IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22608 of 2020
(Through hybrid mode)

Uttam Kumar Giri	....	***Petitioner***

Mr. Arjun Charan Behera, Advocate

-versus-

Insurance Regulatory and Development Authority of India and others	....	***Opposite Parties***

Mr. Ananda Prakash Das, Advocate for O.P.1

Mr. Atam Ali Khan, Advocate for O.P.2

CORAM: JUSTICE ARINDAM SINHA

ORDER
05.09.2022

Order No.

13. **1.** The writ petition was moved before this Bench on 25th November, 2021. On behalf of petitioner there was submission that impugned in the writ petition is order dated 29th January, 2020 made by Insurance Ombudsman. By said order, the authority said that petitioner did not declare recent recurrence, where his son, a cardiac patient, was advised for Rastelli repair procedure. On behalf of opposite party no.2 (the insurance company) it was pointed out from case sheet dated 2nd May, 2019, issued by N. H. Rabindranath Tagore International Institute of Cardiac Sciences that petitioner's son had last check-up at N. H. Bangalore on 2nd January, 2019, before issuance of the policy. Systemic examination said plan Rastelli repair. This procedure was advised by the Bangalore Institute but not disclosed in the proposal. On query from Court it was submitted that claim made was on yearly renewed policy, held from year 2014.

2. The insurance company demonstrated from relevant page of the proposal form, there was suppression of this advice received. The question, to which answer given was ‘no.’, is reproduced below.

> *“Has any of the proposed member been recommended to take investigations/medication/surgery other than for childbirth/minor injuries.”*

3. The proposal was submitted on 29th January, 2019 and risk under the policy renewed from 30th January, 2019.

4. On subsequent date of hearing it was submitted on behalf of petitioner that the claim made on hospitalization suffered by petitioner’s son, the insured, was not for effecting Rastelli repair procedure by operation. Hence, hospitalization expenses claimed under the policy was a good claim. The repudiation was wrongful, it was also pointed out that the insurance company admitted knowledge regarding condition of the insured, as would appear from mail dated 5th March, 2019, reproduced below.

> “*Customer has disclosed history of ASD/VSD surgery in 2014, Declaration was noted and considered. No change in policy T&C’s.”*

5. Today, as before, Mr. Behera, learned advocate appears on behalf of petitioner while Mr. Khan, learned advocate appears on behalf of the insurance company.

6. Mr. Khan draws attention to additional affidavit dated 26th August, 2022, filed by his client. He submits, the affidavit was filed pursuant to his submission, recorded in order dated 5th August, 2022 that the operation undergone by petitioner's son included Rastelli repair. Paragraph 2 from said order dated 5th August, 2022, reproduced below.

> *"2. Adjournment granted is peremptory to demonstrate that operation described in operation note, at page-6 of said affidavit, says that the procedure undertaken included Rastelli repair. The insurance company is granted this final opportunity to obtain certificate from heart surgeon, certifying that particulars of operation mentioned in the document includes Rastelli repair. The certificate issued be tendered by additional affidavit, to be accepted on adjourned date upon advance copy served."*

7. The controversy between petitioner and the insurance company has narrowed down to whether the operation undergone by petitioner's son on 15th May, 2019, described in operation note at page 6 of petitioner's additional affidavit dated 30th November, 2021, was or was not Rastelli repair procedure. Final opportunity granted to the insurance company on 5th August, 2022 was for it to obtain certificate from Heart Surgeon, certifying that particulars of operation mentioned in the document includes Rastelli repair. The insurance company has disclosed expert opinion on the procedure undergone by petitioner's son saying, the operation undergone was to address the same pathology as would be addressed by Rastelli repair procedure. The opinion paragraph of the expert is reproduced below.

> *"I opine that both Rastelli Repir Procedure and the procedure performed on the child are for the correction of Congenital cyanotic heart disease, Tetralogy of Fallot with pulmonary atresia (membranous). Which procedure is ideal for the patient is usually decided on the operating table. There is minor variation in the two procedures, but they address the same pathology. What was advised on 2.1.2019 was only corrected on 15.5.2019."*

8. Court has ascertained that the annual insurance policy was taken by petitioner on his son suffering congenital heart disease. It was taken commencing year, 2014. On 2nd January, 2019 petitioner received advice regarding his son for the latter to undergo Rastelli repair procedure. It appears, inspite of the advice, the boy was operated upon on a different procedure. Court is not prepared to accept that petitioner, to build upon a deliberate suppression of this advice, went to obtain another, though similar procedure on his son, so that expenses incurred would be covered under the policy. More so, because of specific direction upon the insurance company on final opportunity granted, to produce certificate. Instead, an opinion has been obtained.

9. Prayer in the petition is for issuance of direction for providing compensation claimed amount of Rs.3,00,000/- to petitioner as insured by the insurance company, on the held insurance policy by, inter alia, setting aside the order dated 29th January, 2020 passed by Insurance Ombudsman.

On query from Court Mr. Behera submits, hospital expenses claimed was Rs.2,83,438/-.

10. Opposite party no.2 is directed to pay Rs.2,83,438/- to petitioner within two weeks from date, failing which the amount will carry interest at 6% per annum simple, commencing 7th September, 2020 (date of presentation of the writ petition) till date of payment. Said opposite party will also pay cost assessed at Rs.10,000/-.

11. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant