IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19643-2015
Date of Decision: July 24, 2019

Rachna Lodhi **... Petitioner**

vs.

Life Insurance Corporation & Ors **.. Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Virender Kumar, Advocate
for the petitioner.

Mr. Nitin Thatai, Advocate
for the respondents.

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ARUN MONGA, J.

Petitioner herein, *inter-alia,* seeks issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 14.05.2015 (Annexure P-7) passed by Insurance Ombudsman (respondent No.3) and orders dated 08.12.2009 and 17.02.2011 Annexures P-1 and P-2 respectively, passed by Life Insurance Company (respondent No.1) rejecting her insurance claim.

2. Petitioner's husband, namely, Late Sh. Harish Lodhi purchased two life insurance policies, first one effective from 08.12.2009 with maturity date 08.12.2025 for an insured sum of Rs. 2,50,000/- and second one effective from 17.02.2011 with maturity date 17.02.2020 for an insured sum of Rs. 2,20,000/- against periodical payment of premium. At the time of purchase of policies, he was hale and hearty and had been examined by the competent doctors of the respondent- Life Insurance Corporation. Harish

Lodhi died on 15.04.2012 due to Cardio Respiratory Failure during the currency of the policies. Petitioner's insurance claim was rejected by Life Insurance Company on the ground that at the time of filling proposal forms for insurance, Harish Lodhi had concealed material facts about his health. A complaint filed by the petitioner, in this connection, was also rejected by the Insurance Ombudsman.

3. Respondent/Life Insurance Company in its return objected to the territorial jurisdiction of this Court to entertain the petition and also resisted the claim on merits. It is asserted that the medical examination of the life to be insured at the time of purchase of the policy is always general in nature. It does not mean that the insured person can conceal material facts about his health. During examination of the insurance claim, it was found that Harish Lodhi was suffering from GI (Gastro-Intestinal) bleed; ALD (Alcoholic Liver Disease), CLD (Chronic Liver disease), Esophageal varices (blockage of blood flow to liver) and ARF (Acute Renal Failure) shock prior to the issuing of the insurance policies and was under treatment at Jaswant Rai Specialty Hospital, Meerut since 03.07.2009 under Dr. Malay Sharma, MD, DM, Gastro-Entero, more particularly, from 2009 to 2011 as borne out from the treatment record Annexure R-4 (Colly). Utmost good faith being the fundamental principle for a valid contract of insurance, concealment of material facts about health of the life insured, vitiated the contract. The insurance claim had, therefore, been rightly rejected.

4. I have gone through the record and heard learned counsel for the parties.

5. Admittedly, impugned order dated 14.05.2015 (Annexure P-7) was passed by the Insurance Ombudsman, Chandigarh rejecting the

petitioner's grievance/complaint against the refusal of her insurance claim. Part of cause of action for the writ petition, thus, arose at Chandigarh within the territorial jurisdiction of this Court. Therefore, the contention of learned counsel for respondents that this Court has no territorial jurisdiction to entertain and decide the petition is rejected. On merits, the impugned orders do not call for any interference from this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

6. There is merit in the contention of the learned counsel for respondents that routine and general medical examination conducted by the doctor of the respondents, does not absolve the life insured to correctly and honestly answer the questions relating to his health.

7. There is no rejoinder filed by the petitioner to refute the assertions of the respondents that her husband had remained under treatment for various diseases at Jaswant Rai Specialty Hospital, Meerut since 03.07.2009 under Dr. Malay Sharma, MD/DM from 2009 to 2011. The treatment record Annexure R-4 (Colly) produced by the respondents comprise of hospital treatment certificate issued by Dr. Malay Sharma; prescription slips dated 28.01.2010, 03.10.2010, 07.05.2010, 13.12 (year not readable), 07/08 (year not legible), 26.02.2010, 08.02.2010, pathological test/investigation reports dated 18.12.2009, 18.11.2009, 25.02.2010, 03.10.2009, 12.04.2010, 19.03.2010, 19.05.2010, discharge summary (undated) issued by Jaswant Rai Hospital, Meerut. Respondents have also produced as part of Annexure R-4(Colly), the medical report dated 05.12.2013 given by Dr. A.P.Tyagi, MBBS, MD (Medicine), Adarsh Nagar, Meerut bearing his opinion that Harish Lodhi was suffering from chronic

alcoholic liver disease with cirrhosis esophageal varices.

8. It seems difficult to straight-away discard/disbelieve this entire material produced by the respondents and to hold, as contended by the petitioner, that at the time of taking the insurance policies, her husband was hale and hearty. Adjudication of this controversy requires production of elaborate evidence by the parties followed by cross examination of the witnesses. The same cannot be done in exercise of the writ jurisdiction of this Court.

9. As a result, the petition is dismissed. It will, however, be open to the petitioner to seek appropriate remedy in Civil Court or any other forum, in accordance with law.

24.07.2019 **(ARUN MONGA)**
smriti **JUDGE**

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