IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9779 of 2016(O&M)

Reserved on 09.08.2022
Date of Decision-17.08.2022

Joginder Singh

... Petitioner

Versus

Apollo Much Health Insurance Company Ltd. and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Nitin Thatai, Advocate
for respondent No.1.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction, especially in the nature of certiorari, quashing the award dated 17.02.2016 passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon, vide which the application filed by the petitioner under Section 22-C of the Legal Services Authority Act, 1987 was dismissed.

[2]. Permanent Lok Adalat dismissed the claim of the petitioner on the premise that the son of the petitioner got the treatment before expiry of the waiting period of two years,

therefore, respondent-Insurance Company was justified in rejecting the claim of the petitioner in view of Section VI(A) (ii) (g) of the Special Terms and Conditions of the Policy.

[3]. Learned counsel for the petitioner submitted that the petitioner got the policy on 31.12.2012. He got renewed his Easy Health Floater Insurance Policy for the period 31.12.2013 to 30.12.2014 covering himself as well as his family members. In May 2014, son of the petitioner Master Nishant was covered under the Policy started complaining acute pain in his left knee joint. There was no improvement despite medically treated in the hospital and thereafter, the petitioner took his son for treatment to Max Hospital, Gurgaon, but there was no improvement. Petitioner ultimately took his son to Medanta Hospital, Gurgaon on 18.06.2014, where he was diagnosed as a case of "Bilateral Leg Varicose Vein". The son of the petitioner was operated by Dr. Rajiv Parakh on 21.06.2014 and the petitioner paid an amount of Rs.1,37,698/- to the hospital towards expenses of treatment of his son. After discharge from the hospital, the petitioner preferred the claim for reimbursement of medical expenses of his son to the tune of Rs.1,69,019/- for which medical bills were also submitted.

[4]. Respondent No.1 rejected the claim of the petitioner on the premise that the hospitalization was less than 24 hours and his case did not fall under the 'day care

procedures' listed in the policy. Ultimately, the petitioner had to file petition under Section 22-C of the Legal Services Authority Act, 1987.

[5]. It is an admitted case of the parties that the son of the petitioner was admitted in Medanta Hospital on 21.06.2014 and he was discharged on the same day as per discharge summary and he was diagnosed as a case of "Bilateral Leg Varicose Vein". Varicosities were seen in both lower limbs and operation was conducted as "Endovenous laser ablation of both lower limbs varicosities with foam sclerotherapy done under GA on 21.06.2014."

[6]. Respondent-Company rejected the claim vide letter dated 05.11.2014 as well as vide letter dated 20.11.2014, thereby repudiating the claim on the ground that the claim was submitted within two years of starting date of policy i.e. 31.12.2012 and secondly the claim was for management of an ailment where the hospitalization was less than 24 hours and the case did not fall under 'day care procedures' listed in the policy. The waiting period of two years was not over as the policy was taken in December 2012 and treatment was taken on 21.06.2014.

[7]. Learned counsel for the petitioner submitted that the date of inception of the policy was 31.12.2012. As per

Section VI of the Policy, waiting period is defined under Section VI A ii), which reads as under:-

> *"ii) A waiting period of 24 months shall apply to the treatment, whether medical or surgical, of the disease/conditions mentioned below. Additionally the said 24 months waiting period shall be applicable to all surgical procedures mentioned under surgeries in the following table, irrespective of the disease/condition for which the surgery is done, except claims payable due to the occurrence of cancer."*

Section VI B (1) of the Policy reads as under:-

> **"B. Reduction in waiting periods**
>
> *1) If the proposed Insured Person is presently covered and has been continuously covered without any lapses under:*
>
> *(a) any health insurance plan with an Indian non life insurer as per guidelines on portability issued by the Insurance regulator, OR*
>
> *(b) any other similar health insurance plan from Us,*
>
> *Then:*
>
> *(a) The waiting periods specified in Section VI A i), ii) and iii) of the Policy stand deleted; AND:*
>
> *(b) The waiting periods specified in the Section VI A i), ii) and iii) shall be reduced by the number of continuous preceding years of*

coverage of the Insured Person under the previous health insurance policy; AND

(c) If the proposed Sum Insured for a proposed Insured Person is more than the Sum Insured applicable under the previous health insurance policy, then the reduced waiting period shall only apply to the extent of the Sum Insured and any other accrued sum insured under the previous health insurance policy."

[8]. Perusal of Section VI B (1) in totality would show that if the proposed insured person is presently covered and has been continuously covered without any lapse under any health insurance plan with an Indian non life insurer as per guidelines on portability issued by the insurance regulator or any other similar health insurance plan from the respondent-Insurance Company, then the waiting periods specified in VI A i), ii) and iii) stand deleted and the waiting periods in Section VI A i), ii) and iii) shall be reduced by the number of continuous preceding years of coverage of the insured person under the previous health insurance policy.

[9]. Petitioner got his policy renewed for the period 31.12.2013 to 30.12.2014 after inception of original policy on 31.12.2012. At the time of renewal, respondent No.1 issued renewed policy on 29.12.2013, thereby giving details in the following manner:-

"For Rs.300000 (Rupees Three Lakh) Sum Insured-Sec 6A i) of the policy wording is waived, Sec-6A ii) is reduced to 1 year and Sec 6A iii) is reduced to 2 years."

[10]. Perusal of the aforesaid condition in respect of Master Nishant would show that amount of Rs.3 lacs was the sum insured. Wordings of Section VI A i) of the policy were waived. Section VI A ii) was reduced to 1 year and Section VI A iii) was reduced to 2 years. The reduction in waiting period was given if the proposed insured person after availing period of original policy, seeks to get the same renewed and is presently covered and has been continuously covered without any lapse, then the waiting period is reduced by number of continuous preceding years of coverage of insured person under the Policy. The continuous preceding period was from 31.12.2012 to 31.12.2013 and in view of reduction period, period of 2 years would be reduced by 1 year of coverage of the insured person as the period from 31.12.2012 to 31.12.2013 was the period during which the period was continuously covered without any lapse. The treatment was taken during currency of renewed period and therefore, rigour of communication dated 29.12.2013 (Annexure P-4) issued by the respondent-Company, showing reduced period to 1 year under Section VI A ii) would apply.

[11]. Learned counsel for respondent No.1 tried to make out a case that information regarding reduced period is

periodically issued, thereby informing the insured about status of waiting period viz-a-viz reduction in waiting period with the passage of time.

[12]. I do not see any ambiguity in reduction in waiting period as shown in Section VI B (1), wherein it has been specifically mentioned that if the proposed insured person is presently covered and has been continuously covered without any lapse, then the waiting period specified in Section VI A i), ii) and iii) shall be reduced by the number of continuous preceding years of coverage of the insured person under the previous health insurance policy.

[13]. In the instant case, previous health insurance policy started from 31.12.2012 for 1 year and the same was renewed on 31.12.2013 to 30.12.2014, therefore, the case would fall under Section VI B (1) and waiting period would stand reduced from 2 years to 1 year during currency of the renewed policy of insurance cover/policy. Precisely in this context, information dated 29.12.2013 was issued, showing reduced period of 1 year in case of Master Nishant for the claim of Rs.3 lacs.

[14]. The Insurance Policy being a welfare policy and any intricacy in reading the different clauses would not be read to the detriment of the claimant. There is no conclusive clause for such an hypothesis, which is apparently covered

under Section VI of the Easy Health Floater Insurance Policy. It is also a settled proposition that if some unreasonable clauses are incorporated in the policy and the bargaining power of the insurer is unequal, thereby putting the consumer to suffer lack of freedom to contract, then the Court has the power to strike out such unfair and unreasonable clause in the contract on finding that the parties are not equal in bargaining power.

[15]. In the instant case, there is no ambiguity in the words used in Section VI B (1) of the Policy in respect of reduction of waiting period. Even if, two conclusions are applicable, then the conclusion which favours the claim of the customer/insured should be given preference as the consumer was not equal and had no real freedom to contract in view of position of the insurer intricacy of language used in the policy and sometimes insured remained misinformed also.

[16]. In view of above, this writ petition is allowed. Impugned order is set aside. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

17.08.2022
Prince

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**