IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-19556-2020 (O&M).
Date of Decision: 08.02.2023.

RELIGARE HEALTH INSURANCE COMPANY LIMITED (NOW CARE HEALTH INSURANCE LIMITED W.E.F. 19.08.2020)

...Petitioner

Versus

THE CHAIRMAN, PERMANENT LOK ADALAT AND ANR

…Respondents

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

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Present: Mr. Taqdirjit Singh Sidhu, Advocate, for
Mr. Ramdeep Partap Singh, Advocate, for the petitioner.

Mr. Rajiv Kumar Saini, Advocate, for
Mr. Bhim Singh, Advocate, respondent No.2.

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VINOD S. BHARDWAJ. J (ORAL)

The present writ petition raises a challenge to the award dated 18.03.2020 (Annexure P-8) passed by the Permanent Lok Adalat (Public Utility Services), Karnal, vide which the petitioner-Insurance Company has been directed to pay an amount of Rs.3,05,077/- to respondent No.2-applicant along with compensation of

Rs.50,000/- on account of loss suffered and Rs.5,500/- towards litigation expenses.

Briefly summarized, the facts of the present case are that respondent No.2-applicant claimed to have been contacted by the agents of the petitioner-Insurance Company for purchase of a Group Health Policy launched by the petitioner-Insurance Company under the Plan Name "Group Care (Scheme 2-IIB)."

Respondent No.2-applicant purchased the Group Policy No. 10087119 with Certificate of Insurance No. 10486482 valid from 23-12-2015 to 22-12-2016 for a sum assured of 2,50,000/- (Rupees Two Lacs Fifty Thousand) against a premium of Rs.7,894/-. Respondent No.2-applicant claims to have disclosed all essential facts that were required to be disclosed at the time of seeking issuance of policy, along with the relevant documents. The petitioner-Insurance Company after being satisfied with the said documents issued the policy in question. On 17.02.2016, respondent No.2-applicant suffered from an inability to move his right arm and leg and was unable to speak since the morning of 16.02.2016. He was admitted to Arvind Hospital, Karnal initially wherefrom he got admitted in Max Super Specialty Hospital, Shalimar Bagh, New Delhi. He remained admitted and was operated upon by the doctors and an amount of about Rs.5,00,000/- was spent on his treatment. A claim was thereafter submitted by respondent No.2-applicant with the petitioner-Insurance Company for reimbursement of the expenses incurred by him for treatment. The matter was initially postponed on one pretext or the other by the petitioner-Insurance

Company and finally a claim rejection letter dated 22.07.2016 was sent to respondent No.2-applicant on account of non-disclosure of material facts/pre-existing ailments at the time of submission of the proposal form and issuance of the policy. Alleging that the repudiation of the claim of the respondent No.2-applicant by the petitioner-Insurance Company was illegal, an application under Section 22 C of the Legal Services Authorities Act, 1987 (hereinafter referred to as 'the Act of 1987') was filed before the Permanent Lok Adalat (Public Utility Services), Karnal.

Written statement on behalf of the petitioner-Insurance Company was filed wherein apart from taking the routine objections, it was stated on merits that a proposer is mandated to divulge all information as required in the proposal form. The contract of insurance being that of utmost good faith, disclosure of complete and correct information is a pre-requisite for issuance of a proposal document. Failure to furnish the required details would render the policy liable to be repudiated in view of Section 45 of the Insurance Act, 1948. The policy document in question was issued on the basis of wrong and incorrect material information furnished by the respondent No.2-applicant. He cannot be permitted to derive benefit of his own wrong and the applicant having committed a breach of the contractual requirement of utmost good faith, equity does not lie in his favour. It was averred that respondent No.2-applicant suffered from a pre-existing heart disease i.e. CAD (Coronary Artery Disease) – Old PTCA (Percutaneous Transluminal Coronary Angioplasty) since 2010 and that despite being under an obligation to disclose the same in the proposal form (contract) the needful was not done. It was averred that the said fact was duly reflected in the discharge summary issued by the MAX Hospital, Delhi dated 29.02.2016 reiterating the medical history of respondent No.2-applicant. It was thus averred that as per Clause 9 of the terms and conditions of the policy, the respondent No.2-applicant having failed to fulfill his obligations to disclose all the facts at the time of availing the policy, hence, claim was liable to be rejected.

Conciliation proceedings under Section 22 C (4) of the Act of 1987 were initiated and terms of settlement were put to parties, however, the parties having failed to reach at any amicable resolution of the dispute, the issue was adjudicated on merits in exercise of the powers under Section 22 C (8) of the Act of 1987 by the Permanent Lok Adalat (Public Utility Services), Karnal.

Upon consideration of the evidence adduced and the contentions raised by the respective parties, the application was allowed and the petitioner-Insurance Company was directed to pay the claim amount along with interest @ 9% per annum from the date of filing of the application till its payment to the respondent No.2-applicant.

Aggrieved of the aforesaid, 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), Karnal, has committed an error in appreciating the implications and consequences of non-disclosure of the material information. It also failed to take into account Clause No.9 of the terms and conditions of issuance of policy document and that in the absence of non-disclosure of the essential information as required in form (I), the petitioner-Insurance Company has a right to repudiate the claim. He submits that the discharge summary from Hospital was submitted by the respondent No.2-applicant himself and there is no occasion to deny the details mentioned in the aforesaid discharge summary. A further argument has been raised that the Permanent Lok Adalat (Public Utility Services), Karnal has also awarded an exorbitant rate of interest @ 9% per annum from the date of filing of the application till its disbursement and a future interest @ 12% per annum has also been awarded. He submits that the award of aforesaid interest is excessive as Section 34 of the Code of Civil Procedure does not allow interest more than @ 6% per annum.

Per contra, learned counsel appearing on behalf of respondent No.2-applicant contends that the repudiation of the claim by petitioner-Insurance Company was on a wrong pretext. He submits that the Proposal Form (I) requires an applicant to disclose the diagnosis/hospitalisation or treatment for any illness or injury for the last 48 months prior to submission of the Proposal Form. It is contended that the medical ailments referred to and relied upon by the petitioner-Insurance Company pertain to the year 2010 whereas the policy in question was issued in the year 2015. Hence, the aforesaid ailment was more than 04 years old as on the date of submission of the policy document. Since the obligation was to disclose only about the ailments suffered during the last 48 months, hence, the non-disclosure of any other ailment suffered for the period more than 48 months prior to submission of the Proposal Form would not amount to a material concealment/non-disclosure by an applicant and would not make the petitioner-Insurance Company entitled to repudiate the claim. The reliance placed by the petitioner-Insurance Company about the CAD – old PTCA since 2010 is hence inconsequential and could not have laid foundation for the petitioner-Insurance Company to reject the claim and to disentitle respondent No.2-applicant for the benefits under the said Policy. It is further argued that even otherwise, respondent No.2-applicant had suffered a paralytic attack and the same being a neurological condition, was also not even otherwise required to be mentioned in the Column No.5 – "Health and Lifestyle information" as prescribed in the Proposal Form. He submits that the Permanent Lok Adalat (Public Utility Services), Karnal, has duly considered the rival submissions and has dealt with the same. The findings recorded by the Permanent Lok Adalat (Public Utility Services), Karnal reads as under:-

> *"10. In the column Health and Life Style Information of the proposal form (Ex. R-7) the details asked by the Respondents company is "has anyone being diagnosed/hospitalised or under any treatment for any illness/injury during the last 48 months or is suffering from any illness" the petitioner has ticked the 'No' box. As per the Cashless Facility Request form/preauthorization Form (Ex. R-2) received, signed and stamped by the petitioner's treating Doctor, the petitioner is marked to be suffering from heart Disease since 2010 and as per the Discharge Summary issued by the Max Hospital, Delhi dated 29-Feb-2016 (Ex. R-3) the petitioner had a history of CAD (Coronary Artery Disease) old PTCA. Farther as per the discharge summary issued by the Max Hospitals, Delhi*

dated 21.03.2016, (Ex.R-4) the petitioner is marked past history H/O LEFF MCA INFRCT, POST PTCA-2010 HTN All the remarks by the doctors on R-2, R-3, R-4 are as on 2010 and there is no evidence that the petitioner was taking and medication for CAD during the last 48 months. Moreover the petitioner was admitted for other ailment which has no connection with the CAD.

11. After due consideration of the submissions made by the counsel of the parties and perusal of material on record we are of the considered opinion that the respondents were not justified in repudiating the claim of the petitioner on the ground of non discloser of pre-existing heart disease Le CAD (Coronary Artery Disease)-old PTCA since 2010 in the proposal form, when the petitioner claiming compensation for treatment for other ailments. Thus, we direct the respondents to pay the claim amount along with an interest @ 9% from the date of the filing of this petition till payment to the petitioner within 30 days from the date of award. If respondents fail to make the payment within 30 days, the petitioner would be entitled to get interest @12% per annum for the defaulting period. The petitioner is also entitled to compensation of Rs.50,000/- on account of loss suffered and Rs.5,500/- as litigation expense."

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

The fact which remains undisputed is that the pre-existing disease mentioned in the discharge summary by the Max Hospital, Delhi relates to the year 2010. The Proposal Form mandates an applicant-insured to disclose the hospitalization/medication/diagnosis undergone by an insured during the last 48 months prior to submissions of the Proposal Form. Learned counsel for the petitioner-Insurance Company could not refer to any material on the basis of which it could be ascertained that any such disease, as was tabulated in the Proposal Form, was suffered by respondent No.2-applicant within a period of 48 months prior to the issuance of the policy document. Once the obligation by an insured to disclose the information about health and lifestyle for the above period is discharged, he cannot be accused of concealment attracting Section 45 of the Insurance Act, 1948 and to entitle Insurance Company to repudiate the claim. The petitioner-Insurance Company being the underwriter of the risk is within its rights to prescribe the essential conditions and seek relevant/material information, which in its considered opinion is necessary and fundamental for its decision making process. Having prescribed the conditions, the petitioner-Insurance Company cannot thereafter submit that even though the information as desired and required under Proposal Form had been furnished, however, it was incumbent upon an insured to disclose information over and above the information required by them. Such a stand, I am afraid, would amount to prescribing additional terms and conditions in a policy document that were never made known to an insured. Any such interpretation of a policy document to the prejudice of an applicant insured would defeat his rights. Just as an insured is required to disclose complete information, it is also incumbent upon an Insurance Company to inform the proposer about the information that is required to be furnished. Once it has specifically asked for a definite information which in its subjective opinion was sufficient and requisite for its decision making, it cannot thereafter claim that it was prejudiced on account of non-disclosure of the information over and above the information required under the policy document. The finding of fact recorded by the Permanent Lok Adalat (Public Utility Services), Karnal has not been dispelled by referring to any cogent, convincing and reliable evidence and it cannot be perceived that the finding/conclusions recorded by the Permanent Lok Adalat (Public Utility Services), Karnal qua the liability of the petitioner-Insurance Company suffer from any illegality, impropriety, perversity or non-appreciation/misappropriation of evidence available on record.

The findings of the Permanent Lok Adalat (Public Utility Services), Karnal are affirmed to the said effect. It is well settled in law that the Permanent Lok Adalat (Public Utility Services), are governed by the guiding principles laid down under Section 22 D of the Act of 1987 for coming to any conclusion and that any such equitable jurisdiction exercised by the Permanent Lok Adalat would not ordinarily be disturbed till such time that there is an apparent illegality, perversity or impropriety or gross mis-appreciation of the evidence on record.

Learned counsel for the petitioner-Insurance Company has further argued that under the terms of the policy, the interest could not have been awarded on the sum awarded as there is an express prohibition to the said effect in the policy. He contends that in view of an express prohibition, award of any interest under Section 34 of the Interest Act, 1978 is unsustainable.

Learned counsel for the respondent No.2-applicant, however, contends that the aforesaid provision can enure in favour of the petitioner-Insurance Company till such time, the respondent No.2-applicant approached the Court of law and once an appropriate application/petition has been filed before the Court, the procedural laws shall come into operation and the Court would be entitled to award interest by applying the principles of Section 34 of the Code of Civil Procedure, 1908 for the period after the institution of the proceedings and till their adjudication as well as future interest.

This Court in the matter of ***Balwant Kaur Vs. Life Insurance Corporation of India, in RSA No.3494 of 1998, decided on 10.09.2004***, has observed as under:-

> *"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."*
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> *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 interfere 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"

Learned counsel for the respondent No.2-applicant however, fairly concedes that interest as prescribed under Section 34 of the Code of Civil Procedure, 1908 is capped at 6% per annum and that the Permanent Lok Adalat (Public Utility Services), Karnal has awarded interest @ 9% per annum from the date of institution of the complaint till its payment within a period of 30 days along with a future interest @ 12% per annum on failure of the petitioner-Insurance Company to make good the payment within a period of 30 days of the passing of the award. The aforesaid rate of interest is thus in conflict with the mandate of Section 34 of the Code of Civil Procedure. The interest awarded @ 9% and 12% per annum respectively is reduced to 6% per annum. Rest of the Award shall remain intact.

The present petition is accordingly partly allowed.

February 08, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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