



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-2799-2022 (O&M)

Date of decision: 16.07.2024

Bajaj Allianz General Insurance Company Ltd.

...Petitioner

VERSUS

Permanent Lok Adalat, Public Utility, Ludhiana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Karan Gaba, Advocate for
Er. Sandeep Suri, Advocate for the petitioner.

Mr. Rajesh Gupta, Advocate for respondent No.2.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the award dated 26.10.2021 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana in case bearing No.29/2019 titled as 'Anuj Kumar Sehgal Vs. Bajaj Allianz General Insurance Company Limited'.

2. The undisputed facts that emerge from the pleadings are to the effect that respondent No.2-applicant/Anuj Kumar Sehgal had purchased a family health insurance Policy bearing No.OG191000602100035362 bearing customer ID No.123377999 valid w.e.f. 21.07.2018 to 20.07.2019 under which medical claim upto Rs.5 lakh for respondent No.2-applicant/Anuj Kumar Sehgal and his wife Ms. Shabnam was covered. As per the case of respondent No.2-applicant/Anuj Kumar Sehgal, on 08.08.2018 when he was



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travelling to Gurugram along with his wife and relative Arun Sehgal, he suddenly felt acute abdominal pain and was immediately shifted to ShriJi Clinic Gurugram. The medical investigation was undertaken to rule out the possibility of Cardiac arrest. After a brief hospitalization and tests ruling out Cardiac issues, he was discharged. On his way back to Ludhiana, he felt the acute pain yet again and was taken to Adesh Medical College and Hospital, Shahabad, Ambala Cantt., where he remained admitted for about one and a half hours and was then shifted to Deep Hospital, Ludhiana. The medical investigation diagnosed the abdominal pain due to appendicitis. He was operated in an emergency on 09.08.2018 and the total expenses incurred by him for said treatment were Rs.1,51,554/-. The claim submitted by him for reimbursement of the medical expenses incurred was repudiated by the petitioner-Insurance Company by referring to the exclusion clause.

3. As the aforesaid factual aspects are not in dispute, they need not be dealt with any further. The only point which arises for consideration before this Court is as to whether the petitioner-Insurance Company had rightly repudiated the claim submitted by the petitioner or the reasons cited by it were unsustainable.

4. Learned counsel for the petitioner-Company has drawn the attention of this Court to the terms and conditions of the Policy documents and he makes a specific reliance on the exclusion No.4 of Clause 49 of the Policy document which reads thus:

“4. Any disease contracted and/or medical expenses incurred in respect of any disease/illness by the insured



during the first 30 days from the commencement of the policy, except for accidental injuries”.

5. Referring to the above, it is submitted that the Policy in question was taken on 21.07.2018 and that no medical expenses incurred on any disease/illness was to be indemnified by the Insurance Company within a period of 30 days from the commencement of the Policy. Since the commencement date of the Policy was from 21.07.2018 and the expenses for medical treatment were incurred by the petitioner on 09.08.2018, hence, the said expenses were with respect to a treatment within a period of 30 days of the issuance of the Policy. He contends that the exclusion being specific and fully known to respondent No.2-applicant, the claim for medical reimbursement was wrongly awarded by the Permanent Lok Adalat (Public Utility Services) while allowing the application. The essential terms and conditions of the Policy have not been taken into consideration by the Permanent Lok Adalat (Public Utility Services), rendering the award liable to be set aside.

6. Learned counsel appearing on behalf of respondent No.2-applicant however submits that even though there is no dispute with respect to the aforesaid clause of the Policy, however, the pain in question was detected suddenly and that such an exclusion cannot be applied under such circumstances as it would be unfair, unjust and inequitable. He submits that it was a case of unjustifiable denial of the benefits of insurance policy which was obtained for such exigent requirements.

7. I have heard the learned counsel appearing on behalf of the



respective parties and have gone through the documents appended with the present writ petition.

8. The specific exclusion clause in the Policy is undisputed along with its applicability. The only basis for seeking defrayment of the medical expenses incurred by respondent No.2-applicant is that the pain was detected suddenly and that the insured had no prior knowledge thereof. It is also not the pleaded case of respondent No.2-applicant that he was not made aware of the terms and conditions and/or the exclusions governing the applicability of the Insurance Policy.

9. An exclusion in a contract of insurance defines the eventualities not covered by the Policy and thus defines the scope and limit of the coverage provided. It is aimed at managing and limiting its exposure to high risk and to control the premium rates by excluding such claims/period, for the ultimate benefit of the insured. Since exclusions are an essential tool in managing risk, underwriting and determining premium, the same are required to be enforced.

10. A Court of law would generally not ignore an exclusion in an insurance contract except when there are circumstances which require the Court to scrutinize or interpret the exclusions if enforcing an exclusion is unfair or opposed to Public Policy. Scrutiny of such exclusion clause can be carried out by the Courts when it is ambiguous and requires interpretation from the context and intent; where the terms are unconscionable being heavily one sided to give an unfair advantage to the Insurance Company; if there has been misrepresenting and failure to obtain an informed consent etc.



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11. The exclusions specifically incorporated in contract cannot be diluted merely on the asking of a claimant as any such endeavor is likely to frustrate the very object behind the exclusions and the purpose/safeguards which for such exclusions have been kept. A minimum gestation period is often kept to rule out the possibility of frivolous claims and/or concealment of any information. Hence, a mere submission that an exclusion would be unconscionable would not withstand judicial scrutiny.

12. The Permanent Lok Adalat (Public Utility Services) has not accepted the argument of the petitioner by placing reliance on the judgment in the matter of '**Bharat Watch Company through Its Partner Vs. National Insurance Co. Ltd. through Its Regional Manager**', passed in **Civil Appeal No. (S). 3912 of 2019** decided on **12.04.2019**. The said judgment is however not applicable to the facts of the present case since in the said judgment the Hon'ble Supreme Court specifically noticed that the insured was not made aware of the terms of the exclusions and as such the said clause could not have been relied upon by the Insurer.

13. A perusal of the application submitted by respondent No.2-applicant before the Permanent Lok Adalat (Public Utility Services) shows that no such plea had been raised by respondent No.2-applicant that he was not made aware of the terms and conditions of the Policy including the exclusion clause. Moreover, a free look period is prescribed and is permissible as per the Rules notified by the **Insurance Regulatory and Development Authority of India(IRDAI)**. Every prudent consumer is required to go through the terms and conditions and the essential



requirements benefits/insurance coverage prescribed thereunder. In the event he does not agree with the said terms and conditions, he may seek refund of the premium. The lawful presumption which flows on account of failure on the part of the insured to exercise any such option, during the free look period, is that the consumer having gone through the terms and conditions of the policy documents, agrees with the same.

14. I find that the Permanent Lok Adalat (Public Utility Services), Ludhiana, failed to take into consideration the effect of the exclusion clause and the essential distinguishing features rendering the judgment inapplicable. The same is thus an illegality, perversity and failure to apply the facts and law. The award passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana is accordingly liable to be set aside.

15. The present writ petition is accordingly **allowed** and the award dated 26.10.2021 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana in case bearing No.29/2019 titled as ‘Anuj Kumar Sehgal Vs. Bajaj Allianz General Insurance Company Limited’, is **set aside**.

16.07.2024
Mangal Singh

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No