IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224

CWP- 9433-2020
Date of decision: 10.10.2022

VIJAY LAXMI

.....Petitioner

VERSUS

LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Sunil Kumar Goswami, Advocate
for the petitioner.

Mr. Akshay Jain, Advocate
for the respondents.

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VINOD S. BHARDWAJ. J.(Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India for the issuance of writ in the nature of Certiorari for quashing the impugned award dated 05.05.2017 (Annexure P-4) as well as to the order dated 27.02.2020 (Annexure P-9) whereby the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind has not awarded the benefit of triple cover benefits clause policy as per applicable clauses of the policy despite death of the life insured despite holding that the claim of petitioner deserves to be accepted. The application for review was dismissed on 27.02.2020 on technical grounds of maintainability despite admitting error.

2. Briefly summarized the controversy involved in the present petition is that late Dinesh Kumar Sharma-deceased husband of the petitioner had obtained a Life Insurance Policy Number-177978442 on 28.12.2012 for a sum of Rs.5 lakhs. The term of payment of the premium was half yearly. At the time of issuance of the policy concerned, the life insured was hale and hearty. On account of an unfortunate incident on 24.06.2014, Dinesh Kumar Sharma-deceased husband of the petitioner died a natural death at his house in village Badanpur, Tehsil Narwana, District Jind. The applicant-petitioner thereafter lodged a claim alongwith the original documents with the respondent-Insurance Company, however, the admissible benefits under the policy were not released. Resultantly application under Section 22 (C) of the Legal Services Authority Act, 1987 was instituted before Permanent Lok Adalat (Public Utility Services), Bhiwani-Camp Court at Jind.

3. In its reply filed before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind, the respondent-Life Insurance Company has taken a stand that at the time of submission of the proposal form on 26.12.2012 the deceased had given an answer to the queries of Column No.11 (a to k) in 'NO' and had also disclosed that he did not suffer from any ailment requiring treatment for more than a week in the last 05 years and that he also did not suffer from any disease and that his usual state of health was good. It was submitted that as the death of life insured occurred within two years from the date of commencement of policy, the same was put to investigation wherein it transpired that life insured was an old patient of renal disease and used to

take regular treatment from various hospitals viz. PGI, Chandigarh; Jindal Hospital, Hisar as well as Civil Hospital, Jind etc. It was further stated that the deceased applicant had deliberately made a misstatement qua the material information required and as such, the Life Insurance Company is not obligated to release the benefits as claimed and that the claim was rightly rescinded.

4. Upon consideration of the rival submissions made by the respective parties, the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind vide award dated 05.05.2017 allowed the said claim by recording as under:

> *"14. In Ex. R1 repudiation order it is being claimed that life assured had suffered from Kidney and Liver disease whereas in the written statement in preliminary objection No.4 it is being claimed that life assured was old patient of Renal disease. Investigation report Ex. R6 to R8 are there on record but no record of the hospital where the deceased was treated could be placed on record and in Ex. R6 it is simply disclosed that some person in the village disclosed that life assured was not of good health. Again in Ex. R6 it is mentioned against question No.12 that as per enquiry made in the village life assured was normally getting treatment occasionally from the local doctor. This enquiry that deceased used to get treatment for some occasional sickness cannot be termed to be suppression of material circumstances.*
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> *However, in the last of Ex. R6 it is mentioned that deceased was getting treatment from Jindal hospital Hisar as well as PGI. Chandigarh for serious illness relating to Kidney but no one gave anything in writing.Such conclusion is again without*

any basis as neither the source of information regarding Kidney ailment is disclosed nor any hospital record is there. However, in Ex. R7 it is mentioned that life assured was suffering from liver disease and was taking treatment from PGI Chandigarh but again no medical record could be collected and as such on the basis of Investigation report Ex R7 it cannot be concluded that life assured had suppressed the material facts and he was suffering from serious ailment. The another report Ex. R8 is there but again against question No.12 it is mentioned that life assured was not getting treatment from specific doctor or medical attendant and in the last it is mentioned in the report that no record is available with family of the life assured.

Hence, in the investigation report Ex. R6 to R8, there is no reference of specific doctor who attended the patient and no record of the hospital i.e. Jindal Hospital, PGI Chandigarh or Civil Hospital, Jind could be collected and no hospital record is placed on record and as such on the basis of Ex. P6 to P8 it cannot be concluded that the life assured had suppressed the material facts while getting the insurance policy and he was suffering from serious ailment.

15. The respondents have also relied upon statement Ex. R9 i.e statement of Bhoop Singh but claim of the respondent regarding repudiation is the concealment of facts and suppression of material facts and as such medical treatment record was to be collected but no such record is there and as such, in absence of the hospitalisation/treatment record the conclusion in the investigation reports Ex. P6 to P8 is based on hearsay an as per settled preposition of law hearsay evidence is no evidence in the eye of law.

> *Undoubtedly the deceased life assured died within two years, but the enquiry reports Ex. P6 to P8 are vague attempts to frustrate the accrud benefits to the petitioner and as such, this Court is bound to conclude the repudiation vide Ex. R1 is based on whimsical grounds.*
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> *16. A general tendency is there among the insurance companies to repudiate the claim on one or the another reason. No enquiry is conducted when the declaration is furnished at the time of getting policy, whereas the contractual parties are supposed to have verified the Information disclosed. As per policy of the insurance companies facts disclosed at the time of getting the policy are not verified and the intention of the companies at that time is to collect premium. When an investigation is necessitated after submission of the death claim the documented evidence is to be collected but in the present case no such hospital record is there to show that deceased was suffering from kidney disease or other life threatening illness. The investigation report Ex. P6 to P8 and statement Ex.P9 cannot justify the conclusion that there had been intentional concealment of material facts and as such, the claim vide Ex.P1 was repudiated on whimsical grounds.*

5. However, while accepting the claim vide its award dated 05.05.2017, the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind directed payment of only the sum assured alongwith litigation expenses and failed to award all admissible benefits under the policy.

6. Since the claim application had been accepted and a complete award had to be pronounced instead of restricting it to the sum

assured, an application for reviewing the award was moved by the applicant-petitioner before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind on 14.07.2017. The said application was however dismissed by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind vide order dated 27.02.2020 for the reason that there was no jurisdiction to review a decision already pronounced by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind. It was, however, specifically noted by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind that the award dated 05.05.2017 i.e. payment of a sum of Rs.5 lakhs alongwith interest @ 12% per annum and litigation expenses @ Rs.5500/- were not awarded as per the policy plan. The relevant extract of the order reads thus: -

> *"Perusal of the copy of the award dated 05.05.2017 passed by the Permanent Lok Adalat Bhiwani, Camp court at Jind reveals that the respondents is directed to pay sum of Rs. 5,00,000/- along with an interest at the rate of 12 percent per annum and also directed to pay Rs. 5,500/- as litigation expenses. Admittedly the award was not passed as per the policy plan. Now, the question which arises for consideration is whether the present application for reviewing the award dated 05.05.2017 passed by the Permanent Lok Adalat, Camp Court at Jind is maintainable?"*

Aggrieved of the same, the present petition has been filed.

7. Learned counsel appearing on behalf of the petitioner has argued that the policy document of the petitioner contemplates a triple risk cover clause under the Insurance Policy and the heirs of the

deceased-policy holder were entitled to three times the sum assured under the said policy. Accordingly, the claim had to be awarded in terms of the applicable policy document. Once the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind came to the conclusion that there was no material available on record to suggest that there was any material concealment on the part of the deceased husband of the petitioner at the stage of obtaining the policy or submission of proposal form, there was no occasion that the complete relief in terms of the policy ought not to have been awarded. He further contends that the aforesaid mistake is duly acknowledged by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind in its order dated 27.02.2020, however, the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind failed to correct the aforesaid error despite admitting the claim, merely on account of a technical requirement and not for want of merit in the claim of the petitioner-applicant. He refers to the admissible benefits-bonus under the Plan term 133/21/21 and contends that all admissible benefits had to be disbursed to the petitioner, the relevant extract of the benefits under the said plan are extracted as under:

> ***"Benefits of LIC Jeevan Mitra (Triple Cover Endowment Plan).***
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> ***On Maturity:*** *Provided that the policy holder has paid all the premiums, he/she will receive the basic sum assured with vested bonus.*
>
> ***On Death:*** *Provided that the policy is in full force as on the date of the death, the company will be paying three times the sum assured with vested bonus.*
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> ***Accident Benefit:*** *Upto four times the sum assured will be*

offered in the case of accidents.

Surrender value: *Even though buying a life insurance policy is a long term commitment, it is possible to get surrender values under the plan in case he/she would like to terminate the contract earlier."*

8. Per contra, learned counsel appearing on behalf of the respondent-Life Insurance Corporation has vehemently argued that the contract of the Insurance is of utmost good faith and that there was concealment of 'material information' by the proposer. Consequently, the petitioner is not entitled to the claim being allowed. He makes a reference to the personal history column in the proposal form wherein the insured had responded in the negative to all the questions pertaining to his health and had mentioned that his usual state of health is good. It is alleged that such information was fully known to the insured to be incorrect and false. He further contends that the petitioners cannot be permitted to draw advantage of a fraud practiced upon the Insurance Company and to claim the benefits that are not admissible to them. He further contends that the triple cover benefits had not been claimed at the time of submission of application, hence, the said issue cannot be re-agitated and the petitioner would be prohibited from claiming the said amount under Order 2 Rule II of the Civil Procedure Code (hereinafter referred to as "CPC").

9. It is however not disputed by the learned counsel appearing on behalf of the respondent Life Insurance Corporation that they have not raised a challenge to the original award dated 05.05.2017 as well as to the subsequent order dated 27.02.2020.

10. I have heard learned counsel appearing on behalf of the

respective parties and have gone through the documents appended alongwith the instant petition with their able assistance.

11. While adverting to the arguments under Order 2 Rule II CPC and the deemed waiver of the claim, it is essential to refer to the prayer made by the petitioner at the stage of submission of application before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind. The same is reproduced hereinafter below:

> "*In view of the above, the applicant prays that the respondents may kindly be summoned and the parties be persuaded to settle the dispute amicably and it is further prayed that in the event of parties' failure to settle the dispute amicably, an award directing the respondents to pay sum assured Rs.5,00.000/- along with 18% p.a. interest from the date death of the husband of the petitioner/ applicant till final payment of entire amount plus policy benefit attached with the policy and besides this, the respondents be also directed to pay suitable compensation to the applicant/ petitioner.*
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> *Any other relief which this Hon'ble Adalat deems fit in the light of above facts and circumstances be also granted to the applicant/petitioner, in the interest of justice."*

12. A perusal of the same clearly shows that the petitioner-applicant had duly claimed all policy benefits attached with the policy alongwith interest and had not given up any claim. Furthermore, perusal of the award also does not show that the petitioner had given up such claim during the proceedings before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind. The fact that the petitioner immediately moved an application for seeking review of the

award since the benefits admissible had not been awarded on 05.05.2017, further reinforces the conclusion that the claim was never waived or given up. The fact that the Permanent Lok Adalat admitted its lapse further supports the inference against the respondent-Life Insurance Corporation that the petitioner never gave up any of its rights.

13. While referring to the argument that there was material concealment of fact by the life insured, the submissions advanced by the respondent-Life Insurance Corporation are not supported by any evidence available on record. The entire case of respondent is based upon a concealment of the material information that the deceased suffered from renal disease, however, no evidence has been adduced to show that the deceased suffered from any kidney or liver disease. Even though the investigation report as well as the repudiation order had been placed on record before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind, however, no record of the hospital where the deceased was allegedly treated was produced. The order of repudiation Ex.R-1 and the investigation report (Ex.R6) were based on hearsay. An occasional sickness/illness cannot be equated to a deceased. In the event, the respondent Life Insurance Corporation wants to resile from its obligations under the contract of Insurance, the burden would lie on the Life Insurance Corporation to show that material information has been suppressed. There can be no presumption of the fact required to be established. The insurance policies are intended to provide financial support to the family of the deceased and the accured benefits under a policy cannot be denied on the basis of unsubstantiated investigation. The negative burden cannot be cast upon the petitioner to

establish that her deceased husband was not suffering from any disease. Since the reliance on disease is placed by the Insurance company, such responsibility had to be discharged by the respondent-Life Insurance Corporation itself. The aforesaid facts were duly noticed by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind while allowing the claim application.

14. The respondent-Life Insurance Corporation has also not placed on record any document before this Court to establish that there was suppression of material fact by the policy holder or that there was mis-appreciation of the evidence brought before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind.

15. There is thus no valid basis for this Court to conclude that the deceased was suffering from renal and liver disease and that such information was suppressed at the time of obtaining the policy document. There is no material on the basis whereof, this Court may hold that the award passed by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind was not sustainable or based upon misreading or misinterpretation of the evidence available before it.

15. Having held so, this Court has no option but to conclude that once the death in question is undisputedly a natural death and there is nothing to establish suppression of material information, the benefits admissible in terms of the policy obtained by the deceased cannot be denied to be released in favour of the heirs. There was no discussion or reason given by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind for not granting the benefits in its award in terms of the policy issued in favour of the deceased to the benefits of the

petitioner. Accordingly, I allow the present petition and modify the award passed by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind and direct that all the admissible benefits under the policy be disbursed by the respondent-Life Insurance Corporation in favour of the petitioners alongwith interest @ 12% per annum from the date of death till its realization in addition to the principal amount already awarded. Needless to mention that the benefits already disbursed shall be duly adjusted.

The present petition is accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 10, 2022
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No