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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Appeal (CAD) No.7 of 2023

The Divisional Manager
New India Assurance Company Ltd
No.179, III Floor
Jawaharlal Nehru Street
Puducherry – 1. .. Appellant

Vs

1. Rajaram

2. Union of India
   rep. by Union Territory of Pondicherry
   through its Chief Secretary
   Groubert Road, Pondicherry – 1.

3. The Director
   Directorate of Health and Family
   and Health Services
   Government of Puducherry
   Main Block of the Old Maternity Hospital Complex
   Victor Simonel Street, Puducherry – 605 001.

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4. The Director
Directorate of Accounts and Treasuries
Government of Puducherry
Rainbow Nagar
Puducherry – 605 001. .. Respondents

Prayer : Appeal under Section 96 of the Civil Procedure Code read with Order XLI of the CPC and under Section 13(1A) of the Commercial Courts Act, 2015 against the judgment and decree of the Principal District Judge (Commercial Court) at Puducherry, dated 19.10.2022 in C.O.S.No.2 of 2021.

For Appellant	:	Mr.SP.Chockalingam
For Respondents	:	Mr.R.Ganesan for 1st respondent
	:	Mr.S.Raveekumar Government Pleader (Pondy) for respondents 2 to 4

JUDGMENT
(Delivered by SENTHILKUMAR RAMAMOORTHY,J.)

By consent, the appeal was taken up for final disposal at the

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admission stage.

2. The first respondent herein filed C.O.S No.2 of 2021 seeking a judgment and decree for payment of a sum of Rs.3,50,000/- with interest thereon at 12% per annum from the date of plaint till realisation. By judgment and decree dated 19.10.2022, the suit was decreed as prayed for against all four defendants. The fourth defendant in the suit, i.e., New India Assurance Company Limited, is the appellant.

3. The judgment and decree is assailed on the grounds that the insured was the Government of Puducherry and not the first respondent herein and that, consequently, there is no privity of contract between the appellant and the first respondent. The second ground of challenge is that the liability of the insurance company under the health insurance policy ceases the moment the overall claim under the policy reaches 120% of the actual premium paid, excluding service tax, in respect of all persons covered under the scheme.

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4. In course of the hearing before the Principal District Judge, defendants 1 to 3 failed to enter appearance and contest the suit. Therefore, they were set *ex parte*. The appellant herein was the only contesting defendant. The plaintiff adduced evidence by examining himself as P.W.1. The defendant examined P.Ilango, Divisional Manager, as D.W.1. The plaintiff exhibited 16 documents as Exs.A1 to A16 and the fourth defendant exhibited four exhibits as Exs.B1 to B4.

5.1. Mr.Chockalingam, learned counsel, advanced oral arguments on behalf of the appellant. By inviting our attention to G.O.Ms.No.12, dated 19.4.2018, issued by the Government of Puducherry, learned counsel submitted that the bid submitted by the appellant herein was accepted by the Government of Puducherry and, therefore, a contract was entered into between the Government of Puducherry and the appellant in respect of the Contributory Medical Benefit Scheme for pensioners.

5.2. He pointed out that the scheme envisaged cashless medical coverage on floater basis of a maximum sum of Rs.3,50,000/- for

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treatment under hospitalisation and an additional sum of Rs.50,000/- in respect of six specific critical illnesses. Under the terms and conditions, he focused attention on Clause 20 dealing with profit sharing. Learned counsel pointed out that the benefits under the health insurance policy cease the moment the overall claims under the policy reach 120% of the actual premium paid. Since the claims made by the beneficiaries under the policy had crossed the limit of 120%, he submitted that the claim made by the first respondent herein was rejected and that such rejection was duly communicated. In this connection he invited our attention to a communication dated 7.2.2020 [Ex.B4] from the appellant to second defendant.

5.3. By inviting our attention to the impugned judgment, learned counsel contended that the trial court failed to appreciate the fact that there was no privity of contract between the insurance company and the plaintiff. He also contended that Exs.B1 to B4 were not taken into consideration while concluding that the insurance company is liable in respect of the claim. He relied on the judgment of the Apex Court in ***Bajaj***

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Allianz General Insurance Co. Ltd. v. Mukul Aggarwal and others[1] to contend that an insurance contract should be construed strictly without adding words thereto.

6.1. Learned counsel for the first respondent/plaintiff responded to these contentions by submitting that the insurance company did not inform the beneficiaries, such as the first respondent, that benefits under the health insurance policy are subject to a ceiling of 120% of the actual premium paid. By referring to the impugned judgment, learned counsel pointed out that the factual findings were recorded that the insurance company had not informed the beneficiaries about the limitation in the insurance policy.

6.2. He also relied upon a judgment of the Apex Court in ***Texco Marketing Private Limited v. Tata AIG General Insurance Company Limited***[2], particularly paragraphs 42 to 48 thereof, with regard to unfair terms in a contract for insurance and the obligations imposed under

1 *(2024) 2 SCC 344*
2 *(2023) 1 SCC 428*

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Regulations 3 and 4 of the IRDA Regulations, 2002.

6.3. Learned counsel also submitted that the insurance company had deposited the entire decretal amount as a condition for the grant of stay. Consequently, he contended that this amount be paid over to the first respondent/plaintiff.

7. Mr.Raveekumar, learned counsel for the Government of Puducherry, contended that the said respondents are entitled to the benefit of Order XLI Rule 4 of the Civil Procedure Code, 1908 (CPC) notwithstanding the fact that respondents 2 to 4 had remained *ex parte* before the trial court. He contends that the decree proceeded on a ground common to all the defendants and, therefore, the appellate court may reverse the decree not only against the appellant, but also against respondents 2 to 4. In support of this contention, he relies upon a judgment of the Supreme Court in ***Andhra Pradesh Public Service Commission v. Baloji Badhavath and others***[3], especially paragraph 46

3 *(2009) 5 SCC 1*

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thereof. He also relies upon a judgment in ***Ratan Lal Shah v. Firm Lalmandas Chhadammalal and another***[4], particularly paragraphs 3 to 5 thereof.

8. In the light of the rival contentions, the question that falls for consideration is whether there was privity of contract between the appellant and the first respondent.

9. G.O.Ms.No.12 has been placed on record. This is an order issued by the Government of Puducherry accepting the bid of the appellant herein in respect of Contributory Medical Benefit Scheme. The said government order refers to the terms and conditions applicable in respect thereof. Such terms and conditions were appended to the order. Clause 20 thereof, which deals with profit sharing, is particularly relevant and is, therefore, set out below:

> *"(20) PROFIT SHARING*
> *The New India Assurance Company Ltd., Puducherry shall furnish a Monthly / Quarterly / Annual report to the Director of Health &*

4 *(1969) 2 SCC 70*

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Family Welfare Services, Puducherry with the details of the number of claims (hospital wise), and the total amount disbursed (treatments and surgeries wise) and also to the Director of Accounts and Treasuries, Puducherry. The Director of Accounts and Treasuries, Puducherry shall furnish a Annual Report to the Government through Director of Health & Family Welfare Services, Puducherry every year.

All the benefits under the Health Insurance Policy shall cease the moment the overall claims under the policy reaches 120% of the actual premium paid excluding the Service Tax in respect of all the persons who are covered under the Scheme. The overall claim shall be arrived at after taking into account all the expenses relating to bills paid and liable to be paid towards the Hospital/Service providers, medicines and implants purchased all connected expenses for the treatment of the beneficiaries under the Scheme.

The Insurer at the end of the policy period shall set apart 20% of the premium amount (excluding service tax) towards its administrative cost and the balance amount adjusted towards the claims payment received from the network hospitals. If there is any surplus after such adjustments mentioned above, the insurer shall refund 90% of such surplus to the Authority i.e. Government of Puducherry."

10. The second paragraph of Clause 20 makes it abundantly clear that benefits under the policy shall cease the moment the overall claims

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under the policy reach 120% of the actual premium paid, excluding the service tax, in respect of all the persons who are covered under the scheme. The third paragraph thereof provides that 20% of the premium amount shall be set apart towards administrative costs at the end of the policy period and the remaining amount shall be adjusted towards the claims payment. After going through this process, if there is a surplus, it provides that the insurer shall refund 90% of such surplus to the Government of Puducherry. In effect, the policy procured by the Government of Puducherry provides for the insurance company accepting claims only up to 120% of the actual premium paid and also provides for the payment of surplus to the Government of Puducherry.

11. Although the appellant/fourth defendant exhibited the government order, including the above mentioned terms and conditions, the trial court referred to Exs.B1 to B4, but failed to discuss the same or record any findings in respect thereof. In paragraph 18 of the impugned judgment, the following is recorded:

"18 .... Except the document marked under Exs.B1 to B4, there is no

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other document produced by the defendant's side to show that the plaintiff and other members of the scheme were intimated about the said clause.”

12. The trial court also examined the oral evidence of the defendant, including the cross-examination of D.W.1, and recorded the finding that the appellant had not intimated the plaintiff and other beneficiaries about the condition that claims will not be honoured once it reaches 120% of the total premium paid. The trial court failed to notice that the insured under the policy of insurance was the Government of Puducherry and not the first respondent/plaintiff. Consequently, the obligation of the insurance company was to inform the insured and not the beneficiaries, if any.

13. As regards the contention that there was no privity of contract between the plaintiff and the fourth defendant, the trial court concluded that there was privity of contract merely because the premium contributions were made by the first respondent/plaintiff pursuant to the Contributory Medical Benefit Scheme. The first respondent/plaintiff

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never paid the premium directly to the insurance company, instead the Government of Puducherry deducted plaintiff's contribution from the pension payable to plaintiff and paid that over to the insurance company, since the government was the insured. The trial court failed to appreciate the above fact.

14. As regards the contention of Mr.Raveekumar on the applicability of Order XLI Rule 4 CPC, it is clear from the text thereof that it applies only if the decree proceeds on a ground common to all the defendants. In this case, the decree against the Government of Puducherry was on account of failure to contest the suit. By contrast, the decree against the insurance company was on the grounds that there was privity and that the beneficiaries were not informed about the limitation of liability under the insurance policy. Therefore, this contention is rejected.

15. For the reasons aforesaid, the impugned judgment and decree calls for interference insofar as the liability of the insurance company is concerned.

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16. Accordingly, we allow the appeal and set aside the impugned judgment and decree only insofar as the appellant herein is concerned. Consequently, it will be open to the appellant to file an appropriate application for refund of the sum deposited in this court pursuant to the interim order. No costs. Consequently, C.M.P.No.9117 of 2023 is closed.

(K.R.SHRIRAM, C.J.) (SENTHILKUMAR RAMAMOORTHY,J.)

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Index : Yes/No

NC : Yes/No

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