelled by the complainant/insured. Further more, it is not even envisaged under the Regulations framed by IRDA that the insured has to cancel the policy, as is clear from the wording of Rule 6 (2) *ibid*.

17. The argument of learned counsel for the petitioner company that Angioplasty (CAG+PTCA to LAD RCA) is excluded from the head of "Critical Illness" as per clause 4 of the policy and, therefore, the claim of the insured was rightly repudiated by the insurance company also, though may seem initially attractive on the bare reading of Clause 4 of the policy, but in fact is against the spirit of "Critical Illness" covered under Clause 4 viz. Coronary by pass surgery. Ordinarily when a person goes for health insurance he would be satisfied to know that in case of any heart ailment, surgical procedure viz. Coronary by pass surgery, is covered therein and would naturally assume that anything related with that would also be covered under the same. However, a surreptitious insertion of Angioplasty under the head note of Coronary By Pass Surgery would not absolve the insurance company from its responsibility, particularly, when the same is not made known to insured at the time of filling the application form/cover note.

18. While dealing with the scope, purpose and meaning of exclusion clause reference may be had to a Division Bench judgment rendered by this Court in case titled **"IFFCO TOKIO General Insurance Company Limited v. Permanent Lok Adalat (Public Utility Services), Gurgaon and others"** 2012 (1) RCR (Civil) 901. Para 5 of the same is reproduced here under :

" Having heard learned counsel for the petitioner appellant we are of the considered view that no

*interference of this Court would be warranted in the view taken by the learned Single Judge as well as the Lok Adalat. The law is well settled with regard to the exclusion clauses in standard forms of contracts. When the bargaining powers of the parties is unequal and a consumer has no real freedom to contract then such a power may be considered unfair. The principle deducible from various precedents is that the Courts would not enforce and when called upon to do so, strike down such an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. For instance, the above principle would apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It would also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. The types of contract to which the principle formulated above applies to terms which are so unfair and unreasonable that they shock the conscience of the Court. They are opposed to public policy and require to be adjudged void. In that regard we may place reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, AIR 1986 SC 1571.**"*

19. Regarding merits of the claim, it has not been denied that the petitioner did undergo medical treatment and he did

suffer from heart problem which led to the procedure of Angioplasty (CAG+PTCA to LAD RCA), while he was admitted in hospital from 30.04.2006 to 02.05.2006. The entire claim has been resisted on the ground that same is in violation of terms and conditions of the policy.

20. In the premise, keeping in view my above discussion and the reasons contained therein, no interference is called for by this Court in the impugned order passed by learned Permanent Lok Adalat and the writ petition is accordingly dismissed. No order as to costs.

(ARUN MONGA)
JUDGE

AUGUST 02, 2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No