IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

CWP-21164-2020
Date of Decision: December 17, 2020

ORIENTAL INSURANCE COMPANY LIMITED

..... PETITIONER(s)

Versus

PERMANENT LOK ADALAT/PUBLIC UTILITY SERVICES, KURUKSHETRA AND ANOTHER

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. V. Ramswaroop, Advocate for the petitioner.

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LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

Petitioner-insurance company has filed this writ petition for quashing of order dated 20.02.2020 (Annexure P-4), whereby learned Permanent Lok Adalat (for short 'PLA') allowed claim of Rs.1,92,584/-, filed by respondent no.2 along with interest @ 6% per annum from the date of application till the date of actual payment. The petitioner-insurance company has also been directed to pay compensation of Rs.20,000/- and litigation expenses of Rs. 10,000/- with interest @ 6% per annum from the date of award till actual payment.

Respondent no.2 filed an application under Section 22-C of the Legal Services Authorities Act, 1987 with the averments that he secured an

insurance policy i.e. PNB Oriental Royal Mediclaim Policy Schedule vide policy no. 261303/48/2014/916 on 03.09.2013 and he was depositing the premium regularly with subsequent renewals. Respondent no.2 became unwell due to a heart condition and he was admitted at Medanta Medicity Hospital, Gurugram on 10.11.2015. It is claimed that respondent no.2 spent a sum of Rs.1,88,070/- on his treatment and Rs.4,514/- on medicines i.e. total amount of Rs.1,92,584/-. Despite requests, the present petitioner, it is pleaded, did not release the amount due, as per the mediclaim policy.

As conciliation failed, learned PLA proceeded to decide the matter. Evidence was led by both the parties. Points for consideration were culled out by the learned PLA, read as under:-

1. Whether the applicant has purchased Mediclaim Policy from the respondents?

2. Whether the applicant is entitled to a sum of Rs.1,92,584/- from the respondents on account of medical claim?

3. Whether the insurance claim of the applicant has wrongly been repudiated by the respondents and the wrong repudiation of the insurance claim of the applicant by the respondents has caused financial loss, undue harassment and mental agony to the applicant and he is entitled to compensation from them? If so, the amount thereof?

4. Whether the applicant is entitled to litigation expenses from the respondents? If so, to what amount?

Learned PLA, on considering the entire facts and circumstances considered that there was a valid mediclaim policy held by the insured at the relevant time. Admission of the claimant at Medanta Hospital due to heart problem was proved and it was held that repudiation of the claim by the

insurance company was unjustified. Accordingly, the amount as mentioned in the foregoing paras was awarded by the learned PLA. Hence, aggrieved this petition has been filed.

I have heard learned counsel for the petitioner and have gone through the file.

Petitioner primarily resisted the claim raised by respondent no.2 on the basis of exclusion Clause 4.1, which reads as under:

> *"The Company shall not be liable to make any payment under this policy in respect of any expenses whatsoever incurred any Insured Person in connection with or in respect of : Pre-existing health condition or disease or ailment/injuries: Any ailment/disease/injuries/health condition which are pre-existing (treated/untreated, declared/not declared in the proposal form), in case of any of the insured person of the family, when the cover incepts for the first time, are excluded for such insured person up to 3 years of this policy being in force continuously. For the purpose of applying this condition, the date of inception of the first indemnity based health policy taken shall be considered, provided the renewals have been continuous and without any break in period, subject to portability condition. This exclusion will also apply to any complications arising from pre-existing ailments/diseases/injuries. Such complications shall be considered as a part of the pre-existing health condition or disease."*

The policy in question was admittedly secured by respondent no.2 on 03.09.2013 and thereafter, regularly renewed every year till 2016. Admission of claimant/respondent no.2 at Medanta Hospital due to heart condition, his treatment and expenditure incurred thereon is also not in dispute.

Learned counsel for the petitioner-insurance company has argued that exclusion Clause 4.1 is clearly applicable in the present case as the policy was secured in the year 2013 and respondent No.2 suffered the heart problem on 10.11.2015. Thus, as per Clause 4.1, the case of respondent no.2 is not covered as his heart condition was clearly linked to the condition of hypertension. It is further submitted that respondent no.2 was earlier a known case of hypertension and diabetes, therefore, it is on account of a pre-existing condition that the said respondent suffered a cardiac problem. In such a case, exclusion clause 4.1, it is contended is clearly applicable, therefore, impugned award should be set aside. However, I do not find any merit in the arguments raised on behalf of the petitioner for the reasons as discussed in the following paras.

The matter regarding applicability of Clause 4.1 admittedly stands adjudicated by this High Court in case of ***Oriental Insurance Company Limited Vs. Naresh Sharma and others***, 2014 (79) RCR (Civil) 163 and decision dated 07.01.2020 in CWP-107-2020 titled ***Religare Health Insurance Company Ltd. Vs. The Chairman, Permanent Lok Adalat and another***. It has been clearly held that a genuine medical claim cannot be rejected by the insurance company in terms of Clause 4.1. Moreover a medical condition which may arise at the relevant time, cannot necessarily be termed to be a complication arising due to a pre-existing health condition. Once the insurance company is offering a policy for one year, it is not permissible to reject the claim on the basis of Clause 4.1. In the case of ***Religare Health Insurance Company*** (supra), in a similar situation, where an insured earlier suffering from diabetes, was hospitalized for an incident of genito urinary infection, had approached the PLA. His claim has been repudiated by the insurance company

on the ground that a person suffering from diabetes is at a higher risk of being infected, therefore, the aid of Clause of 4.1 was sought. The said argument was rejected while specifically observing that such an argument is farfetched and it would inevitably lead to a situation where claims of persons suffering from diabetes, hypertension etc. would be rejected at the threshold itself as the probability and propensity of such person, developing certain diseases increases or is more than a person not suffering from such a medical condition.

In the present case, there is nothing on record to indicate that respondent no.2 was suffering from a cardiac condition, prior to 2013. Furthermore, it is not in dispute that there is no evidence on record to indicate that the cardiac problem suffered by respondent No.2 in respect to which the claim has been raised, has arisen only due to hypertension or diabetes, which may have been suffered by respondent No.2. A generalization that persons suffering from hypertension and diabetes are more prone to cardiac disease is clearly not sufficient and does not provide a valid justification to the petitioner company to repudiate the claim of respondent no.2.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 20.02.2020 (Annexure P-4), which has been correctly passed by learned PLA/Public Utility Services, Kurukshetra, after proper appreciation of the evidence on record.

No other argument has been addressed.

Present petition is accordingly dismissed with no order as to costs.

17.12.2020 **(LISA GILL)**
Sunil **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No