101

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28996-2022
Date of Decision: 19.07.2023

Star Health and Allied Insurance Co. Ltd. ….Petitioner

Versus

Navneet Golchha and another ….Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ravinder Arora, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

1. Petitioner (Star Health and Allied Insurance Company Limited) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking quashing of order/award dated 20.06.2022 (Annexure P-3) passed by learned Insurance Ombudsman whereby, the complaint filed by the respondent No.1 (Navneet Golchha) against the repudiation of insurance claim of his father, has been allowed and the petitioner/Company has been directed to pay the admissible claim amount to the respondent-claimant as per the policy terms and conditions.

2. Briefly, the parents of respondent No.1/complainant were insured under a policy issued by the New India Assurance Company Limited since 2014 and subsequently the father of respondent No.1/complainant got

the said insurance policy ported with continuity under the Star Health and Allied Insurance Company Limited policy No. P/161121/01/2021/018788 from 2019 which was subsequently granted continuity from 2016 by way of an endorsement in July, 2021. The said policy (Family Health Optima Insurance Plan) was for the period 11/11/2020 to 10/11/2021 and sum assured was Rs.5,00,000/-.

3. On the night of 05.09.2021, the father of respondent No.1/complainant namely Sh. Arun Kumar Golcha, got admitted to hospital in Surat due to sudden clotting in his brain and after 52 days (06.09.2021 to 28.10.2021) in hospital, he passed away on 28.10.2021. The respondent No.1/complainant claimed that during the hospital stay of his father, he had intimated the petitioner/Company regarding his father's admission and treatment, however, subsequently the petitioner/Company rejected the claim through mail. A request for reconsideration by respondent No.1/complainant was also rejected by petitioner/Company, *inter alia* on the ground that a pre-existing disease was not declared and admission and treatment of patient was for non-disclosed disease.

4. The stand of the petitioner/Company was that the father of respondent No.1/complainant was a known case of diabetes mellitus for the past 3-4 years, hypertension and chronic kidney disease for the past 2.5 years, prior to porting of the policy, however, the said ailments were not disclosed in the proposal at the time of porting the policy, accordingly, the same was stated to be non-disclosure of material facts. The petitioner/Company placed reliance on condition No.6 of the policy "Disclosure to information norms", which reads as under:

"Disclosure to information norms: The policy shall

> *become void and all premiums paid thereon shall be forfeited to the Company, in the event of mis-representation, mis description or non-disclosure of any material fact by the policy holder."*

5. After considering the rival contentions of the parties, the Insurance Ombudsman, vide its order/award dated 20.06.2022 came to the conclusion that the repudiation of claim under the policy was bad and the insured was directed to pay the admissible claim amount as per the policy terms and conditions.

6. In the aforementioned circumstances, the petitioner/Company has filed the present Writ Petition before this Court.

7. Learned counsel for the petitioner submits that respondent No.2-Insurance Ombudsman has erred in law and fact in allowing the complaint filed by respondent No.1/complainant and thereby, directing the petitioner/Company to pay the insurance amount in terms of the policy. It is submitted that the insurance policy is a contract between two persons and it is the duty of the proposer to disclose all the material facts to the insurer so that the insurer evaluates the material facts and decide whether to accept the proposal or not as the insurance contract is based on utmost faith. It is submitted that in the case of Health Insurance policy, disclosure of health details are the material facts and insured had to disclose all the past medical history in the proposal whereas, in the instant case, the father of respondent No.1/complainant did not disclose the material facts about his medical history, accordingly, as per condition No.6 of the insurance policy, the insurer had all the right to repudiate the claim and cancel the insurance policy. It was also argued that the complainant had never submitted any representation for change of mobile number and e-mail address from which

it is clearly evident that the insured had accepted the policy schedule without any protest, thus, the complainant could not take a plea before the Insurance Ombudsman that the mobile number and e-mail does not pertain to his family members. It is further submitted that the non-disclosure of material facts makes the contract of insurance voidable, accordingly, it is prayed that the instant petition be allowed and the impugned order/award be quashed and the repudiation of the insurance claim *qua* the father of respondent No.1/complainant be upheld.

8. I have heard learned counsel for the petitioner-Insurance Company and perused the paper book.

9. In the instant case, the sole ground for repudiation of claim of the claimant by the petitioner-Insurance Company is non-disclosure of material facts (factum of previous ailments) within the knowledge of the insured, which is covered under condition No. 6 of the Policy which states that if there is any misrepresentation/non-disclosure of material facts whether by the insured person or any other person acting on his behalf, the company is not liable to make any payment in respect of any claim.

10. Before the learned Insurance Ombudsman, the stand of Petitioner-Insurance Company was that prior to porting of the policy, the insured was suffering from diabetes mellitus, hypertension and chronic kidney disorder, which was not disclosed in the proposal form signed by the insured and a confirmation of the same was received through an OTP message received on his (insured) registered mobile. Thus, it was contended that in terms of condition No. 6 of the Policy, the claim submitted by complainant was rightly rejected.

11. On the other hand, it was the case of the complainant-claimant

that earlier in the year 2014 his parents had taken the policy issued by New Indian Assurance Co. Ltd. which was subsequently ported to Family Health Optima Policy issued by Petitioner-Star Health and Allied Insurance Co. Limited. The said policy is stated to be ported with continuity w.e.f. 2019 and later on the continuity was provided from 2016 onwards. The alleged non-declaration of pre-existing ailments was denied on the ground that the father of the claimant did not get any verification call nor the Insurance Company asked for any medical check-up prior to porting.

12. The learned Insurance Ombudsman while allowing the complaint of the claimant has recorded a finding that the contention of the Insurance Company that the insured had not declared his previous ailments in the proposal signed by him (insured) and a confirmation of the same was received through an OTP message on his registered mobile; was untenable as the representative of the Insurer could not provide any clarification on the mobile No. and e-mail mentioned in the policy. The learned Ombudsman returned the following finding:

> *"...Therefore mobile number mentioned in the policy (of the insured) was called from this forum desk and we were surprised to note that the listed registered phone number was of one "Mr. Sagar" who was employed with M/s Girnar Insurance Broker Private Limited and was not of the insured/complainant. This clearly explains how the proposal was confirmed by the Insurer online and supports the contention of the complainant…"*
>
> *"...it is clear that the insured has not filled up any proposal form and same has infact being done by the broker/agent of the Insurance Company and hence repudiation of liability on the basis of non-disclosure is not justified in view of the facts narrated above…"*

13. Learned counsel for the petitioner has not been able to dislodge the aforestated findings returned by the learned Insurance Ombudsman.

14. In the peculiar facts and circumstances of this case, once it has come on record that the mobile number mentioned in the policy (of the insured) was of one "Mr. Sagar" who was employed with M/s Girnar Insurance Broker Private Limited and was not of the insured/complainant and also that the insured had not filled up any proposal form and same has infact being done by the broker/agent of the Insurance Company, petitioner company cannot be permitted to take a stand that insured had not disclosed the material fact of previous ailments.

15. It is a matter of common observation that while obtaining insurance policies, the proposal forms are usually filled-up by the agents and the insured may not be even aware about the contents of the information filled in the same.

16. That apart the agent of the Insurance Company is required to explain all the details and conditions of the insurance policy sought by the customer. A common man is not supposed to know all the niceties and technicalities of law. Once accepting the premium and having entered into an agreement without verifying the facts, the Insurance Company cannot wriggle out of the liability merely by saying that the contract was made by misrepresentation and concealment. The insurance policies should not be issued and repudiated in such a casual mechanical manner.

17. In any case, this was a ported policy, in continuation of earlier policy which was obtained in 2014 and the continuity itself having been granted w.e.f. 2016 onwards. As the claim was made of the treatment in September/ October, 2021; the same was beyond the period prescribed under

Section 45 of Insurance Act, 1938, to question the policy on the ground of suppression/non-disclosure/misrepresentation of the fact at the time of obtaining policy.

18. Having considered entire facts and circumstances of the case, I do not find any error or illegality in the impugned order/award dated 20.06.2022 (Annexure P-3) passed by the Learned Insurance Ombudsman so as to call for any further interference in the present writ petition. Accordingly, the instant writ petition is dismissed.

19. All pending applications (if any) shall stand closed.

19.07.2023 **(HARSH BUNGER)**
Himani **JUDGE**

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