BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.02.2023

Pronounced on : 21.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13814 of 2022

S.Sankaranarayanan ... Petitioner

Vs.

1.O/o.The Insurance Ombudsman,
Rep. by its Assistant Secretary,
Fathima Akhtar Court,
4th Floor, 453, Anna Salai,
Teynampet,
Chennai – 600 018.

2. Star Health and Allied Insurance Co. Ltd.,
No.1, New Tank Street,
Valluvar Kottam High Road,
Nungambakkam,
Chennai – 600 034.
Rep. By its authorised signatory. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Award No.IO/CHN/A/HI/0038/2022-2023 dated 09.06.22 passed by the 1st respondent and quash the same as illegal and consequently direct the 2nd respondent to renew petitioner's policy for the year 2022-23 and to settle the amount of Rs.56,344/- claimed by the petitioner with interest and compensation within the period that may be stipulated by this Court.

For Petitioner	: Mr.M.E.Ilango
For R-2	: Mr.K.Ravi
For R-1	: No appearance.

ORDER

The petitioner is a retired principal of M/s.Kumaragurupara Swamigal Arts College, Srivaikundam, Tirunelveli. He took medical insurance policy from the second respondent for himself and his wife in the year 2018. The petitioner was admitted in Rose Mary Mission Hospital and Research Centre, Tirunelveli on 18.12.2021 for renal issues. He was discharged on 22.12.2021. He incurred a sum of Rs.56,344/- towards treatment. He claimed reimbursement. He also submitted the relevant documents. The petitioner's policy was to expire on 07.02.2022. The petitioner paid a sum of Rs.55,265/- towards premium for extension of the insurance policy. After receiving the same, the insurer rejected the petitioner's claim for reimbursement and also cancelled the policy. Aggrieved by the same, the petitioner approached the Insurance

Ombudsman. The Insurance Ombudsman sustained the stand of the insurer. Questioning the award passed by the Ombudsman and for directing the second respondent to renew his policy and for settling his claim for reimbursement, the present writ petition came to be filed.

2.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order.

3.The second respondent has filed counter affidavit and the learned standing counsel took me through its contents. According to the second respondent, the petitioner had suppressed his pre-existing disease and that is why, the claim was repudiated. The allegation of the petitioner that only at the insistence of the insurer, he paid the premium amount for extension of insurance policy has been denied. The insurer would claim that the amount was voluntarily paid by the petitioner. All the other allegations made by the petitioner have also been denied by the insurer in the counter affidavit. The learned standing counsel relied on the decision of the Hon'ble Supreme Court reported in ***(2009) 8 SCC 316 (Satwant Kaur Sandhu Vs. New India Assurance Company Ltd)***. He pressed for dismissal of this writ petition.

4. I carefully considered the rival contentions and went through the materials on record.

5. The writ petitioner had taken health insurance policy with the second respondent. It covered the petitioner as well as his wife. The reason for negativing the petitioner's claim for reimbursement as well as cancellation of the policy was that the petitioner had suppressed his pre-existing disease. It is true that the petitioner underwent a minor prostate surgery at Sri Ramachandra Medical Centre, at Chennai during October 2017. When the blood test was done, the report disclosed Creatinine level of 1.6. The stand of the petitioner is that he was not informed about the said condition which in any event was not abnormal. The claim had been made in respect of expenses incurred for Chronic kidney disorder. The petitioner had taken the policy in February 2018 and he had renewed it periodically. It was renewed on 08.02.2021 and it was valid up to 07.02.2022. The petitioner took treatment in Rose Mary Mission Hospital and Research Centre, at Tirunelveli, for fever in December 2021. It was then diagnosed that the petitioner was having Chronic kidney disorder. The petitioner submitted all the previous

medical records for processing his claim including the one received from Sri Ramachandra Medical Centre.

6. One can take judicial notice of the fact that whenever the insurance policy is on the verge of expiry, the insurer will contact the insured for renewal. Therefore, the claim of the petitioner that the premium for extension / renewal was paid at the instance of the second respondent is probable and believable.

7. Let me look at the sequence of events. The petitioner paid a sum of Rs.55,265/- on 16.01.2022 for the period from 08.02.2022 to 07.02.2023. After receiving the renewal premium on 16.01.2022, on the next day 17.01.2022, the petitioner's claim for reimbursement was negatived and the earlier policy was cancelled. It is not as if the insurer independently discovered that the petitioner had taken treatment at Sri Ramachandra Medical Centre. It was the petitioner who furnished the relevant records. The claim form with final bill was received from the petitioner in December 2021 itself. The conduct of the second respondent has to be taken note of. A contract of Insurance is one of uberrima fides. This will apply not to the policy holder but also to insurer. The earlier

policy was valid till 07.02.2022. On 16.01.2022, the renewal premium was collected from the petitioner. By then, the insurer was possessed with all the information about the petitioner. The medical records pertaining to the petitioner were with the insurer. Having accepted the renewal premium with full knowledge of all the relevant facts, it was not open to the insurer to repudiate the claim on the ground of suppression. The petitioner had suffered a double whammy. The conduct of the insurer is clearly lacking in *bona fides.* The insurer knew on 16.01.2022 itself that they are going to reject the petitioner's claim. They should not have induced the petitioner to believe that his policy will continue to be valid. This obvious inducement by the second respondent to extract a hefty sum from the petitioner violates the principle of fairness. It is more for this reason that I am constrained to interfere.

8. The petitioner was not taking a fresh policy. He only renewed an existing policy. Renewal premium was taken on 16.01.2022 during the subsistence of the original policy. By then, the insurer was in the know of things regarding the medical condition of the petitioner. Having accepted the premium with full knowledge, the insurer cannot turn round and cancel the policy on the ground of suppression. It was not open to the

second respondent to cancel it. If the insurer intended to cancel the policy, they should not have collected the premium. By accepting the policy on 16.01.2022 towards renewal, the insurer is estopped from cancelling the policy. Once I hold that the policy cannot be cancelled, the consequence is that the claim has to be honoured. This aspect of the matter was not taken note of by the Ombudsman.

9. The first respondent failed to take note of the sequence of events. He had mechanically accepted the stand of the insurer. The impugned award is set aside. The second respondent is directed to honour the petitioner's claim and pay a sum of Rs.56,344/- (Rupees Fifty Six Thousand Three Hundred and Forty Four only) within a period of four weeks from the date of receipt of a copy of this order. If the second respondent does not do so within the aforesaid period, it will carry interest @ 12% p.a. from the date of the petitioner's claim. This writ petition stands allowed. No costs.

21.06.2023

Index : Yes / No
Internet : Yes/ No
PMU

To:

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G.R.SWAMINATHAN, J.

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