

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-16579-2017 (O&M)
Date of Decision: 22.08.2022**

THE NEW INDIA ASSURANCE CO.

... Petitioner

Versus

ATUL KUMAR AGGARWAL AND ANOTHER

... Respondents

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

Present: Mr. Vinod Chaudhari, Advocate
for the petitioner.

Mr. Munish Jolly, Advocate
for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been preferred under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari to quash the order dated 16.01.2017 (Annexure P-1) passed by respondent No.1-Permanent Lok Adalat (Public Utility Services), Patiala vide which it allowed the application filed by the respondent No.1 and had directed the petitioner-insurance company to pay a sum of Rs.1,79,949.52/-.

Briefly summarized facts of the case are that the respondent No.1-applicant got insured himself and his family consisting of his wife namely Shivani Aggarwal, son namely Agrim Kumar Aggarwal and daughter Aradhaya Aggarwal under the medi-claim Policy of the petitioner-insurance company vide Policy No.36140034120100000289 on 28.03.2007, which was later on renewed every year from time to time. The said Policy was valid as on the date when the claim in question was submitted. The respondent No.1-

applicant and his wife were insured for a sum of Rs.1,50,000/- each, while his children were insured for a sum of Rs.1,00,000/- each.

It was claimed that at the time of inspection of the Policy, the agents of the petitioner-insurance company had assured the respondent No.1-applicant that all types of pre and post hospitalization expenses, medical expense, surgical treatment etc. at any hospital in India shall be paid by the petitioner-insurance company.

That Agrim Aggarwal, son of the respondent No.1-applicant had been under treatment of Mamta Children Clinic, Khanna since 2012 and the intimation regarding the same was given to the petitioner-insurance company from time to time. In the year 2013, the examination was also conducted by doctors of Chaitanya Hospital, Chandigarh on account of fever suffered by the son of the respondent No.1-applicant in the month of September 2013 and again in the month of December 2013. He again suffered fever in January, 2014 for four days, when opinion of the Expert Child Specialist was taken, but nothing abnormal was observed therein and only routine treatment was given and tests were prescribed. On 04.03.2014, the son of respondent No.1-applicant was again examined by the doctors of PGI, Chandigarh but no abnormality was diagnosed. The medi-claim Policy was renewed by the respondent No.1-applicant for a sum of Rs.8,00,000/- for the whole family. In the month of April 2014, the doctors of PGI Chandigarh sent the samples of the son of respondent No.1-applicant to clinically diagnose the cause of the problem being faced by the son of respondent No.1-applicant. On 15.04.2014, they diagnosed it to be CML-CP (Chronic Myeloid Leukemia Chronic Phase) and started treatment by oral chemotherapy as this is the most safe and practised way of treatment for children. In the said treatment, indoor hospitalisation is not required and chemo tablets are given orally. Since the

son of the respondent No.1-applicant was diagnosed with cancer by the doctors of PGI Chandigarh, he was given treatment by PGI, Chandigarh at regular follow-ups. Huge amount of money was spent by the respondent No.1-applicant towards the treatment of his son.

The respondent No.1-applicant gave intimation about the admission and prolonged treatment of his son with PGI and the regular medical follow up including oral chemotherapy being administered to him and also raised the claim under the medi-claim Policy. The petitioner-insurance company, however, did not release the amount on one or other false pretexts. Accordingly, a legal notice dated 26.03.2015 was got served by the respondent No.1-applicant upon the petitioner-insurance company seeking release of amount already spent by him on the treatment of his son. Failing response to the same, an application under Section 22-C of the Legal Services Authorities Act, 1987 was moved by the respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Service), Patiala in the month of July 2015 and was registered vide application No.2441 of 2015.

Upon notice, the petitioner-insurance company took a plea that the respondent No.1-applicant was not entitled to the claim and the same stands repudiated. A plea was taken that cancer is a disease where a treatment cannot be given without indoor admission of the patient. It was further contended that oral chemo tablets were not covered under the terms and conditions of the Policy and clause 2.4 of the Insurance Brochure did not cover the reimbursement of the expenses incurred as an OPD patient. As such, there was no error in the decision taken by the petitioner authorities in repudiating the claim of the respondent No.1-applicant.

The conciliation proceedings in terms of the Legal Services Authorities Act, 1987 failed to arrive at an amicable resolution to the dispute. The parties were thus called upon to lead their respective evidences.

The respondent No.1-applicant produced his affidavit as Ex.AW1/A, copy of PGI Doctor Certificate dated 12.02.2015 Ex.A1, copy of detail of expenses Ex.A2, copies of Insurance Policy Ex.A3 to Ex.A7, copies of Medical Bills Ex.A8 to Ex.A80 and copy of Legal Notice Ex.A81.

Whereas the petitioner-insurance company (respondent therein) produced affidavit of Shri Ramesh Pandita, Sr. Divisional Manager as Ex.RW1/A, copy of reply to legal notice Ex.R1, copy of letter dated 12.12.2014 Ex.R2, copy of Insurance Policy with terms and conditions Ex.R3 copy of letter dated 21.05.2014 Ex.R4 and copy of Claim Forum Ex.R5.

Upon consideration of the evidence led by the respective parties, the Permanent Lok Adalat came to a conclusion that clause 2.4 of the Policy/brochure does not debar the respondent No.1-applicant from filing reimbursement of the medi-claim in terms of the Policy and thus, directed the release of the payment alongwith interest at the rate of 8% per annum from two months after submission of the claim till payment within one month from the receipt of copy of the Award and that in the event of failure on the part of the petitioner-insurance company to make the payment within the stipulated period, the respondent No.1-applicant was held to be entitled to recover the same alongwith interest at the rate of 14% per annum.

Aggrieved of the same, the petitioner-insurance company preferred the present writ petition.

Learned counsel for the petitioner-insurance company has impugned the aforesaid Award dated 16.01.2017 passed by the Permanent Lok Adalat, Patiala and has submitted that the Insurance Policy pertaining to

the son of the respondent No.1-applicant was for a sum of Rs.1,00,000/-, however, an amount of Rs.1,79,949.52/- has been awarded which is more than the sum assured. He further contends that interest on the aforesaid amount also could not have been awarded by the Permanent Lok Adalat as the same is not covered under the Policy. Reliance was placed upon the judgment of this High Court dated 13.02.2017 passed in the matter of New India Assurance Co. Ltd. Vs. Presiding Officer and another bearing CWP No.2603 of 2017.

Per contra, the submissions advanced by the counsel for the petitioner were responded to by the counsel for the respondent-applicant to contend that it is incorrect on the part of the petitioner to argue that the claim has been awarded for an amount beyond the sum insured. As a matter of fact, the claim in question relates to three different years. However, a common petition was filed. Resultantly, it cannot be suggested or argued that the entire claim relates to one single year. Hence, the claim is within the confines of the sum insured. He has further made a reference to prospectus of the Mediclaim Insurance Policy issued by the Petitioner-Insurance Company. The relevant extract of the same reads thus:

“2.3. Expenses on Hospitalization for minimum period of 24 hours are admissible. However, this time limit is not applied to specific treatment i.e. Dialysis, Chemotherapy, Radio-therapy, Eye-Surgery, Dental Surgery, Lithotripsy (Kidney stone removal), Tonsillectomy, D & C taken in the Hospitalization/ Nursing Home and the insured is discharged on the same day the treatment will be considered to be taken under hospitalization benefits.”

It is contended that as per the aforesaid clause, a patient who is being administered oral chemotherapy without hospitalization, even as an

OPD patient is covered under the medi-claim Insurance Policy. The exception of the 24 hours' hospitalization is prescribed for such treatment. Consequently, the interpretation by the petitioner-insurance company is contrary to the prospectus issued by the insurance company for the medi-claim Insurance Policy. He further refers to reasons given by the Permanent Lok Adalat while passing the Award. The relevant extract of the same is reproduced hereinafter below:

“9. We have considered the rival contentions of the parties and have also gone through the record of the case carefully. Admittedly the applicant had purchased mediclaim Policy from 28.03.2013 to 27.03.2014 covering the risk of Rs. 1,50,000/- for himself, for his wife Shivani Aggarwal, Rs.1,50,000/- for his son Agrim Aggarwal of Rs.1,00,000/- and for his daughter Aradhaya Aggarwal of Rs.1,00,000/-. The respondents have denied that the applicant was assured by the company that all types of pre and post hospitalization expenses, medical expenses, surgical treatment at any hospital in India will be paid by the Insurance Company in case of any pre or post hospitalization of all the family members of the applicant due to any reason. Perusal of the repudiation letter dated 12.12.2014 Ex. R2 would show that the claim of the applicant was repudiated that only necessary and reasonable indoor hospitalization is payable under Policy. The repudiation letter further shows that no hospitalization was done in this case. The repudiation letter further shows that the claim is non payable.

10. Perusal of the certificate Ex. A1 would show that it was given by Dr. Deepak Bansal, Professor Department of Pediatrics PGI, Chandigarh which is as follows:

"This is to certify that Agrim Aggarwal age 10 years CR No. 201401206318 PHC No.3738 S/o Atul Kumar Aggarwal R/o H. No. 3, Sector 21-C, Chander Lok, Mandi Gobindgarh (Punjab) is a known case of Chronic Myeloid Leukemia (Chronic phase). It is a type of blood cancer. It

was diagnosed on 12th April, 2014. He is receiving Tab. Imatinib as treatment, since April, 2014. The treatment is typically on OPD basis. A very long (often life-long) treatment and OPD visits are required. Hospitalization is rarely required, only for complications if any."

So, as per the certificate Ex.A1 given by Dr. Deepak Bansal, no hospitalization was required in the case of Agrim Aggarwal.

- 11. As per the complainant he has spent Rs.1,79,949.52/ on the treatment of his son Agrim Aggarwal. Ex-A2 shows the details of the expenses. The copies of bills Ex.A8 to A80 also confirm the expenditure on medicine etc of Agrim Aggarwal.*
- 12. Even in clause 2.4 of the New India Insurance Company Ltd. covering DOMICILIARY HOSPITALIZATION benefits means "when treatment such as dialysis, Chemotherapy, Radiotherapy etc. is taken in the hospital/nursing home and the insured is discharged on the same day treatment will be considered to be taken under hospitalization benefit section". As per certificate Ex. A1 of Dr. Deepak Bansal, Professor Department PGI, Chandigarh also proves that hospitalization is rarely required only for complications if any. The certificate further proves that no hospitalization was required in the case of Agrim Aggarwal. The applicant has spent huge amount of Rs. 1,79,949.52/- on the treatment of his son Agrim Aggarwal. The applicant is therefore entitled to recover the amount spent on the treatment of Agrim Aggarwal as per terms and conditions of the Insurance Policy.*
- 13. Keeping in view the above discussed circumstances and the principles of equity, fair play, and natural principles of justice we allow the application and pass an award directing the respondents to pay the claim amount of Rs. 1,79,949.52/- to the applicant alongwith interest at the rate of 8% per annum from two months after submission of the claim form till payment within one month from the receipt of the copy of the award. In case the respondents fail to make the payment as stipulated the applicant would be entitled to recover the same with 14%*

interest thereon from two months after the submission of the claim form till payment by the process of law. No order as to costs. Copy of the award be supplied to the parties free of costs as and when they apply for the same.”

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the file with their able assistance.

The submission advanced by the learned counsel appearing on behalf of the respondent-applicant regarding the claim pertaining to three financial years is not disputed by the counsel representing the petitioner-insurance company. Furthermore, the reference to Clause 2.3 of the Insurance Prospectus also dispels the contention of the petitioner that hospitalization is a pre-requisite for disbursement of the claim relating to oral chemotherapy being administered to the son of the respondent No.1-applicant. It is also not disputed that the treatment was administered under the supervision of PGI and has to be treated as taken in hospitalization in terms of Clause 2.3 of the Policy (supra).

Thus, both the submissions regarding merits of the claim and its tenability are devoid of merit. The argument of the petitioner is not supported from the reading of the Policy Brochure and deserves to be rejected. No further argument regarding challenge to the Award on merits and based upon Policy document was raised.

The same leads to the next argument on behalf of the petitioner-insurance company relating to the award of interest. Reliance has been placed by the counsel for the petitioner-insurance company on the judgment dated 13.02.2017 passed by this Court in the matter of **‘New India Assurance Co. Ltd. Vs. Presiding Officer and another’** bearing CWP No.2603 of 2017 to contend that interest is not payable as per the Insurance Policy. Learned

the aforesaid judgment is not applicable as the Hon'ble High Court had not taken into consideration the provisions of Interest Act, 1978. It is submitted that the interest awarded by the Permanent Lok Adalat is not under the Policy, but the same is on account of wrongful delay in releasing the claim amount to the respondent No.1-applicant.

It would thus be essential to examine the provisions of the Interest Act, 1978. Section 3 of the Interest Act, 1978 reads thus:

“Section 3. Power of court to allow interest.—

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

- (a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;*
- (b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings: Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.*

(2) Where, in any such proceedings as are mentioned in sub-section (1),—

- (a) *judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and*
 - (b) *the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.*
- (3) *Nothing in this section,—*
- (a) *shall apply in relation to—*
 - (i) *any debt or damages upon which interest is payable as of right, by virtue of any agreement; or*
 - (ii) *any debt or damages upon which payment of interest is barred, by virtue of an express agreement;*
 - (b) *shall affect—*
 - (i) *the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or*
 - (ii) *the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);*
 - (c) *shall empower the court to award interest upon interest.”*

Debt has been defined under Section 2(c) of the Interest Act, 1978 to meet any liability for an ascertained sum of money, excluding a judgment debt. Sub-Section 3 of Section 3 exempts the provision of the

Section where the agreement contemplates interest as a matter of right or where interest is debarred by virtue of an express agreement. In other cases, the interest is payable.

Learned counsel for the Petitioner-Insurance Company has failed to refer to any clause of the Insurance Policy as admitted by the respondent No.1-applicant showing an express prohibition against award of interest.

The statutory provision empowers award of interest as a restitution measure once a Court comes to a conclusion that an ascertained debt has been wrongly retained by the debtor. Court of law has to balance the equity and needs to suitably indemnify the victim. It would be necessary to refer to some precedents.

The Hon'ble Supreme Court in the matter of **Thazhathe Purayil Sarabi and others Vs. Union of India and another** reported as **(2009) 7 SCC 372** has held as under:

“Interest is basically a compensation payable on account of denial of the right to utilize the money due, during the period in which the same could have been made available to the claimant and which has been, in fact, utilized by person withholding the same.”

The Hon'ble Supreme Court in the matter of **Union of India Vs. Tata Chemicals Ltd.** reported as **(2014) 6 SCC 335** has further observed as under:

“Interest is a kind of compensation for use and retention of money curtailed or retained without right.”

The Hon'ble Supreme Court in the matter of **Manalal Prabhudayal Vs. Oriental Insurance Company Ltd.** reported as **(2009) 17 SCC 296** has also held as under:

“Grant of interest and rate of interest is not to be ordinarily interfered with unless exercise of discretion is ex-facie bad in law.”

The Hon’ble Supreme Court thus has held about accrual of right in favour of the deprived and it is not just a concession. The debtor having retained the amount and drawn benefit thereof, he ought not to capitalize on his wrongful acts. It further holds that grant of interest should not be ordinarily interfered with unless such discretion is bad in law.

The petitioner could not refer to any material on the basis whereof it could be hold that the discretion is bad in law or contrary to law.

Furthermore, the Division Bench Judgment of this High Court, relied on by the petitioner does not deal with the mandate of the Interest Act, 1978 and accrual of right to restitution in favour of the deprived victim

Resultantly, the present petition is dismissed and the Award dated 16.01.2017 passed by Permanent Lok Adalat (Public Utility Services) is affirmed.

22.08.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**