IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223 **CWP-10577-2018**
Date of decision: 20.01.2023

HDFC ERGO GENERAL INSURANCE COMPANY LTD.

...Petitioner(s)

Versus

SUJATA CHHABRA AND ANOTHER

...Respondent(s)

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

Present: Mr. Vishal Aggarwal, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for the respondent No.1.

VINOD S. BHARDWAJ , J (Oral)

The present petition has been preferred for setting aside the award dated 06.06.2017 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Chandigarh.

Briefly summarised the facts in the present case that the respondent-applicant had taken a “Health Suraksha Policy” from the petitioner-insurance company on 04.11.2014. Policy Document No. 2952200894581200000/1 was issued. Sum assured under the policy was Rs.3 lacs. Respondent-applicant fall ill on 28.03.2015 and was taken to INSCOL Hospital, Sector 34, Chandigarh where she underwent ECG and was thereupon, taken to Max Speciality Hospital in Mohali on that very date**.** Coronary Angiography and Coronary Engioplasty was conducted on her on 28.03.2015 itself. The respondent-applicant had been promised cashless insurance by the petitioner-Insurance Company.

It was, accordingly, informed immediately by the hospital as well as by the attendants of the applicant-respondent**.** All documents were collected by a representative of the petitioner-Insurance Company from the hospital. However, the claim was denied on the ground that there were certain discrepancies in the documents. Resultantly, the applicant-respondent had to borrow money from relatives to pay the medical bills. The respondent-applicant, thereafter, submitted all requisite documents with the petitioner-Insurance Company on 14.04.2015 and also the clarificatory documents as required by the petitioner-Insurance Company later on. However, the claim was again rejected by the petitioner-Insurance Company on the ground that the respondent-applicant was held to be a known case of "HTN and Bronchial Asthma" for five years prior to the inception of policy 01.11.2014. It was stated that as the aforesaid facts had not been disclosed to the Insurance company at the time of issuance of the policy, hence, there was a breach of the utmost good faith by the insured and the Insurance Company was entitled to repudiate the claim**.** An application under Section 22(C) was, therefore, preferred by the respondent-applicant before the Permanent Lok Adalat (Public Utility Services) U.T Chandigarh, under the Legal Services Authorities Act, 1987.

The petitioner Insurance Company appeared before the Permanent Lok Adalat and reiterated their stand as noticed above.

Efforts were undertaken by the Permanent Lok Adalat for amicable resolution of the issue by formulating the terms of settlement. However, after its failure to arrive at any amicable resolution, it proceeded with adjudication in terms of Section 22(C) (8) of the Legal Services Authorities, 1987. Upon consideration of the documents available on record, the application was allowed and the petitioner Insurance Company was directed to make payment of the amount of Rs.3 lacs along with interest at the rate of 9% per cent till the date of its realization. In addition thereto, compensation to the tune of Rs.25,000/- for harassment and Rs.5000/- towards litigation expenses were also awarded. Aggrieved thereof, the present petition has been preferred.

Counsel for the petitioner has vehemently argued that the provision of Section 45 of the Insurance Act, 1948 mandates that all information, as is crucial must be disclosed by the insured. The respondent-applicant was obligated in law to disclose all material information to enable the Insurance-company to take a decision whether or not to underwrite a risk. The history of the Hypertension and Bronchial Asthama having not been disclosed by the respondent-applicant and the same being crucial, the claim had been rightly declined.

The insurance-company has a liberty to take decision whether to underwrite the risk or not and the insured allowed the petitioner to accept the risk on account of concealment of relevant information.

Controverting the arguments raised by the counsel for the petitioner, the counsel for the respondent has drawn attention to the award and the material considered by the Permanent Lok Adalat (Public Utility Services) Gurugram as per which Dr. Jeet Ram Kaushal, Heart specialist of Government Medical College and Hospital, Sector-32, Chandigarh had been examined as a witness and he had stated on oath that hyper-tension could or could not be the cause of severe heart attack. It was also clarified by the specialist-expert that the Bronchial Asthma, with which the respondent-applicant was stated to be suffering, had no co-relation with the acute attack suffered by the respondent-applicant. The relevant extract of the aforesaid award is reproduced hereinafter:-

> *"The next objection of the respondents is that the applicant had been suffering from Hyper Tension and Bronchial Asthma for the last 5 years. The applicant is stated to have said so to the doctor who had admitted her in the Max Hospital on 28.03.2015. As per various rulings of the National Consumer Commission New Delhi it is the duty of the respondents to prove that the patient was suffering from such a disease five years prior to her purchasing the policy. No doubt the applicant is stated to have disclosed these facts regarding her pre-existing disease at the time of admission in the Max Hospital but this by itself is not the proof of her having this ailment prior to her purchasing the policy. The respondent is required to prove this fact by leading their own evidence after the same is collected from the institution where she was undergoing such treatment prior to the purchase of the policy. The respondents in order to prove this fact have submitted annexure D-5, a photostate copy of certificate issued by Dr. Sanjeet Singh Sodhi of Healthcare Mohali who had certified that Ms. Sujata Chhabra was undergoing treatment for Hyper Tension since more than one year. This certificate issued by the said doctor on 02.05.2015. Although, the said doctor has not been produced by the respondents in the witness box yet there is no reference of her having Bronchial Asthma. No document has been produced by the respondents to prove that she was suffering from Bornchial Asthma for the last five years at the time of her admission in Max Hospital. The bald statement of the patient at the time of admission in this behalf would not discharge the liability cast upon the respondents to*

> *prove this fact. Such a statement if made by the patient at the time admission cannot be accepted that she was suffering from Bronchial Asthma for the last five years as has been depicted in her Admission document prepared on 28.03.2015 which is annexure D-4.*
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> *Thus, keeping in view the certificate by Dr. Sodhi which is annexure D-5 and the admission with respect to the Hyper Tension made by the applicant-Sujata Chhabra in document annexure D-6 in the questionnaire put to her, it is certain that she was suffering from the aforesaid of Hyper Tension at the t ime when she had purchased the policy. According to Dr. Jeet Ram Kaushal heart specialist of Government Medical College & Hospital, Sector 32, Chandigarh, who was examined as a witness has stated on oath that hyper tension could or could not be the cause of severe Heart Attack. The doctor has also clarified that Bronchial Asthma with which she was suffering, had no relevance with the acute attach she had suffered, but already it is held that it is not proved by the respondents that she was suffering Bronchial Asthma. Thus, from the opinion of heart specialist is clear that the respondents have failed to prove that the hyper tension suddenly could have cause Heart Attack which was suffered by the applicant."*

He has further placed reliance on a judgment of this Court bearing ***CWP No.20301 of 2016 "Shriram Life Insurance Company Ltd. Vs. Insurance Ombudsman and another"*** wherein the petition filed by the Insurance Company on the ground that the insured was suffering from Hypertension and thus the Insurance Company was entitled to repudiate the claim was dismissed by observing that the non-mentioning of hypertension is not fatal to the interest of the deceased insured.

Additionally, reference is also made to the Division Bench

Judgment of the High Court of Jammu & Kashmir in the matter of ***"Reliance General Insurance Company Ltd. Vs. K. Parvez Qureshi and Others"*** reported as **AIR/2017/J&K/81** to reiterate the above.

I have heard the learned counsel appearing on behalf of the respective parties and have gave through the document appended with the present petition with their able assistance.

The present case would not require this Court to determine controversy as to whether there was any material concealment of information by respondent-applicant or not, since, the facts of the present case depict that an expert i.e. Dr Jeet Ram, who was the Heart specialist from the Govt. Medical College in Hospital, Sector-32, Chandigarh, had appeared as a witness and deposed that hypertension could or could not be the reason of heart attack and further that the Bronchial Asthama has no relevance to the cardiac attack suffered by the petitioner. The above said expert evidence has not been rebutted or controverted by leading any other expert evidence by the Insurance Company

The said evidence has infact been largely relied by the Permanent Lok Adalat(Public Utility Services) U.T. Chandigarh.

The exercise of discretion by the Permanent Lok Adalat (Publice Utility Services) is seemingly based upon the principles of natural justice, objectivity, fair play, equity and other principles of justice. It cannot be said to be misconceived, in the facts and circumstances of present case. It would also not be appropriate for this court to substitute its judicial discretion for the judicial discretion exercised by Permenant Lok Adalat (Public Utility Services) unless exercise of such discretion is reflected to be in violation of the settle provisions of law or suffers from judicial impropriety and/or complete misappreciation of the evidence available on record.

If the view taken by the Permanent Lok Adalat was a possible view on an objective consideration of the evidence brought before it, such a view would not be ordinarily substituted by the High Court in exercise of its power of judicial review merely because any other view is also a possible view on consideration of such evidence.

I find that the judgment of the Permanent Lok Adalat(Public Utility Services)U.T. Chandigarh does not suffer from any illegality, impropriety, perversity or misappreciation of the evidence available on the record.

The present petition is hence dismissed and the order of PLA(PUS) Chandigarh is affirmed.

20.01.2023 **(VINOD S. BHARDWAJ)**
joyti **JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	No