IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.29421 of 2019
Date of Decision: 16.01.2020

United India Insurance Company Limited

..... Appellant

Versus

Jatinder Khanna and others

..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

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LISA GILL, J.

This petition has been filed by the United India Insurance Company Ltd., challenging award dated 21.06.2019 (Annexure P-5), passed by Permanent Lok Adalat (Public Utility Services), Ludhiana, whereby the petitioner has been directed to pay a sum of ₹3,51,000/- along with interest at the rate of 6% per annum.

Brief facts necessary for the adjudication of the case are that respondent no.1, filed a petition under Section 22-C, Sub Section-1 of the Legal Services Authorities Act, 1987 (for short 'Act'), with the averments that he had purchased two mediclaim policies, one bearing no. 200900/48/11/000002897 for a sum of ₹5,00,000/- (Alankit Health Care) valid for the period 22.03.2012 to 21.03.2013 and another one, namely Super Top Up Medicare Policy bearing no. 200900/48/11/36/000002896 for a sum of ₹7,00,000/- valid for the period 29.03.2012 to 28.03.2013. The said policies were in continuation for the last

six years and both of them were cashless policies. No claim had earlier been raised. Respondent no.1 developed some kidney and liver problem on 02.07.2012. He was referred to Medanta Medi City Gurugram (Gurgaon) on 09.07.2012. Surgery was conducted upon respondent no.1. As per the discharge summary, Ex.A-36, respondent no.1, was detected with Hepato Cellular Carcinoma (HCC) and Right Kidney Cell Cancer (RCC). The CECT was done on 03.07.2012 which showed SOL in right lobe of liver measuring (4x3.2 cm). HRCT Chest showed graunulomatous lesion in posterior segment of left upper lobe. PET scan showed FDG uptake in right kidney and segment 5 of livry. Liver nodule biopsy done on 07.07.2012 showed evidence of HCC and AFP value was 10.5 IU/ml. DTPA scan showed evidence of reduced GFR with early bi-lateral parenchymal disease. Claim of the applicant was satisfied insofar as the first policy is concerned. However, his claim under the Super Top Up Medicare Policy, was refused on the ground that the problem arose due to a pre-existing disease and he was not covered as per the terms and conditions of the policy i.e., Clause no. 4, dealing with exclusions, which provides that in case of any pre-existing condition as defined in the policy, the company shall not be liable to make any payment until 48 months of a continuous coverage of such injured person having elapsed, since inception of his/her Super Top Up Medicare Policy with the company.

Learned Permanent Lok Adalat, Ludhiana, allowed the claim while observing that the present petitioner was unable to prove that the problem suffered by the applicant was directly related to any pre-existing disease, specifically diabetes or of smoking. The plea raised by the petitioner that there was a concealment of pre-existing disease, was also rejected. The petitioner

was accordingly held entitled to recover a sum of ₹3,51,000/- from the respondents along with interest at the rate of 6% per annum.

Aggrieved therefrom, present writ petition has been filed by the petitioner-United India Insurance Company.

Learned counsel for the petitioner while not raising any serious dispute regarding the ground of concealment of any pre-existing disease, submits that even if, such a pre-existing disease, is duly revealed by the insured, he is not entitled to the claim on account of the specific exclusion clause in the policy. It is, thus, prayed that the present writ petition be allowed and award dated 21.06.2019, passed by Permanent Lok Adalat, Ludhiana, be quashed. Consequently petition under Section 22-C of the Act be dismissed.

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

As far as, the medical condition suffered by respondent no.1, for which he was treated, is concerned, there is no dispute. It is further not in dispute that respondent no.1 had duly mentioned the pre-existing condition of diabetes that he was suffering from. There is clearly no question of the diabetes being the emergent causative factor for the medical condition (cancer) visiting respondent no.1. The Permanent Lok Adalat, Ludhiana, has rightly observed that insofar as the question of smoking by respondent no.1, is concerned, the evidence on record, does not indicate that he was smoking since the age of 10 or that it has any relevance in the factual matrix of the case. There is indeed no expert evidence as such in this respect. Furthermore, respondent no.1 had truthfully and honestly given details of the anti epileptic drugs he had taken after suffering a head injury in an accident, a number of years ago. It is also not

denied that respondent no.1 had stopped taking these drugs about nine years (9) prior to the inception of the policy in question. There is yet again no evidence to reflect any co-relation between the emergent medical condition of respondent no.1 and the said anti epileptic drugs.

Argument raised by learned counsel for the petitioner in respect to the exclusion clause justifying the repudiation of the claim is equally untenable and hence rejected. Clause 4 of the terms and conditions of the policy deals with exclusion. Relevant part of Clause 4.1 and 4.6, reads as under:-

> "The company shall not be liable to make any payment under this policy in respect of any expenses whatsoever incurred by any insured person in connection with or in respect of:
>
> 4.1 Any pre-existing condition(s) as defined in the policy, until 48 months of continuous coverage of such insured person have elapsed, since inception of his/her Super Top Up Medicare Policy with the Company.
>
> Pre-existing condition/disease definition: Any condition, ailment or injury or related condition(s) for which insured person had signs or symptoms and/or were diagnosed, and/or received medical advice/treatment, within 48 months prior to his/her Super Top Up Medicare policy with the Company.
>
> xxxxxxx
>
> 4.6 Convalescence, general debility, run-down, condition or rest cure, Congenital external disease or defects or anomalies, Sterility, Venereal disease, intentional self injury and use of intoxicant drugs/alcohol."

It is relevant to note that there is no evidence on record to indicate that the emergent medical condition for which the claim was raised was caused by or related to any pre-existing disease, therefore the question of exclusion

clause coming to the fore does not arise. The question of the condition of 48 months of continuous coverage in respect to a policy of one year (12 months), is thus not being commented upon.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned award dated 21.06.2019, passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana

No other argument has been addressed.

This petition is accordingly dismissed with no order as to cost.

(**LISA GILL**)
JUDGE

16.01.2020
s.khan

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No