IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-2232-2017
Date of decision: 20.01.2023

LIFE INSURANCE CORPORATION OF INDIA

.......Petitioner

VERSUS

PERMANENT LOK ADALAT AND RAJ BABA AND ANOTHER

.......Respondents

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

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Present:- Mr. Prateek Mahajan, Advocate and
Ms. Saloni Sharma, Advocate
for the petitioner.

Dr. Sumati Jund, Advocate
for respondent No.2.

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<u>VINOD S. BHARDWAJ, J. (Oral)</u>

The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing of the award dated 26.10.2016 passed by the Permanent Lok Adalat (Public Utility Service), Bhiwani (Camp Court at Jind) (Annexure P-1) whereby the petitioner-Insurance company had been directed to make a payment of Rs. 2,50,000/- alongwith benefits if any, and interest @ 9% per annum from the date of repudiation of claim till its final payment under Policy No. 177783164.

2. Briefly summarized the facts of the present case are that the respondent-applicant Raj Bala being nominee of deceased Ram Bhaj had

filed an application under Section 22 (C) of the Legal Service Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Bhiwani on the ground that her husband had purchased an insurance policy for a sum of Rs.2,50,000/- issued on 28.12.2011 by the branch office at Jind. Her husband died on 19.12.2013. The respondent-applicant being the nominee was the beneficiary of the said policy. Intimation regarding death of Ram Bhaj was conveyed to the petitioner-Insurance company and a claim was lodged for payment of the sum insured alongwith other death cum-maturity benefits. The petitioner-insurance company, however, avoided to settle the claim on one pretext or the other and eventually, a letter dated 16.05.2014 was sent to the respondent-applicant repudiating the claim of the respondent on the ground of concealment of material facts by Ram Bhaj regarding his health at the time of purchasing of the Insurance policy. It was averred that all the material facts had been duly disclosed to the agent before purchasing the insurance policy and that said facts had been duly verified and confirmed by the official/agent of the insurance-company. It was also pointed out that the deceased Ram Bhaj was not suffering from any disease and was healthy. A legal notice dated 26.08.2015 was thereafter sent by the respondent-applicant to the petitioner-insurance company and as the same failed to bring about the desire result, the application was preferred before the Permanent Lok Adalat (Public Utility Service), Bhiwani (Camp Court at Jind).

3. The petitioner-insurance company filed its response before the Permanent Lok Adalat (Public Utility Service), Bhiwani (Camp Court at Jind) wherein it was stated that the deceased Ram Bhaj was suffering from disease K/C/O-COPD since many years prior to the commencement of the

risk under the policy in question. The insurance policy had been obtained with a malicious intention to defraud the petitioner-corporation. A false declaration had been submitted in the proposal form dated 20.01.2012 and that the insurance contract had been brought about on the strength of information known to the insured to be false. Hence, the principle of *Uberrinal fides* i.e. utmost good faith had been breached. Resultantly, the petitioner-insurance company was entitled to repudiate the same.

3. Proposed terms of settlement as per the procedure of the Legal Service Authority Act, 1987 was set out at as the parties to resolve the issue. The parties, however, failed to arrive at an amicable resolution of the issue, hence, adjudication of the *lis* was done. An award was finally passed in favour of the respondent-claimant against which the present petition has been preferred.

4. Notice of motion in the instant case was issued on 23.03.2017 after passing a detailed order which reads thus:-

> *Learned counsel for the petitioner submits that on account of deceased having not disclosed in the proposal form that he was suffering from different diseases and remained admitted in hospital which is apparent from Annexure P-7, the petitioner-Corporation had rightly repudiated the insurance claim.*
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> *Learned counsel for the petitioner relies upon judgment in **Satwant Kaur Sandhu Vs. New India Assurance Company Limited, 2009 (4) R.C.R. (Criminal) 546** where in a case of claim under mediclaim policy, the patient suffering from chronic renal failure had not disclosed the factum of ailment, the act of insurance company in repudiating the claim, was upheld by the Supreme Court. The plea of the petitioner is that the contract of insurance is a contract uberrimae fidei and the assured is under solemn obligation to make a true and full*

disclosure of the material facts relevant to take decision about acceptance of proposal.

The claim submitted by respondent No.2 under the policy of insurance before the Permanent Lok Adalat has been considered in exercise of powers under Section 22-C of the Legal Services Authorities Act, 1987 thereby directing the petitioner-Corporation to pay insurance amount of Rs.2,50,000/- along with interest at the rate of 9% from the date of repudiation

Learned counsel for the petitioner has vehemently contended that the deceased insured had concealed material facts at the time of filling of the proposal form, copy of which has been placed on record as Annexure P-5. The reason for repudiation as claimed by the petitioner-Corporation, is that the assured was suffering from kidney problem and was known case of chronic obstructive pulmonary disease (K/C/O COPD) before submitting proposal for insurance and that he having not disclosed these facts in the proposal form/personal statement, the Corporation has rightly repudiated the claim under the policy vide letter Annexure P-4 dated 16.05.2014.

I have heard learned counsel for the petitioner and considered the judgments in ***Satwant Kaur Sandhu Vs. New India Assurance Company Limited, 2009 (4) R.C.R. (Criminal) 546 and P.C. Chacko and another Vs. Chairman, Life Insurance Corporation of India and others, 2008 (1) R.C.R. (Civil) 127*** *laying down that when a policy is taken by insured giving incorrect information about his health, the insurance company can repudiate the policy within a period of two years.*

I have carefully considered the facts and circumstances of the case. The present case is not a case of mediclaim policy. I am of the opinion that in the present case husband of respondent No.2 had died on 19.12.2013, 9 days prior to the expiry of 2 years of insurance policy. The claimant-respondent No.2 after the death of her husband, produced the entire *medical record of treatment of deceased in Post Graduate Institute of Medical Science, Rohtak showing that husband of respondent No.2 was admitted in the hospital on 12.06.2013 and was discharged on 12.06.2013. In the discharge slip on the second page, the above said fact that the petitioner was known case of chronic obstructive pulmonary disease since many years would indicate that at the time of getting the insurance policy i.e. 28.12.2011, the deceased was patient of chronic disease which he did not disclose.*

I have considered the said contention carefully and I am of the opinion that the petitioner had bona fide produced all the documents pertaining to the ailment of the deceased. Noting, in the case summary that the deceased was suffering from known case of chronic obstructive pulmonary disease since many years, will not ipso facto raise a presumption that he had concealed material facts at the time of submission of the proposal form for insurance. The nature and severeness of the ailment has not been established before the Permanent Lok Adalat. No specific date could be brought to the notice of the Permanent Lok Adalat indicating that the petitioner was actually suffering from any serious ailment or chronic disease on 28.12.2011 when the policy commenced.

In view of said circumstances, the ratio of the judgments cited by counsel for the petitioner, are not applicable to the facts of the present case.

Taking into consideration the age of the deceased and there being no material available on the record, it will not be prudent to assume that at the time of furnishing of the details of insurance, the deceased was suffering from any ailment.

No ground is made out to interfere in the order passed by respondent No.1 for grant of amount of Rs.2,50,000/- as insured money.

Learned counsel for the petitioner has next contended that respondent No.2 is not entitled to the interest as per the terms of the insurance policy and that the Permanent Lok

Adalat could not have exercised discretion to grant interest on account of prohibitory clause which is mentioned in the insurance policy.

*Learned counsel for the petitioner relies upon the judgment of this Court in **Life Insurance Corporation of India Vs. Maman Chand and others, 2014 (4) R.C.R. (Civil) 454** and the provisions of the Interest Act, 1978.*

The writ petition is dismissed, so far as the award of insured amount of Rs.2,50,000/- is concerned but counsel for the petitioner appears to have raised an arguable point regarding the entitlement of respondent No.2 for interest.

Notice of motion to respondent No.2 for only pertaining to the question of payment of interest, for 11.07.2017.

The recovery of interest on the sum of Rs.2,50,000/- will remain stayed subject to the condition that the petitioner deposits the principal amount of Rs.2,50,000/-, within one month before the executing Court."

5. Taking into consideration that the writ petition was dismissed insofar as the question of determination of the liability and passing of award for the principal amount is concerned, the said issue is thus not being dealt with at this stage. The controversy which survives is only as regards the grant of interest on the principal amount of Rs. 2,50,000/-.

6. Counsel for the petitioner contends that the insurance policy document No.177783164 dated 02.02.2012 specifically incorporated that the insured would not be entitled to any interest on account of delay in release of the benefits. The relevant extract of the clause reads thus:

"The LIFE INSURANCE CORPORATION OF INDIA (hereinafter called as "the Corporation") having received a proposal and declaration and the first premium from the proposer and the life assured named in the Schedule ***and the said proposal and declaration with the***

> ***statements contained and referred to therein having been agreed to by the said proposer and the Corporation as the basis of assurance*** *do by this Policy agree, in consideration of and subject to the due receipt of subsequent premiums as set out in the Schedule, to pay the Sum Assured (together with such further sum or sums as may be allocated by way of Bonus in the case of with Profit Policies),* ***but without interest*** *at the Branch Office of the Corporation where this policy is serviced to the person or persons to whom the same is payable in terms of the said Schedule, on proof to the satisfaction of the Corporation of the Sum Assured having become payable as set out in the Schedule, of the title of the said person or persons claiming payment and of the correctness of the age of the Life Assured stated in the Proposal if not previously admitted.*
>
> *AND it is hereby declared that this policy of assurance shall be* ***subject to the conditions and privileges printed on the back hereof*** *and the following Schedule and every endorsement placed on the policy by the Corporation shall be deemed part of the policy".*

7. He further places reliance on judgment of this Court in the matter of "***Life Insurance Corporation versus Maman Chand and others***" reported as ***2014 (4) RCR (Civil) 454*** to contend that where there is a prohibitory clause in the policy for payment of interest, Section 3 (3) (a) (ii) of the Interest Act, 1978 will not apply and the Court cannot its exercise its discretion under Section 34 of the Civil Procedure Code to grant interest. The relevant extract of the said judgment reads thus:

> "*11. Once the claimants were entitled for the Sum Assured but without interest, as agreed between the parties in the abovesaid Clause of the policy Ex. P1, plaintiffs were not*

entitled for interest which was wrongly awarded by the learned courts below. In such a situation, provisions contained in Section 3(3)(a)(ii) of the Interest Act, 1978, would be attracted, which reads as "any debt or damages upon which payment of interest is barred, by virtue of an express agreement". In the present case, there was an express agreement between the parties in the form of the abovesaid clause of the policy Ex. P1, because of which the plaintiffs were not entitled for interest on the sum assured. Having said that, this Court feels no hesitation to conclude that learned courts below transgressed their jurisdiction, while granting interest to the plaintiffs-respondents, even without there being any prayer made on their behalf and also in view of the abovesaid express agreement between the parties.

12. The view taken by this Court also finds support from the abovesaid judgments relied upon by the learned counsel for the appellant. The relevant observations made by a Division Bench of this court in para 63 and 64 of the judgment in Laksihmi's case (supra), which can be gainfully followed in the present case, read as under :-

> *"In a recent decision of the Supreme Court of India in* ***Thawardas Pheramal v. Union of India (S), AIR 1955 Supreme Court 468,*** *this matter was examined in some detail, and it was held, that the following, among other conditions, must be fulfilled before interest can be awarded under the Act :*
>
> *(1) there must be a debt or a sum certain;*
>
> *(2) It must be payable at a certain time or otherwise;*
>
> *(3) these debts or sums must be payable by virtue of some written contract at a certain time;*
>
> *(4) there must have been a demand in writing stating that interest will be demanded from the date of demand.*
>
> *In this case, the plaintiff did not make any such demand from the insurer. Moreover, there is no agreement between the insured and the insurer entitling the former*

> *to any interest. No question of market usage, whereby insurers become liable to pay interest on overdue amounts of policy has been pleaded or could possibly arise. Prior to the coming in force of the Law Reforms (Miscellaneous Provisions) Act 1934 (section 3), the interest upon the money payable upon a policy of insurance upon the life of the insured could not be recovered from the insurer, even though the payment had been wrongfully delayed or where such promise was to be implied from the usage of trade or other obligations.*
>
> *Reference has also been made in the course of the arguments to Section 34 of the Code of Civil Procedure , which relates to the discretion of the Court in allowing interest after the due date of the suit. In this case, not interest after the suit has been allowed by the trial court and the plaintiff is not aggrieved on this account as no appeal or cross-objections have been filed in this Court. For reasons stated above, interest must be denied, to the plaintiff, and issue No. 4 is decided against her. No other issue has been pressed, and no other point has been taken by the parties.*

Similarly, the law laid down by the Delhi High Court in Smt. Shanta Trivedi's case (supra), which aptly applies to the facts of the present case, read as under :-

"The contract of insurance as set out in the life insurance policies expressly bars the payment of any interest by the defendant to the person entitled to receive the insurance amount. The learned counsel for the plaintiff contended that the plaintiff would be entitled to interest under the interest Act, 1978 but his contention is incorrect in view of Sub-Section (3) (ii) of the Section 3 of the said Act which provides that nothing in Section 3 shall apply in relation to any debt or damages upon which payment of interest is barred, by virtue of an express agreement. Interest is payable under Section 3(1) and (2) of this

Act in the discretion of the Court but interest cannot be allowed if the payment of interest is barred by virtue of an express agreement. There is no mercantile customary usage proved on the records of the case whereby interest would be payable to the plaintiff. Thus, the plaintiff is not entitled to any amount by way of interest and this issue is decided accordingly against the plaintiff."

13. Reverting back to the facts of the present case and respectfully following the law laid down in the cases referred to hereinabove, answer to the substantial question posed above, is and has to be in the affirmative. In the present case, plaintiffs did not challenge the validity of the abovesaid clause of an express agreement between the parties. It seems that plaintiffs were fully aware about the abovesaid clause of the insurance policy because of which, they did not take any averment or made any prayer in their plaint claiming interest on the sum assured. In this view of the matter, it is unhesitatingly held that learned courts below committed patent illegality, while not appreciating the material aspects of the matter, because of which the impugned judgments and decrees cannot be sustained."

8. Counsel for the respondent No.2 has on the other hand placed reliance on judgment of this Court in "***Balwant Kaur versus Life Insurance Corporation of India***" in **RSA No. 3494 of 1998** decided on 10.09.2004. The relevant extract of the said judgment reads thus:

12. The Supreme Court concluded in one of the principles laid down in the aforesaid judgment to the following effect:-

"Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the Civil Procedure Code de hors the contract between the parties. In a given case if the Court

> *finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."*

In view of the judgments referred to above, it can be safely concluded that in terms of express prohibition of interest in terms of the policy, the plaintiff is not entitled to interest from the date of death of the policy holder till institution of the suit as pre-suit interest is a matter of substantive law. In substantive law, the plaintiff is not entitled to interest in terms of Section 3(3)(ii) of the Interest Act, 1978. Thus, in respect of first substantive question of law it is held that the plaintiff is not entitled to interest for the period prior to the filing of the suit.

13. However, once the suit is filed, award of interest pendente lite and post-decree is discretionary with the Court and is governed by Section 34 of the Code de hors the contract between the parties. Therefore, the stipulation that no interest would be payable under the terms of the policy would cease to have effect after the filing of the suit and the plaintiff would be entitled to interest in terms of Section 34 of the Code.

14. It is needless to say that the rights of the parties are adjudicated with reference to the date on which lis is commenced. Therefore, to compensate the delay in final adjudication, the Court is empowered to grant interest in terms of Section 34 of the Code for the period lis remained pending before the court and for the period after the decree to enable the judgment debtor to make payment. Thus, the plaintiff is required to be compensated for the period spent in litigation as well.

15. Single Bench judgment of this Court in Hindustan Lever Limited's case (supra) is to the same effect wherein interest was claimed on damages on account of death in a railway accident. It was held to the following effect :-

> *"There can be three periods for which in the case of a decree for payment of money, interest may be allowed. The first period is the one which is prior to the date of the suit. The payment of interest for that period is a matter of substantive law and contractual liability and is outside the scope of Section 34 Civil Procedure Code. According to Ruttanji Ranji's case, AIR 1938 Privy Council 67 (supra) and Vithal Dass v. Rup Chand, AIR 1967 Supreme Court 188, interest can be awarded for that period (1) when there is an agreement for payment of the same, or (2) when it is payable by the usage of trade having the force of law, or (3) when the payment of the same is contemplated by the provision of any substantive law, or (4) under the Interest Act. It may also sometimes be awarded under the rule of equity. The second period is the one which intervenes the date of suit and the date of decree. The Court granting the money decree has discretion to allow interest pendente lite i.e. for the second period up to the limit of contractual rate. The third period is from the date of decree to the date of payment. For the said period, the Court granting the decree has discretion to allow interest, commonly known as future interest, on the amount adjudged, subject to the limit of 6 per cent, per annum, as it deems reasonable. Section 34, Civil Procedure Code, provides that the Court may, while awarding decree for payment of money, direct the payment of interest at such rate, as it deems reasonable, to be paid on the principal amount for any period period to the institution of the suit, with future interest on such principal sum at a rate not exceeding 6 per cent per annum......"*

The principles laid down in the said judgment are the one which have been culled down by the Supreme Court in the later judgments.

16. In Smt. Shanta Trivedi's case (supra), relied upon by learned counsel for the respondents, interest has been declined in view of the provisions of Section 3(3)(ii) of the Interest Act, 1978. However, no argument has been raised in the said case that the claim of interest after the filing of the suit would be governed by the provisions of Section 34 of the Code and not by contract. Therefore, to that extent, I am unable to subscribe to the view that the plaintiff is not entitled to interest after the filing of suit as well. The Court has not dealt with the argument now raised by the appellant that she would be entitled to interest under Section 34 of the Code. In Sulochani Devi's case (supra), learned counsel for the plaintiff has forgone the claim of interest and, therefore, the said judgment is not applicable to the facts of the present case.

17. In view of the above, the first substantial question of law is answered to the effect that the plaintiff is not entitled to interest for pre-suit period in view of the express stipulation in the policy. However, the plaintiff is entitled to interest for the period the suit remained pending before the Court as well as from the date of decree till realisation. Since the learned trial Court has exercised discretion in granting interest at the rate or 6 per cent per annum for the pendente lite period as well as for the period after the grant of decree, I do not find any reason to interefere with the said discretion exercised by the trial Court. Consequently, the present appeal is allowed and the judgment and decree passed by the learned first Appellate Court is modified to the effect that the plaintiff shall be entitled to interest at the rate of 6% per annum for the period from the date of filing of the suit till the date of realisation.
Appeal allowed"

9. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition as also the judgment cited by them in support of their respective claims.

10. There can be no dispute with respect to the preposition of law laid down in the precednent judgments of this Court where it held that the provisions of the Interest Act, 1978 shall not come to the aid of a claimant to claim interest where there is an express prohibition against awarding of interest in the agreement. However, the question which arises for consideration is as to whether the said prohibition relates to the pre-litigation period or the period after a party has approached the Court. The said aspect was taken into consideration by this Court in the judgment of "***Balwant Kaur versus Life Insurance Corporation of India***" (supra).

11. In so far as reliance on the judgment of L.I.C. of India versus Maman Chand is concerned, the said judgment does not come to the aid of the petitioner. Even in the said judgment, this Court upheld entitlement of the claimant to interest under Section 34 of the Civil Procedure Code, but the same was declined since the interest had not been claimed. The power of the Court to grant *pendente lite* interest ws thus affirmed. The application submitted by the respondent shows that interest on the sum insured had been claimed by the respondent.

12. When a contract contains an express prohibition against award of interest, the relationship would be governed by the substantive law governing the contract and the terms agreed to between the parties are to be given effect. However, once the party approached the Court and demands interest for undue delay in release of money or unjustified retention of

money & claim interest thereon, the procedural code become operative and can be invoked. The operative domain of substantive law would be governed by the Code of Civil Procedure and exercise of such jurisdiction would not be in conflict with substantive law. The award of interest thus is not in violation of Section 3(3)(a)(ii) of the Interest Act, 1978 for the period after institution of the suit. The bar shall however operate for the period prior thereto.

13. Once the issue comes before the Court, the period during which it has remained pending with Court & thereafter shall be governed by the discretion of the Court. A reasonable rate of interest thus may be granted by the Court for the period after the date of filing of the suit.

14. The case in hand in my opinion, would be closer to the ratio in the matter of "***Balwant Kumar versus Life Insurance Corporation***" (supra). The respondent-applicant would thus be entitled to the interest for the period from the institution of claim before the Permanent Lok Adalat (Public Utility Service), Bhiwani (Camp Court at Jind) till its actual payment i.e. with effect from 21.10.2015 till its actual disbursement on 24.04.2017. The rate of interest awarded is reduced from the award @ 9% to 6% per annum. Since the principal amount pursuant to the notice of motion order had already been deposited by the petitioner with the Executing Court, interest post decree is not being awarded.

15. The interest for the above period i.e. from 21.10.2015 till 24.04.2017 @ 6% p.a. shall be deposited by the petitioner-Insurance Company with the Executing Court within a period of 06 weeks of receipt of certified copy of this Court.

Petition is accordingly disposed of as partly allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)

JANUARY 20, 2023 **JUDGE**

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No