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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/90/2024
IA NO: GA/1/2024

PRALAY SHANKAR DHAR & ANR.
VS
THE INSURANCE OMBUDSMAN & ANR.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16th August, 2024

Appearance :
Mr. Pratyush Patwari, Adv.
Mr. Arun Tanti, Adv.
…for appellants

The Court : This intra-court appeal by the writ petitioners is directed against the order dated 1st May, 2024 passed in WPO 308 of 2024. The appellants/writ petitioners challenged the order passed by the Insurance Ombudsman, which affirmed the order passed by the respondent private Insurance company repudiating the insured's claim made by the first appellant.

Learned Advocate appearing for the appellants would vehemently contend that the order passed by the Ombudsman is wholly untenable, without taking into the actual contention and the order is in violation of the principles of natural justice. The respondent Insurance company before the Learned Single Bench contended that the repudiation of the policy was on account of non-disclosure of Double Hip Replacement surgery done on the first appellant during the year.

The contention of the appellants was that the policy was renewed once and in between the appellants made a claim for undergoing Double Hip Replacement surgery, which was approved and amount was sanctioned. Further, reliance has been placed on Regulation 8(2) of the Insurance Regulatory And Development Authority of India (Protection of Policyholders' Interests) Regulations, 2017. Learned Single Bench had extensively considered the factual matrix and also dealt with the effect of Regulation 8(2) of the Act. The Learned Writ Court also took note of the transcript of the voice conversation within the parties and was of the view that the answer "OK" for one of the questions as regards the pre-existing health condition was not an appropriate answer. That apart, the issue that the Insurer had honoured two policies previously was also considered and rightly held that it cannot be elevated to the high status of acquiescence or waiver on the part of the insurer, since an act of waiver constitutes an act which is done with full knowledge of the fact which is sought to be waived. Reference was made to decision of the Hon'ble Supreme Court in the case of *Satwant Kaur Sandhu vs. New India Assurance Company Ltd.*, reported at *(2009) 8 SCC 316* and the

Learned Single Bench noted paragraph 16 of the said judgment wherein the Hon'ble Supreme Court held that the materiality of the fact which is alleged to be suppressed depends not on the present claim or the nature of the same but on whether the suppression had a bearing on the Insurer being agreeable to accepting risk at all or in fixing the premium in the Insurance policy. With regard to the Double Hip Replacement Surgery performed on the first appellant in 1990, the Learned Single Bench was right in observing that this is undoubtedly a matter of serious importance since the fixation of premium and/or the decision of the insurer to accept the policy would directly be linked with such disclosure. The effect of Regulation 8(2) was also considered and it was held that on account of suppression of material facts the petitioners could not be entitled to any equitable relief in a writ petition.

Thus, we find the reasoning given by the Learned Single Bench is just and proper and does not call for any interference.

For the above reasons, the appeal stands dismissed.

The application IA NO: GA/1/2024 also stands dismissed.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)j