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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6753/2018

ALKA TANDON ..... Petitioner

Through: Mr Lovish Sharma, Mr Gobind Malhotra, Mr Kartik Khanna, Mr Rakesh Kumar and Mr P. Arora, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Bhagvan Swarup Shukla, CGSC with Mr Sarvan Kumar Shukla, Advocate for UOI/R-1.
Mr Rajiv Kapur, Ms Khushboo Kapur and Ms Anjle Gupta, Advocates for R-2.
Ms Nidhi Singh, Ms Upasna Shukla, Mr Aman Jha and Mr Dhruv Shukla, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **31.07.2019**

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to respondent no.3 (SBI General Insurance Co. Ltd.) to process the petitioner's claim for a sum of ₹4,75,451/- on account of the medical procedure undergone by the petitioner. The petitioner further claims interest at the rate of 18% from the date of submission of the claim form.

2. Admittedly, the petitioner had purchased an Insurance Policy/Mediclaim (bearing No. 2299123). The said policy was in effect from 20.10.2014 to 19.10.2015. This policy was thereafter renewed from time to

time. Admittedly, during the first three years, no claim was made by the petitioner.

3. It is stated that in October, 2017, the petitioner developed chest pain and breathlessness on account of which she underwent various health checkups. She was admitted for Coronary Angiography at Max Super Specialty Hospital and was diagnosed with Coronary Artery Disease/Double Vessel Disease. The petitioner was advised Coronary Artery Bypass Grafting (CABG) and was discharged from the said hospital on 03.11.2017.

4. Thereafter, the petitioner underwent the CABG surgery at BLK Super Specialty Hospital, Delhi. She was discharged from the said hospital on 16.11.2017. The petitioner claimed that she incurred a total expense of ₹4,16,139/- at the said Hospital. The petitioner also claims that considering other expenses, she had incurred total expenses of ₹4,75,451/- on her treatment.

5. Although, the petitioner was entitled for cashless facility, she was not provided that facility either at Max Super Specialty Hospital where she incurred expenses of ₹59,312/-, or at BLK Super Specialty Hospital, Delhi.

6. The petitioner's claim was rejected by a letter dated 27.02.2018 on the ground that she was a case of Diabetes Mellitus which is a risk factor for Coronary Artery Disease, and as per the documents, the petitioner was suffering from the same from 10 years. Respondent no.3 states that since the said condition was pre-existing in nature and the medical treatment provided to her was a result of the same, the same was not covered under the policy. According to respondent no.3, the expenses arising of the said ailment were not payable as pre-existing illnesses were not covered under the policy

exclusion clause.

7. Admittedly, the proposal form submitted by the petitioner clearly indicated that the petitioner was suffering from diabetes.

8. This Court finds it difficult to appreciate respondent no.3's contention that the procedure underwent by the petitioner was on account of a pre-existing illness. Clearly, Coronary Artery disease is not the same ailment as Diabetes Mellitus.

9. The learned counsel appearing for the respondents has also raised a preliminary objection regarding maintainability of the present petition. She states that respondent no.3 is a private company formed as a joint venture between State Bank of India Limited and Insurance Australia Group. It is also averred in the counter affidavit that both the said entities have equal representation on the Board of respondent no. 3 company.

10. In view of the above, respondent no. 3 is not 'State' within the meaning of Article 12 of the Constitution of India. In view of the above, this Court does not consider it apposite to issue any *mandamus*, granting the relief as prayed for.

11. The present petition is disposed of leaving it open for the petitioner to institute an appropriate action for recovery of the claim raised. The petitioner would also be entitled to claim interest on the amount withheld. Needless to state that such action, if any, shall be decided in accordance with law.

VIBHU BAKHRU, J

JULY 31, 2019/ RK