**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP-21174-2013 (O&M).
Date of Decision: 01.08.2023.**

BAJAJ ALLIANZ LIFE INSURANCE CO. LTD

...Petitioner

Versus

CHARANJIT KAUR AND ANOTHER

…Respondents

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

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Present: Mr. Varun Chawla, Advocate, for the petitioner.

Mr. Mayank Mathur, Advocate, for the respondents.

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VINOD S. BHARDWAJ. J (ORAL)

Challenge in the present writ petition is to the order dated 02.01.2013 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Patiala, Punjab, in Application No.351 of 2012 wherein the petitioner-Insurance Company has been directed to cancel the policy and refund the sum of Rs.2,50,000/- deposited by the petitioner along with interest @ 8% per annum.

Briefly summarized, the facts of the present case are that the respondent No.2-applicant had purchased a policy from the petitioner-Bajaj Allianz life Insurance Co. Ltd. bearing Policy No.0078883616 which was to commence from 18.01.2008 and the policy term was for a period of 10 years. The sum assured was Rs.12,50,000/- whereas the annual premium was Rs.2,50,000/-. The first premium was paid through cheque at the time of submission of the proposal for insurance on 18.12.2007. The husband of respondent No.2-applicant was appointed as a nominee. It was claimed that at the time of the proposal, the agent of the company informed the respondent No.2-applicant that it was a single premium policy and in the event of occurrence of death, the nominee will get a sum assured of Rs.12,50,000/- and if anything happens to the husband of the respondent No.2-applicant, then the company will additionally pay a sum of Rs.2,00,000/- as the insurance cover was also extended to the husband of respondent No.2-applicant for the above value.

In the month of May, 2011, Sampuran Singh (husband of the respondent No.2-applicant) passed away in a road accident. Respondent No.2-applicant thereafter traced the policy document on return of her children from abroad and submitted the claim of Rs. 2,00,000/- as per the policy and as assured by the Agent. However, the petitioner-Insurance Company declined the above said request for invalid and unsustainable reasons. An application for refund of the premium was then submitted by the petitioner which was also declined. Consequently, the above application under Section 22 C of the Legal

Services Act, 1987, was filed before the Permanent Lok Adalat (Public Utility Services), Patiala.

The petitioner-Insurance Company put in appearance and submitted that the proposal form was for the regular premium unit linked "Century Plus" vide proposal form dated 02.01.2008 and was obtained after fully understanding the terms and conditions, features, charged benefits etc. of the plan. She agreed to pay yearly regular premium @ Rs.2,50,000/- for the policy term of 10 years. Having accepted the proposal, the policy bond was issued to her commencing from 18.01.2008 for the sum assured of Rs.12,50,000/-. The terms and conditions of the original document were never disputed by the respondent No.2-applicant for nearly 04 years. She was thus not only aware of the said terms but was also fully satisfied with the conditions incorporated therein. She enjoyed the benefits of the said policy for the aforesaid period and never exercised her option to cancel the policy bond during free-look period. The allegations about having been defrauded at a belated stage, is thus an afterthought and was denied. It hence justified its action to be in accordance with the policy document and there was no illegality in its action. The claim of respondent No.2-applicant was not maintainable and deserved to be set aside.

Efforts were made to amicably resolve the dispute between the parties, however, it failed to fructify into a final settlement. Consequently, adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), Patiala.

After considering the rival contentions on behalf of the respective parties, the Permanent Lok Adalat (Public Utility Services), Patiala, directed petitioner-Insurance Company to refund the amount of Rs.2,50,000/- deposited by respondent No.2-applicant along with interest @ 8% per annum from the due date till payment thereof.

Aggrieved thereof, the present writ petition has been filed.

Learned counsel for the petitioner-Insurance Company has vehemently argued that the Permanent Lok Adalat (Public Utility Services), committed a gross error in not appreciating the terms and conditions of the policy bond. It is contended that the policy purchased by the respondent was a unit linked insurance plan and the death benefits entailed not only for the sum assured but also the fund value. The reasons given by the Permanent Lok Adalat (Public Utility Services), to direct refund of the aforesaid amount was misconceived and not based upon correct reading of the terms and conditions of the policy. The order was based on an interpretation as if a premium of Rs.25 lakhs was being charged by the petitioner-Insurance Company against a sum assured of Rs.12,50,000/- which is misconceived. He relied on the terms and conditions of the policy to contend that the respondent No.2-applicant had only paid single premium and never deposited subsequent premiums due to which the policy was liable to be forfeited. A revival period of 04 years is prescribed in the policy document. Respondent No.2-applicant having never opted to seek revival of the said policy and having never challenged the terms and conditions thereof could not have imputed the conditions to have not been made known to her especially when the policy bond document was always in her possession. Having not exercised the option to seek cancellation of the policy bond during the free look period, respondent No.2-applicant cannot at a belated staged be allowed the refund of amount which already stands lapsed. The value of the fund has already been remitted in terms of the policy document on expiry of the revival period. He further submits that the interest @ 8% per annum awarded by the Permanent Lok Adalat (Public Utility Services), Patiala, is also on the higher side.

Controverting the aforesaid arguments, learned counsel for respondent No.2-applicant disputes that no remittances were made to respondent No.2-applicant on the expiry of the period of policy revival as claimed. He refers to the bond document to contend that the proposal form appended by the petitioner-Insurance Company along with the present petition as Annexure P-4 is at variance from the proposal form submitted by respondent No.2-applicant with the petitioner-Insurance Company. He points out to the discrepancies which are incorporated below in a tabulated form:-

		Proposal Form Annexure P-4	**Policy Bond document exhibited**
1	Unit linked plan	Has been ticked	There is no tick on the unit linked plan
2	Individual	Ticked	Not ticked
3	Insured name	Rakesh Kumar has been used	Kumar is missing
4	Nominee	Ramesh Kumar	Kumar is not mentioned
5	Branch sector	Sector ticked	Tick Missing
6	In column No.5 premium frequency	Mentioned annual	Missing
7		Multiplier has	Multiplier is

		been mentioned	missing.
7		Period 10 years has been mentioned	Absent
8		Term of 10 years has been mentioned	Absent
9	Proposal deposit	Columns are blank	Some columns has been ticked
11	Cause of death	Mentioned in Column No.12 is annual for the father and in the column of mother it has been dotted	Annual is mentioned in the terms form attached as Annexure P-4
12	Column 15(f)	Column has been ticked	Has been left blank
13	The date of the policy document	12.01.2008	18.12.2007
14	PNR number	Mentioned	Absent.
15	In the Insurance consultant report	Rs.1,25,000/- has been mentioned as sum assured	Sum assured has been mentioned as 12.50 lakhs.
16	Date above end of column has been mentioned as	12.01.2008	18.12.2007

Referring to above discrepancies, counsel for respondent No.2-applicant has contended that the original proposal form has been supplied by the petitioner itself to the respondent No.2-applicant. The entire case of petitioner-Insurance Company is based on the policy bond unit linked insurance plan whereas the said proposal form was never submitted by the respondent No.2-applicant. These discrepancies would go to the root of the policy bond and there was no occasion for the respondent No.2-applicant to have known of the same until the claim papers were submitted and as soon as the aforesaid discrepancies/fraud practiced upon her came to the knowledge of respondent No.2-applicant. She immediately filed the application under Section 22 C of the Legal

Services Authorities Act, 1987. He further contends that petitioner-Insurance Company cannot take benefit of the fraud committed on the insured by their own agent and the only reason why the subsequent premiums had not been deposited was that the agent had assured that it was a single premium policy. The contemporaneous conduct of the petitioner-Insurance Company substantiates the assurance made to her by the agent of the petitioner-Insurance Company and binds it against any mis-representation made by its agent at the time of selling the policy. Being a case of mis-selling/fraud committed on respondent No.2-applicant/consumer, petitioner-Insurance Company cannot be permitted to draw premium thereupon and to capitalize on the said lapse. He further submits that the facts have been correctly appreciated by the Permanent Lok Adalat (Public Utility Services), Patiala and the illegality having been noticed, the refund was ordered. Reference is made to paragraphs No.7, 8, 9, 10 and 11. The same are extracted as under:-

> *"7. The perusal of the policy documents Ex.AW/1 would show that the sum assured was Rs.12,50,000/-, installment of premium was Rs.2,50,000/- and policy premium term was 10 years and the date of last premium paid was 18.12.2007 with date of maturity being 18.1.2018. The case of the respondents is that the applicant opted for a premium payment plan of yearly installment of Rs.2,50,000/-. It is also the case of the respondents that the installments were to be paid for 10 years. Admittedly a sum assured was Rs.12,50,000/-. If as per the respondents the applicant was to pay Rs.2,50,000/- every year that to for 10 years then the total amount of ten premium would come to Rs.25,00,000/-. Meaning thereby the applicant was to get Rs.12,50,000/- only against the investment of Rs.25 lacs. Thus, no sane*

person would invest such a huge amount of Rs.25 lacs to get back the benefit of Rs.12,50,000/- only.

8. In view of above discussion we hold that the policy document in dispute is nothing but an illegal document procured by fraud whereby people like the applicant have been fooled to invest such a huge amount for a meager return. Therefore, we direct the respondents to cancel the policy and refund the amount of Rs.2,50,00/- deposited by the applicant as premium.

9. It is also the case of the applicant that her husband Sampuran Singh was also insured for Rs.2 lacs and she was assured that if anything happens to her husband then the company will pay Rs.2 lacs as per the terms of the policy. It is also the case of applicant that her husband Sampuran Singh had died in the month of May, 2011 in an accident and that she is entitled to get Rs.2 lacs as per the terms of the policy.

10. The perusal of the policy documents Ex.AW-1/C would shows that Sampuran Singh husband of the applicant was appointed as a nominee only. The policy does not show if husband of the applicant was also assured for Rs.2 lacs. In other words, there is nothing in the policy which could entitle the applicant to recover Rs.2 lacs on account of death of her husband Sampuran Singh. Moreover, the perusal of the proposal form Ex.AW-1/F would show that a question No.9e) was put to the applicant asking her whether her husband was assured or not and in answer to that question it was mentioned that husband of the applicant was assured for a sum of Rs.2 lacs so there is nothing on record If Sampuran Singh was also assured for an amount of Rs.2 lacs. Moreover, as discussed above the policy in

> *dispute has been cancelled on the request of the applicant and in that event also the applicant is not entitled to any such relief qua the policy in dispute.*
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> *11. Keeping in view the above discussed circumstances and the principle of equity, fair play, natural principles of justice we allow the application and pass an award directing the respondents to cancel the policy in dispute and refund the amount of Rs.2,50,000/- to the applicant deposited by the applicant alongwith interest @ 8% p.a. from the due date 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 15% interest thereon from the due date 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."*

He further contends that both the documents in fact are generated by the respondents-themselves and they have failed to point out that how the above said discrepancies could be reconciled. No explanation has also been furnished by them qua the aforesaid discrepancies. He further submits that the award of interest was appropriate and cannot be said to be exorbitant or excessive.

I have heard learned counsel for the respective parties and have gone through the documents appended along with the present petition.

Learned counsel for the petitioner-Insurance Company is not able to controvert the fact that the aforesaid discrepancies in the proposal form attached as Annexure P-4 and supplied along with the policy document reflect fundamental, crucial and inherent discrepancies. No satisfactory explanation has been put forward as to how the discrepancies have crept in and that in case the policy proposal form appended along with the policy bond document is taken into consideration there was no option exercised by the insured for seeking a policy bond document under the unit linked insurance plan with annualized premium to be paid.

The entire case of the petitioner being that annual premium was to be paid and that owing to that default, the policy lapsed, the proposal form becomes a primary document to ascertain the intent of the contracting parties. The proposal form attached with the policy bond is at variance with the proposal form appended with the petition and does not support the annualized premium consent of the respondent. The mere failure of the respondent to not seek a refund during the free-look period may not be sufficient to assume a consent and give rise to a binding agreement. The proposal form and the declaration made therein are oft relied by Insurances Companies to claim immunity from making payment, the same analogy has to be applied even when it benefits the insured.

The conduct of the insured lends credence to the claim made by her and absence of the petitioner Insurance Company to offer a satisfactory explanation leads to an adverse inference.

In the said background, when Section 22 D of the Legal Services Authorities Act, 1987, lays down the guiding principles for determination of dispute, exercise of equity and discretion by the Permanent Lok Adalat (Public Utility Services), would not ordinarily be interfered with unless such discretion is illegal, invalid and suffers from impropriety and mis-appreciation of evidence. Such circumstances are not made out from the facts of this case.

At the same time, it cannot also be lost sight of the fact that the respondent No.2-applicant also did not exercise due prudence expected of an insured and did not examine the terms and conditions of the policy bond document as and when it was supplied to her and also provided for free look period and to seek cancellation, if she was not satisfied with the terms and conditions mentioned/contained thereunder.

Section 22 D of the Legal Services Authorities Act, 1987 lays down the guidelines for exercise of jurisdiction by the Permanent Lok Adalat (Public Utility Services), and holds that the Permanent Lok Adalat (Public Utility Services), is to be guided by principles of natural justice, objectivity, fairness, equity and other principles of justice. Hence, where two views were possible upon consideration of the documents brought on record and the Permanent Lok Adalat (Public Utility Services), has exercised its jurisdiction in a particular manner, such a view would not be held to be absurd and unsustainable merely because any other view is also possible.

I thus do not find any infirmity, illegality, impropriety or travesty of justice on the part of the Permanent Lok Adalat (Public Utility Services), Patiala, directing refund of the premium amount by petitioner-Insurance Company. However, in so far as the interest @ 8% is concerned, I find that the said rate of interest under the given circumstances is on the higher side. The interests awarded by the Permanent Lok Adalat (Public Utility Services), Patiala @ 8% per annum is accordingly reduced to 6% per annum from the date of filing of the application till its final disbursement. In the event any amount has already been paid by the petitioner-Insurance Company, as is claimed, the said amount shall be adjusted from the dues payable to the respondent No.2-applicant.

Petition is accordingly disposed of as partly allowed.

August 01, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No