2023:PHHC:141432

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204

CWP-6019-2016
Date of decision: 02.11.2023

UNITED INDIA INSURANCE COMPANY LTD .....Petitioner

VERSUS

PERMANENT LOK ADALAT PALWAL AND ANR .....Respondents

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

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Present: - Mr. Shubham Gupta, Advocate and
Mr. D. P. Gupta, Advocate
for the petitioner.

Defence of respondent No.2 struck off
Vide order dated 13.02.2017.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the award dated 03.12.2015 passed by the Permanent Lok Adalat (Public Utility Services) Camp Court at Palwal whereby the application filed by the respondent applicant has been allowed.

2. Briefly summarized the facts of the case are that the respondent-applicant had submitted the application before the Permanent Lok Adalat (Public Utility Services) under Section 22-C of the Legal Services Authorities Act, 1987 for seeking release of the balance amount of Rs. 2,60,000/- in addition to the payment of Rs. 1,40,000/- already made by the petitioner-Insurance company as per the terms of the medi care family insurance policy. It is undisputed that the said medical policy was valid

from 20.10.2013 to 19.10.2014 and that the respondent-applicant was regular subscriber of the said medi care insurance policy since 2011-12. His wife Smt. Santosh Kumari was also insured under the said policy for medical purposes. She had to undergo an Ortho Surgery on 05.06.2014 for her knee joint replacement at Primus Super Specialty Hospital, New Delhi. The period of hospitalization was from 04.06.2014 to 14.06.2014. The total expenses incurred were Rs. 4,75,072/- for hospitalization, treatment and medication. A bill was accordingly raised for reimbursement of the medical claim and to indemnify to the extent of Rs. 4 lacs, however, the respondents reimbursed only to a sum of Rs. 1,40,000/- out of the said amount.

3. The petitioner Insurance Company put a plea that the petitioner was entitled to be reimbursed the maximum to the extent of 70% of the sum assured under the policy and that the said amount came to Rs. 1,40,000/- and the same has been rightly paid.

4. After failure of the conciliation proceedings, the Permanent Lok Adalat (Public Utility Services) considered the case on merits and pass an award in favour of the respondent-applicant after noticing that the sum assured under the policy was Rs. 5 lacs and that the amount claimed was less than the same. An award of Rs. 1,05,000/- was passed in favour of the respondent-applicant.

5. Aggrieved thereof, the present petition has been filed.

6. Learned counsel appearing on behalf of the petitioner has placed reliance upon Clause 5.11 of the policy document to contend that the Insurance company was liable to compensate only to the extent of sum insured under the policy inforce at the time when it was contracted or suffered during the currency of such policy or removal thereof. The

admissible benefits have already been released in favour of the petitioner. The relevant clause is extracted as under:

> ***ENHANCEMENT OF SUM INSURED***
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> *The insured may seek enhancement of Sum Insured in writing at or before payment of premium for renewal, which may be granted at the discretion of the Company. However, notwithstanding enhancement, for claims arising respect of ailment, disease or injury contracted or suffered during a preceding policy period, liability of the company shall be only to the extent of the Sum Insured under the policy in force at the time when it was contracted or suffer during the currency of such renewed policy or any subsequent renewal thereof.*
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> *Any such request for enhancement must be accompanied by a declaration that the insured or any other insured person in respect of whom such enhancement is sought is not aware of any symptoms or other indications that may give rise to a claim under the policy. The Company may require such insured person/s to undergo a Medical examination enable the company to take a decision on accepting the request for enhancement in the Sum Insured. 50% of the Medical examination will be reimbursed to the insured person on acceptance of the request for enhancement the sum insured."*

7. It was put to the counsel for the petitioner as to whether the present case pertained to enhancement of the sum insured or not, counsel for the petitioner contends that there was no such enhancement with respect to the sum insured. No other argument was raised.

8. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents available on record as also the contentions raised.

9. The Permanent Lok Adalat (Public Utility Services) has examined the entire issue including the contention raised by the petitioner at length. The operation part of the order reads thus:

> *"7. It is admitted case of the parties that the petitioner was a regular subscriber of Family Medicare Policy' issued by the respondent since 2011-12. Every year he had been making the payment of premium. It is also not in dispute that the policy referred to hereinabove was issued by the respondent for the period 20.10.2013 to 19.10.2014. Under this policy the petitioner and his wife Smt. Santosh Kumari were insured for medical purposes. As per the terms of his policy the respondent was liable to indemnify the petitioner and his wife to the extent of the amount spent on hospitalization, medication and treatment required for any ailment suffered by them during the continuation of this policy or 70% of the sum assured. Whenever was less. The respondent also admitted that the petitioner's wife Smt. Santosh Kumari (insured under the above policy) had undergone total knee replacement during the continuation of this policy from Primus Super Specialty Hospital. It was also not in dispute that she remained hospitalized in that hospital for her treatment from 4.06.2014 to 14.06.2014 as indoor patient. Further it was also admitted that the petitioner had in all spent a sum of Rs. 4,75,072/- on hospitalization, medication and treatment of his wife required for the above operation and had paid that amount in the above hospital at the time of her discharge on 14.06.2014 as is evident from the bill and the receipt placed on file. Copy of the discharge summary issued by the hospital fully substantiated the claim of the petitioner. Copy of the same has also been placed on file.*
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> *8. In view of the above admitted facts the petitioner claimed that the respondent was liable to reimburse an amount of Rs. 4,00,000/- as the sum assured under the policy was Rs.*

5,00,000/-. On the other hand the respondent claimed that the sum assured was only Rs. 2,00,000/- and against that, as per the terms of the policy, the petitioner was entitled to receive 70% of this sum assured against the above bill raised by the hospital.

9. Having given thoughtful consideration to the above rival claims we find the contention raised by the respondent to be quite baseless. A bare perusal of the above policy would reveal that the sum assured under this policy was Rs. 3,50,000/. Neither it was Rs. 2,00,000/- as claimed by the respondent nor it was Rs. 5,00,000/- as claimed by the petitioner. As per the terms of this policy as also admitted by the parties the respondent was liable to reimburse 70% of the assured sum against the bill raised by the petitioner for Rs. 4,75,072/-. That amount comes to be Rs. 2,45,000/-. Nothing could be urged by either of the parties to dispute this calculation having been made in view of the terms of the policy and the sum assured shown in it. Accordingly we hold the respondent liable to indemnify the petitioner to the extent of Rs. 3,50,000/- under this policy. Out of this amount when this petitioner paid only a sum of Rs. 1,40,000/- to the petitioner and that amount was admittedly received by the petitioner we hold the respondent liable to reimburse the amount of Rs. 1,05,000/- more to the petitioner. Despite the legal entitlement of the petitioner and without any reason the respondent withheld this amount it has to be taken as a deficiency in service on the part of the respondent as insurer.

10. In the result the present petition is hereby accepted. An award for Rs. 1,05,000/- (one lakh five thousand only) is hereby passed in favour of the petitioner against the respondent directing the respondent to pay this amount to the petitioner within 45 days from today failing which the petitioner shall be entitled to recover this amount alongwith interest at the rate of 7.5% per annum from the date of filing of this petition till the

realization of this amount. No order as to costs. File be consigned to the records.

10. It is apparent from perusal of the said award that the Permanent Lok Adalat (Public Utility Services) has specifically noticed that the sum assured under the policy was Rs. 5,00,000/- and the respondent claimed that the sum assured was only Rs. 2 lacs and 70% has been released against the above said amount. The policy document was examined by the Permanent Lok Adalat (Public Utility Services) and it was noticed that sum assured under the policy was Rs. 3,50,000/- and was not Rs. 2 lacs as claimed by him or Rs. 5 lacs as claimed by the respondent-applicant. As per the terms of the policy and claim made by the petitioner, reimbursement was to the extent of 70% of the sum assured or the bill, whichever is less. The amount of 70% of Rs. 4,75,072/- come to be Rs. 2,45,000/- . Since the same was less than the sum assured, hence, the differential amount of Rs. 1,05,000/- has been awarded by the Permanent Lok Adalat (Public Utility Services).

11. Counsel for the petitioner has not been able to dispel the said findings by referring to any document and to establish that the sum assured was only Rs. 2 lacs and that the finding recorded by the Permanent Lok Adalat (Public Utility Services) about the sum assured being Rs. 3,50,000/- was factually incorrect. The same being a question of fact, the burden lay on the petitioner-Insurance Company to make out its case & to establish that the award was based on misreading of the evidence or it suffered from any illegality, perversity or arbitrariness. There can be no inference of a fact & the onus was to be discharged by the Insurance Company about proving a fact. It was always in possession of the entire evidence & documents, having

failed to prove the fact by referring to its documents, an inference flows against the Insurance Company.

12. The Permanent Lok Adalat is guided in its decision making by the guidelines provided under Section 22-D of the Legal Services Authorities Act, 1987 which holds that Permanent Lok Adalat shall decide on the basis of principle of natural justice; objectivity, equity & other principles of justice. An exercise of a discretion on above principles would not vitiate the award merely because any other view is possible. It is for the petitioner to establish that exercise of discretion suffers from a vice of illegality, procedural impropriety, gross irregularity, perversity or mis-appreciation of evidence which led to a conclusion that would be unsustainable on a correct appreciation.

13. It is evident that the Permanent Lok Adalat (Public Utility Services) has taken into consideration all the relevant facts & arguments advanced by the petitioner Insurance Company and have exercised its discretion in terms of the guidelines prescribed under Section 22 –D of the Legal Services Authorities Act, 1987.

14. The award does not suffer from the vice of illegality, perversity or gross misappreciation of evidence, hence, I fail to agree with the petitioner. The present petition is accordingly dismissed. The Award dated 03.12.2015 passed by the Permanent Lok Adalat (Public Utility Services) Camp Court at Palwal is hereby affirmed.

(VINOD S. BHARDWAJ)

NOVEMBER 02, 2023 **JUDGE**

Vishal Sharma

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