IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

FMA 1183 of 2021
With
IA NO: CAN 1 OF 2021

(Through Video Conference)

Reserved on : 23.02.2022
Pronounced on: 23.03.2022

Ratan Chakraborty

...Appellant

-Vs-

The Life Insurance Corporation of India & Ors.

...Respondents

Present:-

Mr. Piyush Kanti Roy,
Mr. Kumarjyoti Tewari,
Mr. Prantick Ghosh,
Mr. Tarunjyoti Tewari,
Mr. Siddhartha Sarkar,
Mr. Aniruddha Tewari, Advocates

... for the Appellant

Mr. D.K. Kundu,
Mr. A. Basu, Advocates

... for the Respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA, CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ, JUDGE

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the learned Single judge dated 13.07.2021passed in W.P.A. No. 6476 of 2020 (Ratan Chakraborty -versus- LIC & Ors.) has been questioned by the appellant.

2. The petitioner/appellant herein was aggrieved by an order of fixing the premium to be paid to validate an insurance policy. The Learned counsel for the appellant, questioning the order of learned Single Judge under challenge has submitted that the first policy was obtained on 2.8.2008, thereafter the second policy was obtained on 28.11.2011 and subsequently on 25.2.2013 the first policy was surrendered. He submits that the second policy was suspended on 4.8.2014 on the ground of suppression of certain information which according to the appellant is impermissible in view of Section 45 of the Insurance Act, as the Act provides for limitation of two years. In furtherance of the same, he has relied on the judgement of the Supreme Court in Canara Bank vs United India Insurance Comppany Limited & Ors. (2020) 3 SCC 455 Paragraph 44, where it was held that "If the Insurance Company while accepting the proposal form did not ask the insured to clarify any ambiguities then the Insurance Company after accepting the premium cannot now urge that there was a wrong declaration made by the insured."

3. The petitioner earlier filed a writ petition being WP No. 1252 (W) of 2016, which was disposed of. The Insurance Company was directed to dispose of the representation made by the petitioner. Such representation was disposed of on March 9, 2016. The petitioner being aggrieved filed a writ petition WP No. 80 (W) of 2016, which was dismissed. An appeal was preferred in which the Hon'ble Division Bench in FMA 532 of 2020 directed the petitioner to undergo a medical test which the petitioner did. This medical test was held on March 6, 2020, pursuant to which the impugned order fixing the quantum of premium, was passed.

4. The learned counsel for the petitioner drew the attention of the court to Section 45 of the Insurance Act while arguing that the quantum fixed by the impugned order is erroneous and that the petitioner was not liable to pay such amount of premium in order to validate the insurance policy. The petitioner was liable to pay the premium of Rs 4,75,000 in terms of the insurance policy and the impugned order revised such premium at Rs. 5,06 709. There was a dispute between the insured and the insurance

company with regard to the operation of the policy over a given period of time. The insured was called upon to undergo a medical test when this dispute stood resolved by the appeal Court. A reassessment of the quantum of premium to be paid by the insured was also required as per the appeal court.

5. As submitted by the appellant, the first issue here is whether -during the period second policy remain suspended i.e., from 4.8.2014 until 2020 is the appellant liable to pay the normal premium? Secondly, whether he is liable to pay enhanced premium and higher rate of interest because during these seven years there was no insurance coverage. In support of his submission, he has relied on the judgement of the Supreme Court in the matter of National Insurance Company Limited vs. Jikubhai Nathuji Dabhi (Smt.) & Ors (1997) 1 SCC 66 and contended that the interest is payable at the rate of 9 percent. Thirdly, whether the appellant is supposed to pay the enhanced premium only with effect from date of revival of the policy prospectively?

6. Having heard the learned counsel for the parties and after perusal of the records and the order passed by the learned Single Judge, this Court is of the view that the learned Single Judge is correct in stating that a writ court is not an appellate court and that the writ court need not re-apprise the evidence and substitute its finding with that arrived at by the authority.

7. However, the learned Single Judge was not justified in stating that there is no material on record to substantiate that the calculation made by the insurance company fixing the enhanced premium. In order to answer the issues raised by the appellant, it is held that, the appellant is liable to pay the normal premium as the appellant fulfilled the requirements by undergoing necessary medical tests while determining the exact premium by the respondent and had satisfied the same. Moreover, an interest of 9 % was correctly imposed on the appellant by the insurance company. But, the appellant is not liable to pay any extra premium as it is placed on record, that from the commencement of policy till recent date no claim arose and the policy was suspended . Hence, class I extra premium cannot be charged. The appellant is liable to pay the enhanced premium with effect from date of revival of the policy prospectively since, the appellant was not negligent in paying the premium on time, rather he was prevented from paying the premium by the respondents during the suspension period.

8. For the foregoing reasons, the appeal is partly allowed. All pending application are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

<u>Kolkata</u>

23.03.2022
PA(BS)