

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7767 OF 2016

National Insurance Company Ltd.	..Petitioner
V/s.	
Mr.Virendra Madhusudan Joshi	..Respondent

Mr.Asim Vidyarthi for the Petitioner.

Mr.Vijay S. Bhadkamkar, for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 21st FEBRUARY 2020

PC.

1. The challenge in this petition is to the order dated 20th March 2015 passed by the learned Insurance Ombudsman, Pune directing the payment of an amount of Rs.10,39,000/- by way of ex-gratia payment to the respondent.

2. The learned counsel for the petitioner has raised three grounds:-

(i) That there was suppression of material fact on the part of the respondent, in respect of the pre-existing diseases. It is submitted that the respondent has failed to disclose in the data-sheet that he was

suffering from Hypertension and was on medication for the said purpose. In the submissions of the learned counsel for the petitioner, the Insurance Policy itself is a proposal-cum-policy and respondent had clearly failed to answer a material question about pre-existing diseases.

(ii) It is submitted that the Ombudsman while granting the compensation by way of ex-gratia, payment could not have granted the bill amount of the risk covered under the policy. In other words the Ombudsman can only grant a certain amount by way of token compensation/damages leaving it to the parties to take resort to an appropriate remedy and;

(iii) The Ombudsman has not recorded any reasons while granting the claim.

3. The learned counsel for the respondent has submitted that there was no suppression of any material fact and in any event assuming that the petitioner has failed to answer a relevant question about pre-existing diseases, either in the affirmative or negative,

there is no reason why the petitioner acted on the same. It is submitted that now the petitioner cannot turn around and disown the liability. Secondly, it is submitted that the Ombudsman has rightly found that the pre-existing ailment has nothing to do with the episode of acute IHD which the respondent suffered during his travel in Australia. In this regard the learned counsel has referred to the certificate dated 12th February 2015 given by Dr. Shrirish Hirimath from Pune. It is submitted that this being a finding of fact, this Court would be slow in interfering with such a finding, particularly which is of a technical nature.

4. I have considered the circumstances and submissions made. Admittedly, in this case, there is no formal proposal form obtained from the respondent. The data sheet which is at page 25 of the compilation indeed shows that the question about pre-existing illness or medicine is neither answered in the affirmative nor in the negative. The said datasheet which is styled as a “confirmation of availability of insurance (part-II)” is signed both by the authorised signatory of the petitioner and the respondent. It does not appear that the question about pre-existing illness or medicine was answered either in the affirmative or in the negative so as to demonstrate that there was an active or intentional concealment on

behalf of the petitioner. It is necessary to note that if at all a particular question which was material before the petitioner could have issued the medical policy was not answered either in the affirmative or in the negative, it was for the petitioner to have verified the same.

5. The contention that the impugned order passed by the Ombudsman is unreasoned also can not be accepted. The Ombudsman is not expected to give detailed reasons while deciding the claim of the present nature. The Ombudsman, on fact, has found that in any event the pre-existing ailment namely Hypertension and the medication for it had no relation with the episode of the Acute IHD suffered by the petitioner while traveling in Australia. The contention on the quantum also cannot be accepted.

6. Considering the overall circumstances, I do not find that the impugned order suffers from any infirmity so as to require interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is accordingly dismissed, with no order as to costs.

The amount deposited before this Court along with interest, if any, shall be paid to the respondent after a period of six weeks.

C.V. BHADANG, J.