29.07.2024
Sl. No. 20
g.b./Swa.M
Court No.09

WPA 11728 of 2023

The Prity Soren Marandi
-Vs-
Union of India & Ors.

Mr. Biswajit Hazra
Mr. Archisman Sain
……For the Petitioner
Mr. Arijit Dey
Mr. D. R. Mukherjee
…..For the Respondent Nos. 4 and 5
Mr. Rajesh Singh
Mr. Aniruddha Singh
Mr. Shibashis Nandy
…….For the Respondent No.2

1. The petitioner has challenged an order passed by the Insurance Ombudsman. The petitioner claims to be the widow of one late Lubin Soren. The insurance claim of the deceased vide Policy No.47433690410 under SBI Life – Saral Shield, UIN No. 111N066V02 was denied by the death claims department. The Claims Review Committee had upheld such decision.

2. The AVP – Claims SBI Life Insurance Company Ltd. informed the petitioner that the contract between the husband of the petitioner and the Insurance Company was entered in good faith. The petitioner's husband was required to answer certain queries as to whether he was hospitalized during the last 10 years or whether he had been suffering from any liver disease (jaundice/hepatitis, etc.), truthfully. Both these queries were answered in negative "No". The queries are quoted below with the answers:-

Question No	Question	Answer
Q. 13(4)	During the last 10 years, have you undergone or advised to undergo hospitalization or an operation or any	No

	investigation or tests or medical treatment	
Q. 13(15)	Are you suffering from, or did you suffer or undergo investigation in the past from or have you been advised to undergo investigation or treatment for: (c) Liver Disease (Jaundice/Hepatitis, etc)	No

3. Under such circumstances, the authority was of the view that as the petitioner's husband had suppressed the pre-existing liver disease. The death claim of the petitioner's husband could not be allowed. The claim was reviewed by the appropriate committee and found to be inadmissible on account of suppression. The petitioner preferred an appeal before the Ombudsman. The petitioner was heard and an order was passed. The Ombudsman arrived at the following decision:-

"Observation and conclusions:

The hearing was attended by both complainant & respondent Company. Complainant submitted that her husband died on 09.06.2021 & that she is a complete housewife with no money. Also a loan is outstanding. That prior to the policy issue a searching was done & then the policy was issued. Representative of the Company submitted that certain health questionnaire was answered in the negative on the proposal paper & that GLD Case was noted by Dr. R. N. Ghosh on 29.11.2015 that is prior to policy date. Thus Company while corroborating with past medical reports & adverse medical history not disclosed by DLA, the Company had taken decision to repudiate the subject claim as per terms & condition of the policy. The complainant states that she is not getting claim. During the hearing it was noted that complainant had approached this office seeking relief of the amount of claim

AWARD
COMPLAINANT REF: NO: KOL-L-041-2223-0502
Taking into account the facts & circumstances of the case and the submission made by both the parties during the course of hearing and after going through

the documents submitted it is observed that Deceased Life assured had adverse past medical history which was not disclosed to the Insurer at time of taking the policy. As such the respondent Company has taken decision of repudiation of the claim as per policy terms & condition. The complaint is hereby dismissed without any relief to the complainant. Accordingly the complaint is treated as disposed of. If the decision is not acceptable to the complainant, he is at liberty to approach any other Forum/Court as per Law of the land against the Respondent Insurer.

4. The petitioner's complaint was dismissed.

5. The records of the SBI Life indicate that the Insurance Company investigated into the death case and it was revealed that the policy holder (DLA) was suffering from liver disease and was undergoing treatment for the same, prior to the date of commencement of the policy. He had mistated his health condition while submitting the proposal for the policy. In the medical examination form, the DLA answered in negative, to such queries. The medical reports which were submitted were in respect of the usual routine and preliminary tests. The DLA did not reveal his latent liver disease. In the questionnaire, answers were given in the negative to question no. 13 (4) and question no. (13) and (15). As per the discharge report of the Department of Health, West Bengal, the final diagnosis which was issued on October 26, 2015, was "CLD, portal hypertension, Ascites and Hepatic Encephalopathy. The company also submitted treatment papers of Lubin Soren dated November 8, 2015, November 29, 2019 and July 18, 2019 before the Ombudsman. On the basis of such papers, it was found that the DLA was suffering from CLD and hepatomegaly. From the sonogram report of the entire abdomen dated July 15, 2019, it was reported that DLA had impression of Hepatomegaly with Grade-II Fatty liver. The company submitted death certificate given by Dr. Karan Paswan wherein the cause of death was cardiorespiratory failure (in chronic liver disease). It was

evident from all the documents produced by the company that the DLA was being treated for a serious liver disease prior to the date of commencement of the policy and the DLA had intentionally withheld the health condition. Disclosure of actual disease would have led the company to reject the proposal. In view of the imposition of non-disclosure clause and per terms and condition of the policy, the claim was repudiated and an amount of Rs.27,900/- had been credited to the petitioner's account held with the SBI, towards refund of the premium paid.

6. Admittedly Lubin Soren expired at home. The company had done its due diligence and investigation and collected various medical reports, which would indicate that Lubin Soren was suffering from a pre-existing chronic liver disease. The Doctor's certificate also indicates that the deceased died due to cardiorespiratory failure, due to a chronic liver disease.

7. The insurance policy was effective from 12th of March, 2019 and Late Mr. Soren breathed his last on June 9, 2021 but all the medical documents which was relied upon by the insurance company and Ombudsman indicate that the deceased was suffering from a pre-existing liver disease, chronic in nature.

8. The medical examination by the doctor empanelled with the SBI Life were in respect of preliminary health condition. Such examination would not reveal the liver condition of the insured. The insured had been undergoing treatment on and from 2015, which is revealed by the records. Such material evidence was considered by the Ombudsman. The death certificate of the Doctor of Lubin Soren also indicates that the death occurred due to pre-existing chronic liver disease. The terms and conditions of the policy provide that upon discovery of suppression or misrepresentation, the sum insured can be denied.

9. Under such circumstances, this court does not find any irregularity in the decision making process. The petitioner has not been able to show that the ombudsman had wrongly relied on the evidence produced by the company.

10. It appears that the premium was Rs.9,300/- per year. Rs.27,900/-, that is, the total premium paid by the insured was refunded.

11. The evidence which was before the ombudsman being medical records relating to the chronic liver disease of the deceased, cannot be overlooked by the court. The court cannot direct the SBI Life to reconsider the issue when the Ombudsman has also come to a conclusion that the records proved the allegation of suppression of pre-existing disease. The policy is a contract between the insurer and the insured and a writ court cannot direct the insurer to deviate from the terms. The terms are binding on both parties. The petitioner has not been able to prove with material evidence that the findings of the insurance company and the Ombudsman with regard to the pre-existing disease are incorrect.

12. The writ petitioner being WPA 11728 of 2023 stands disposed of.

13. Parties are to act on the basis of the server copy of this order.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after completion of all necessary formalities.

(Shampa Sarkar, J.)