IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.04.2023	26.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.33599 OF 2019
AND
W.M.P. NO.34067 OF 2019

HDFC ERGO General Insurance Co. Ltd.
Rep. by its Authorised Signatory
6th Floor, Leela Business Park
Andheri Kurla Road, Andheri (E)
Mumbai 400 059. .. Petitioner

- Vs -

1. Insurance Ombudsman
For the State of Tamil Nadu & Puducherry
Office of the Insurance Ombudsman
Fatima Akhtar Court
4th Floor, 453, Anna Salai
Teynampet
Chennai 600 018.

2. A.S.Kanagaraj .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records of the 1st respondent in Award No.IO/CHN/A/GI/0126/2019-2020 dated 27.09.2019 allowing the complaint of the 2nd respondent and quash the same.

For Petitioner : Ms. Radha Gopalan, SC
For M/s.Bhargavi Gopalan

For Respondents : Mr. M.B.Raghavan for R-1

ORDER

Challenging the order of the 1st respondent in and by which the petitioner had been directed to settle the claim of the 2nd respondent pursuant to the death of the life insured, the present petition has been filed.

2. It is the case of the petitioner that one Manickam had taken a 'Sarv Suraksha Policy' vide Policy No.52531281 for the period 06.06.2017 to 05.06.2020. Under the said policy, the coverage extended to the life insured are as under :-

Accidental Damage	-	Rs.38,98,100/-
Credit Shield	-	Rs.38,98,100/-
Critical Illness	-	Rs.15,00,000/-
Permanent Total/Partial Disability	-	Rs.38,98,100/-

3. It is the further case of the petitioner that the liability of the petitioner is subject to the terms and conditions and exclusions incorporated in the policy. It is the further case of the petitioner a claim was submitted by the 2nd respondent on 25.6.2018 under the 'Critical Illness' coverage of the policy stating that the insured was admitted at Royal Care Super Speciality Hospital, Coimbatore during the period 16.4.2018 to 8.5.2018 and pronounced dead on 8.5.2018 and the reason for the death, as could be ascertained from the documents is that the insured was a known case of Hypertension/Diabetes Mellitus/Cerebrovascular Accident/Chronic Kidney Disease.

4. It is the further case of the petitioner that the claim was repudiated on the ground that the medical condition in the reports did not manifest during the policy period and was in existence much prior and, therefore, the claim does not fall within the ambit of the policy cover. Aggrieved by the said repudiation, the 2nd respondent preferred complaint before the 1st respondent and by impugned order dated, the petitioner was directed to settle the claim of the 2nd respondent together with interest as per Rule 17 (7) of the Insurance

Ombudsman Rules, 2017. Aggrieved by the said order, the present writ petition has been filed.

5. Learned senior counsel appearing for the petitioner submits that the impugned order of the 1st respondent is wholly arbitrary, highly illegal and as a matter of principle, affects the public at large, as the binding nature of the aforesaid order will affect the whole body of insurance companies if the order is allowed to stand.

6. It is the further submission of the learned senior counsel that the order is perverse, unreasonable and cannot stand the scrutiny of law. The petitioner cannot be made to pay the claim amount, when the illness suffered by the insured has not been disclosed nor the medical records, showing the suffering of the ailments by the insured have been placed with the petitioner at the time of taking the policy.

7. It is the further submission of the learned senior counsel that the insured was suffering from Chronic Renal Failure and had a history of diabetes

and hypertension for the last 15 years, and had also suffered a stroke 8 years prior, which pre-existing conditions have not been disclosed and by the implied terms of the policy, the pre-existing conditions stood automatically excluded from the policy. Enlarging further on the submission, learned senior counsel submitted that the policy clearly mandates that any critical illness for which care, treatment or advice was recommended by or received from a Physician or which first manifested itself or was contracted before the start of the policy period or for which a claim has or could have been made under any earlier policy, no claim having been made by the 2nd respondent or the insured at any point of time earlier, the petitioner cannot be fastened with any liability to pay the claim on the policy.

8. It is the further submission of the learned senior counsel that the date of admission of the deceased in the hospital is on 16.4.2018 and the date of death was 8.5.2018, which is within the period of 30 days and, therefore, under the terms of the policy, no compensation is payable to the nominee, viz., the 2nd respondent. The 1st respondent has failed to take note of the

abovesaid factors while passing the impugned order, which deserves to be interfered with.

9. Learned senior counsel for the petitioner, drawing the attention of this Court to Section I of the policy schedule, which speaks of Critical Illness, submits that the insured not having survived the minimum period of 30 days from the date of diagnosis, no claim is payable to the 2nd respondent. It is the further submission of the learned senior counsel that the specific exclusions, which are applicable to Section I in the policy schedule clearly prescribes that no payment will be made by the insurer for any claim directly or indirectly caused by, based on, arising out of or howsoever attributable to any critical illness diagnosed within the first 90 days of the date of commencement of the policy for the first 90 days. The insured having fallen prey to the pre-existing illness, which has not been disclosed in the policy, the nominee is not entitled for payment of the claim amount. The 1st respondent has not appreciated the materials aforesaid in proper perspective and has passed the impugned order, which is perverse, arbitrary, illegal and is liable to be interfered with.

10. Per contra, learned counsel appearing for the 1st respondent submitted that the cause of death of the insured is not due to any pre-existing illness, which is clear from the report of the hospital authorities. Therefore, the repudiation of the claim of the 2nd respondent citing pre-existing illness is wholly unsustainable, which has been rightly interfered with by the 1st respondent.

11. It is the further submission of the learned counsel that the policy was taken with the petitioner on 06.06.2017, while the insured was hospitalised on 16.4.2018 and passed away on 8.5.2018. In this backdrop, the specific exclusion of 90 days insofar as any diagnosis with regard to critical illness has been fulfilled and, therefore, all the illness are to be covered by the petitioner. It is the further submission of the learned counsel that the pre-existing illness, which is alleged by the petitioner, was not attributable to the death of the insured and, therefore, the repudiation of the claim of the 2nd respondent is wholly unjustifiable. It is the further submission of the learned counsel that even without admitting that the pre-existing illness was the cause of death, the contention of the petitioner cannot be considered for the simple

reason that insofar as stroke, which the petitioner is alleged to have suffered, it was eight years before the contractual obligation entered into between the petitioner and the insured; insofar as hypertension and diabetes mellitus is concerned, more than 75% of the population suffer from the said medical complications. Further, even according to the petitioner, it is alleged that the petitioner is a known hypertensive and diabetes mellitus patient for over the past 15 years. Such being the case, the said complications could not be brought within the ambit of critical illness or pre-existing disease, which warrants repudiation of the claim on the death of the insured. Therefore, it is submitted that the 1st respondent has carefully considered all the materials while passing the impugned order and, therefore, no interference is warranted with the same and, prays for dismissal of the present writ petition.

12. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

13. There is no dispute about the fact that the insured had taken the policy covering the period 6.6.2017 to 5.6.2020. The critical illness, which was suffered by the insured, was on 16.4.2018 and the insured passed away on 8.5.2018. The critical illness has been diagnosed beyond the period of 90 days and, therefore, the specific exclusion cannot be pressed into service. Therefore, to that extent the insurer is liable to pay the claim amount under the aforesaid head.

14. The case of the petitioner is that the insured had suffered stroke about eight years prior to the policy, which was not disclosed and, therefore, the manifestation of such illness being before the start of the policy period, the said illness would stand excluded and, therefore, no claim is payable to the insured. The relevant portion of the policy schedule is quoted hereunder:-

> *"Any critical illness for which care, treatment, or advice was recommended by or received from a Physician, or which first manifested itself or was contracted before the start of the policy period, or for which a claim has or could have been made under any earlier policy."*

15. Though such a contention is advanced on behalf of the petitioner, however, what is relevant to be noted here is the fact that the terminology used in the said clause is *'first manifested itself or was contracted before the start of the policy period'.* What is pertinent to be noted here is that the clause clearly indicates that the manifestation or contraction of the critical illness should be before the start of the policy period, meaning thereby that the manifestation or contraction should be in close proximity to the start of the policy period. Giving any other construction to the above clause would defeat the insured's right, as no insured, who is truthful, would be anticipating any illness and insurance itself is only as a protective cover to the life of the insured. Therefore, proximity of the period to the illness manifested or contracted would alone be relevant and any critical illness, which the insured had contracted too anterior in point of time cannot be the basis to construe the said clause.

16. The repudiation of the claim of the 2nd respondent was on the basis of the first manifestation or contraction of the critical illness by the insured. A perusal of the materials available on record reveal that the the 1st respondent

has taken into consideration all the materials placed before it. In fact, the 1st respondent has not only perused the certificates of the attending physician but also opinion of the expert was obtained with regard to the stroke suffered by the insured. True it is that the opinion of the experts as also the attending physician was to the effect that the possibility of stroke eight years back was not ruled out, which was on the basis of the medications in the form of antiplatelets/anticoagulents taken by the insured. Therefore, the 1st respondent came to a definitive opinion that the stroke was not a first-time stroke, but had manifested prior to the inception of the policy. But, as held by this Court, the said manifestation was not in close proximity with the policy, but was in far anterior point of time in relation to the policy period.

17. The other reason for the repudiation of the claim was on account of the other critical illness observed, which pertains to complete renal failure. It is borne out by record, as also the certificates issued by the attending physician that the insured was diagnosed with Hypertension and Diabetes Mellitus and has been under treatment of the attending physician since February, 2018. However, the analysis of the 1st respondent with regard to

the renal failure, reveals that the renal failure is stated to be mid renal failure by the attending physician and a further observation is also found in the impugned order that the insured was not said to have been undergoing dialysis, to show that the kidneys have failed, which would indicate acute renal failure, which alone could be said to be a critical illness, covered under the policy. When the illness is not opined to be of such a critical nature, which was also attributed as a cause of death of the insured, but has been assigned as an attendant factor for the passing away of the insured, the invocation of the critical illness clause for the mid renal failure cannot be sustained.

18. One other ground which is canvassed on behalf of the petitioner for repudiating the claim of the 2nd respondent is that the insured died within 30 days from the date of diagnosis of the critical illness and, therefore, is not entitled for payment of the claim as is provided in Section I of the Policy Schedule.

19. There is no quarrel about the fact that the insured was diagnosed with critical illness on his admission on 16.4.2018 and that the insured passed

away on 8.5.2018, which is within a period of thirty days. The insured was not alive beyond the period of 30 days and, thereafter, had breathed his last. However, as rightly observed by the 1st respondent, the rejection of the claim of the 2nd respondent was not on the basis of Section I of the Policy Schedule relating to critical illness, but was on account of the manifestation or contraction of the illness. Further, the petitioner has repudiated the claim mainly on the ground of Chronic Kidney Disease, however, the 1st respondent has given a categorical finding that kidney disease was not shown to be critical by the attending physician and the main reason for death was stroke, which has not been the basis for repudiation of the claim of the 1st respondent.

20. Moreover, the 1st respondent has rightly rendered a finding that only a passing mention is made about the stroke in the rejection order and there is no mention of any other disease than renal failure. Such being the case, for the very first time, only in the show cause notice, the petitioner has taken a stand that stroke suffered by the insured is a pre-existing disease, which stands excluded under the Specific Exclusion 1 of Section 1 of the Critical Illness.

21. Further, the petitioner has not invoked Section I – Critical Illness clause, which mandates 30 days period of survival for payment of the critical illness cover. When the repudiation of the claim of the 2nd respondent at the earliest point of time was not on the basis of Section I – Critical Illness clause, the petitioner cannot make a fresh claim for repudiation either before the 1st respondent or before this Court that Section I – Critical Illness clause is not satisfied and, therefore, the insured is not entitled to that cover and, accordingly, his nominee is not entitled to the claim for critical illness. It is not open to the petitioner to pick and choose the clauses under which repudiation of the claim can be made at different points of time. When a claim is made, it is the duty of the insurer to quote all the clauses under which the claim is not payable and reject the same. When the insurer has not chosen to take into account all the clauses under which the repudiation is liable to be made and sticks to a particular clause to repudiate the claim, the insurer cannot, at a later point of time, resort to some other clause to reject the claim of the nominee, as there is no claim before it for repudiation. Therefore, the present contention with regard to the non-fulfillment of the survival period of 30 days

in respect of critical illness cannot be entertained and, accordingly, the same is rejected.

22. The 1st respondent has taken into consideration all the aforesaid aspects and has given a detailed and reasoned order, which does not suffer any infirmity, perversity or arbitrariness and, accordingly, the same does not warrant any interference at the hands of this Court.

23. For the reasons aforesaid, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

26.04.2023

Index : Yes / No

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To

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For the State of Tamil Nadu & Puducherry
Office of the Insurance Ombudsman
Fatima Akhtar Court
4th Floor, 453, Anna Salai
Teynampet
Chennai 600 018.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO. 33599 OF 2019

Pronounced on
26.04.2023