IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.36323 of 2023
And
W.M.P.No.36302 of 2023

Reliance General Insurance Company Limited
Chennai Regional Office
Building No.10 & 11, No.13, 5th Floor,
Chennai Citi Center,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004. ... Petitioner

Vs.

1.Insurance Ombudsman, Chennai,
(for the State of Tamilnadu &
Union Territories – Puducheri Town and Karaikal),
'Fatima Akhtar Court', IV Floor,
No.453, Anna Salai,
Chennai – 600 018.

2.Sankar Padmanabhan ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in Award bearing number: IO/CHN/A/HI/0283/2023-2024, dated 19.06.2023 of the first respondent – Insurance Ombudsman, Chennai, allowing the complaint of the second respondent and quash the same.

For Petitioner : Mr.K.Vinod
For Respondents : R1 – No Appearance
Mr.P.Giridharan for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records in Award bearing number: IO/CHN/A/HI/0283/2023-2024, dated 19.06.2023 of the first respondent – Insurance Ombudsman, Chennai, allowing the complaint of the second respondent and quash the same.

2.The learned counsel appearing for the petitioner submitted that the petitioner had introduced Reliance Travel Care Policy – for individual (61-70) as an Over Seas Health Policy and accepting the proposal from the second respondent, the petitioner issued Reliance Travel Care Policy – for individual (61-70) to the second respondent for the period 08.05.2022 to 04.09.2022 at any Geographical area excluding USA and Canada. The said policy covers the medical expenses including transportation evacuation and repatriation of mortal remains, dental treatment, loss of passport total loss of checked baggage, delay of checked in baggage, personal accident, accidental death common carrier personal liability compassionate visit for any one illness and for any one accident.

3.The learned counsel appearing for the petitioner further submitted that the second respondent took treatment for respiratory failure from 08.07.2022 to 13.07.2022 at Monash Health in Clayton, Australia and filed a claim form dated 22.07.2022 claiming the medical expenses incurred by him. During verification of the documents it was found from the second respondent's Doctor report that the second respondent had past pertinent medical history of diabetes mellitus for ten years and Asthma – COPD for five months prior to May, 2022 and hence the second respondent's claim was rejected. Aggrieved by the same, the second respondent preferred complaint before the Insurance Ombudsman, Chennai on 03.05.2023 and the Insurance Ombudsman directed the petitioner to settle the claim made by the second respondent.

4.The learned counsel appearing for the petitioner further submitted that the second respondent had past pertinent medical history of diabetes mellitus for ten years and Asthma – COPD for five months prior to May, 2022, and further submitted that the second respondent ought to have disclosed about his illness while purchasing the policy, however, the second respondent did not disclose the said facts while purchasing the policy, which is material suppression and hence, the second respondent is not entitled to claim the medical expenditure incurred by him. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Apex Court reported in ***(2009) 8 SCC 316 [Satwant Kaur Sandhu Vs. New India Assurance Company Limited]***.

5.Per contra, the learned counsel appearing for the second respondent submitted that the second respondent took Reliance Travel Care Policy for the period 08.05.2022 to 04.09.2022 before his trip to Australia and during his stay at Melbourne, Australia, on 08.07.2022, the second respondent developed breathlessness and fever and hence, he took medical support from Intensive Care Unit of Monash Health in Clayton, Australia from 08.07.2022 to 13.07.2022. The second respondent submitted the claim form to the petitioner for the treatment undergone by him, however, the petitioner sent a letter repudiating the second respondent's claim. The learned counsel further submitted that as per Clause IX of the proposal form, the second respondent has to undergo medical examination before the nominated Doctor of the petitioner, however, the petitioner did not take any step to examine the second respondent before issuing the policy.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The facts of the present case is not in dispute. Admittedly, the petitioner issued Reliance Travel Care Policy – for individual (61-70) to the second respondent for the period 08.05.2022 to 04.09.2022 at any Geographical area excluding USA and Canada. The said policy covers the medical expenses including transportation evacuation and repatriation of mortal remains, dental treatment, loss of passport total loss of checked baggage, delay of checked in baggage, personal accident, accidental death common carrier personal liability compassionate visit for any one illness and for any one accident.

8.The second respondent during his stay at Melbourne, Australia, on 08.07.2022, developed breathlessness and fever and hence, he took medical support from Intensive Care Unit of Monash Health in Clayton, Australia from 08.07.2022 to 13.07.2022 and he filed claim form dated 22.07.2022 claiming the medical expenses incurred by him. During verification of the documents it was found that the second respondent had past pertinent medical history of diabetes mellitus for ten years and Asthma – COPD for five months prior to May, 2022 and hence the second respondent's claim was rejected by the petitioner. Aggrieved by the same, the second respondent preferred complaint before the Insurance Ombudsman, Chennai on 03.05.2023 and the Insurance Ombudsman directed the petitioner to settle the claim made by the second respondent.

9.Once the expert body has opined that the second respondent is entitled to the claim made by him, this Court is not inclined to sit over in appeal in the order passed by the first respondent. When there is a Clause in the proposal form, that the second respondent has to undergo medical examination before the nominated Doctor of the petitioner, it is for the petitioner to examine the second respondent before issuing the policy and failure to do so cannot be put against the second respondent.

10.Hence, this Court is of the view that there is no material suppression and the impugned order warrants no interference. The petitioner is directed to settle the admissible claim to the second respondent, within a period of four weeks from the date of copy of this order.

11.The writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

19.10.2024

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

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(for the State of Tamilnadu &
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M.DHANDAPANI,J.
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