IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 107 of 2020
Date of Decision: January 07, 2020

Religare Health Insurance Company Ltd.

..... Appellants(s)

Versus

The Chairman, Permanent Lok Adalat and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. G.S. Bawa, Advocate
for the petitioner.

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LISA GILL, J.

This petition has been filed by the Religare Health Insurance Company Ltd., challenging order dated 14.08.2019 (Annexure P-7), passed by Public Utility Services, Kapurthala vide which an award of Rs.39,257/- as well as damages of Rs.10,000/- have been awarded to respondent no.2.

Respondent no.2 filed an application under Section 22-C of the Legal Services Authorities Act, 1987, claiming to have purchased a health insurance policy bearing No.10742106 from the petitioner-insurance company for the period 02.08.2016 to 01.08.2017. A premium of Rs.19,323/- was duly paid. The policy was renewed from 02.08.2017 to 01.08.2018 and another sum of Rs.19,828/- was paid as premium. It is further stated that the applicant-respondent no.2 did not suffer any ailment in the first year of the policy and no claim was accordingly raised. However, in the month of October 2017,

applicant-respondent no.2 experienced a problem and he was diagnosed to be suffering from phimosis. He was advised to undergo a surgical procedure of circumcision. He was admitted in the hospital on 29.10.2017. Intimation was duly given to the insurance company and the applicant-respondent was stated to be assured of all the expenses of the hospital and treatment being borne by the insurance company. The surgery was conducted on 30.10.2017 and the applicant-respondent was discharged on 31.10.2017. Respondent no.2 lodged his claim. The Executive of the company who visited the applicant assured that the claim process would be completed and the necessary amount shall be released to the applicant. However, an e-mail dated 27.12.2017 was received by the applicant wherein his claim had been repudiated. Legal notice dated 20.01.2018 was served upon the petitioner-company seeking release of the amount of Rs.28,212/- on account of medical expenses for the treatment along with interest @ 10% per annum and other expenses towards post-operative treatment and damages for harassment and litigation expenses.

The petitioner contested the claim while raising a specific defence that the applicant-respondent no.2 was not covered under the terms and conditions of the policy. A specific stand was taken that the policy was issued on 02.08.2016 and the applicant was admitted from 29.10.2017 to 31.10.2017 for surgery of genito urinary system. Treatment of pre-existing disease and its complications falls within the two year waiting clause stipulated under the exclusion Clause 4.1(b)(i)(vii) and 401(b)(i)(c), therefore, the claim was rightly rejected.

The application under Section 22-C of the Act filed by the applicant-respondent no.2 was allowed by the learned Permanent Lok Adalat

while observing that such a stipulation of a waiting period of 24 months, especially when the term of the mediclaim itself is one year, is illogical and such a clause cannot bind the purchaser of the policy. Aggrieved therefrom this petition has been filed.

Learned counsel for the petitioner refers to the exclusion clause of the policy i.e. 4.1 and submits that respondent no.2 suffered the problem because of a pre-existing disease i.e. diabetes, therefore, in any case, the petitioner is not liable to indemnify respondent no.2. It is, thus, prayed that the present writ petition be allowed and order dated 14.08.2019, passed by Public Utility Services, Kapurthala 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.

There is no dispute regarding the mediclaim/policy being purchased by respondent no.2 for the period 02.08.2016 to 01.08.2017 and further renewed from 02.08.2017 to 01.08.2018. There is further no dispute regarding the due deposit of the premium as demanded by the petitioner. Learned counsel for the petitioner is unable to deny that the insured-respondent no.2 had duly disclosed the malady of diabetes being suffered by him. There is neither any pleading nor any argument to the effect that there is any concealment by respondent no.2 in this respect. I do not find any merit in the argument raised by learned counsel for the petitioner to the effect that the incidence of genitourinary infection suffered by respondent no.2 and consequent Phimosis was caused directly and solely by the factum of respondent no.2 suffering from diabetes. Reference by learned counsel for the

petitioner to a report (Annexure P-5) by Dr. C.H. Asrani, Consultant Family Physician and Insurance Claims Consultant, Mumbai, is of no avail. Learned counsel for the petitioner has vehemently argued that as per the said report, patients with diabetes are at a higher risk for getting infections, phimosis and it is clearly opined by Dr. C.H. Asrani that surgery of respondent no.2 was carried out due to an acute clinical episode which is merely a complication of the medical condition of diabetes. There is indeed no evidence on record to indicate that the surgery was conducted for a problem which was caused solely due to the factum of respondent no.2 suffering from diabetes. Indeed such an argument apart from being far fetched is not substantiated by anything on record. In case such an argument is accepted, it will inevitably lead to a situation where the claim of a person suffering from diabetes, hypertension etc. can be rejected at the threshold itself as the probability and propensity of such a person, developing certain diseases increases or is more than a person not suffering such a medical condition. Clause 4 of the terms and conditions of the policy deals with exclusion. Relevant part of Clause 4.1 reads as under:-

4.1 Waiting Period:

(a) 30 Day waiting period

(i) Claim for any medical expenses for treatment of any illness during the first 30 days from the policy period start date shall not be admissible, except those medical expenses incurred directly as a result of an injury taking place within the Policy Period.

(ii) This exclusion shall not apply for subsequent policy years provided that there is no break in policy for that insured person and that the policy has been renewed with the company for that insured person within the grace period and for the same or lower sum insured.

(b) Specific waiting periodic

(i) Any claim for or arising out of any of the following illness or surgical procedures shall not be admissible during the first 24 (twenty four) consecutive months of coverage of the insured person by the company from the first policy period start date.

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VII. Surgery of Genito urinary system unless necessitated by malignancy.

(ii)If an insured person is suffering from any of the above illness, conditions or pre-existing disease at the time of commencement of first policy with the company, any claim in respect of that illness, condition or pre-existing disease shall not be covered until the completion of 24 months of continuous insurance coverage with the company from the first policy period start dated.

(c). Pre-existing disease claims will not be admissible for any medical expenses incurred for hospitalisation in respect of diagnosis/treatment of any pre-existing disease until 24 months of continuous coverage has elapsed, since the inception of the first policy with the company.

It bears reiteration that there is neither any assertion or evidence on record that respondent no.2 is guilty of any concealment as far as his diabetic condition is concerned and neither is he asserted to be suffering from phimosis before the purchase of the policy/mediclaim. In such a situation, learned Permanent Lok Adalat has correctly allowed the application under Section 22-C while observing as under:-

"We have carefully considered the submission of the parties as mentioned above the factum of purchasing the insurance policy and premium paid within time is not denied. The only question to be decided as to whether the insured can be compelled to wait for the period of 24

months from the starting of the policy to lodge any claim. After going through the nature of the policy this clause does not appear to be justified in any manner for the reason that duration of the sold policy itself if for one year the person purchases. In case that the policy is for the minimum period for 3 years or more than such the condition that any claim will not be entertained before completion of the period of 24 month could be justified. If in a medical claim policy for one year it is stipulated that any claim which is lodged before 24 months of the policy shall not be entertained then, the very purpose of purchasing the policy for one year shall become redundant. Since the company itself is issuing policies for the tenure of 1 year then the company cannot claim that the company shall not pay any claim before the period of 2 years. There is no explanation as to how this clause justifies the issuance of policy for one year."

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 14.08.2019, passed by Public Utility Services, Kapurthala.

No other argument has been addressed.

This petition is accordingly dismissed.

(LISA GILL)
JUDGE

January 07, 2020
'Sunil'

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