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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 2870 of 2023

Padma Das
Vs.
The Consumer Affairs Officer,
Consumer Affairs Department & Ors.

Mr. Gouranga Kumar Das,
Ms. Poulami Dutta
...for the petitioner

1. The petitioner is the mother of a deceased insurance policy holder, who died of chronic liver disease.

2. Learned counsel for the petitioner argues that the Insurance Company illegally refused to pay the insurance claim, although the premium amount was refunded to the petitioner.

3. Learned counsel points out that the Insurance Company, after the claim being made, insisted upon production of copy of complete indoor case papers of Kolkata Police Hospital where the life assured expired and copy of complete medical records pertaining to diagnosis and treatment of liver disease.

4. Learned counsel for the petitioner submits that although a copy of complete indoor case papers of the hospital, where the life assured expired, was produced, there was no prior treatment of the

diseased and as such, no other medical records pertaining to diagnosis and treatment of liver disease was produced.

5. It is argued that at the time of opening the policy, the Insurance Company was satisfied that the life assured was otherwise eligible for the policy and, as such, cannot now refuse the claim of the petitioner, who is the mother of the deceased.

6. Despite direction of affidavits, no affidavit-in-opposition has been filed by the Insurance Company, nor is anybody present to represent the Insurance Company, even despite service of notice of upgradation of the matter. A copy of the receipt is kept on record.

7. Since the Insurance Company chooses not to rebut the allegations made in the writ petition, we are required to proceed on the basis of the materials disclosed before this Court by the writ petitioner by way of the writ petition itself and its annexures.

8. In the refusal impugned before this Court, the Insurance Company relied on Clause 11.1 of Proposal Form, which, inter alia, included a query as to whether the life assured suffered from or received/receiving treatment or advice for any of the diseases or impairments as mentioned therein.

9. Under sub-clause (f), digestive system disease/disorder like ulcers, hemorrhoids, diseases of gall bladder or intestine have been included. Under sub-clause (i), "any other disorder/disease not mentioned above" has also been included.

10. It is an admitted position that nothing was disclosed regarding the chronic liver disease of the deceased, since the petitioner takes a stand that the life assured never suffered from such chronic disease at the time of opening the policy and, as such, there was no prior treatment of the same.

11. However, the medical information, documents regarding which have been produced by the petitioner herself on the insistence of the Insurance Company, speaks otherwise. The said hospital documents, under the head 'What had you treated the insured for", mentions *severe sepsis in a case of … Chronic Liver disease*.

12. Also, under another query asking the Hospital to give brief details of the illness or surgical condition that the insured was being treated for by the hospital and whether the same contributed to her death, it has been mentioned that the deceased was *treated for chronic liver disease with Ascites and Sepsis*.

13. Thus, it is clear that the deceased policy-holder was suffering from chronic liver disease which,

ultimately, became the cause of her death. From the documents annexed, it is found that the policy was opened in March, 2021, whereas the demise took place in the month of March, 2022, that is, one year after.

14. A plausible inference befitting a reasonable man is that the chronic liver disease was existing when the policy was taken out, otherwise the same could not have led to the serious consequence of demise for the said disease within a year.

15. Hence, it cannot be said that in its decision, the Insurance Company flouted the Wednesbury principle of reasonableness.

16. That apart, I do not find that the discretion exercised by the Insurance Company is arbitrary or unreasonable and/or the procedure adopted by the Insurance Company in insisting on documents and relying on the medical papers, was irregular. Hence, the writ court ought not to interfere with such due exercise of discretion by the Insurance Company within the parameters of the insurance policy.

17. Accordingly, in spite of there being no controversy to the materials annexed to the writ petition and even on the basis of the writ petition and its annexures, the petitioner is not entitled to interference in the present case.

18. Accordingly, W.P.A. No. 2870 of 2023 is dismissed without, however, any order as to costs.

19. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)