2024:PHHC:169686

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208

CWP-8028-2019
Date of decision: 09.12.2024

THE ORIENTAL INSURANCE COMPANY LTD. .....Petitioner

VERSUS

RAJVIR SINGH AND OTHERS .....Respondents

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

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Present: - Ms. Swatantar Kapoor, Advocate for the petitioner.
(Through Video Conferencing).

Mr. Lajpat Sharma, Advocate and
Ms. Monika Khatri, Advocate for respondent No.1.

Mr. Hemant Hans, Advocate for
Mr. Bhushan Bhatia, Advocate for respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the Award dated 14.12.2018 passed by the Permanent Lok Adalat (Public Utility Services), Hisar in case No. 700 of 20.08.2015.

2. Briefly summarized the facts of the present case are that the respondent No.1-applicant Rajvir Singh moved an application before the Permanent Lok Adalat under Section 22 (C) of the Legal Services Authorities Act, 1987 claiming that he had obtained PNB Oriental Medical

Policy bearing No.261500/48/2013/913 valid from 07.03.2013 to 06.03.2014 from the petitioner-Insurance Company. The said policy was further extended from 31.03.2014 to 31.03.2015 after paying the premium. The respondent-applicant claims to have fallen ill on 31.01.2015 and was admitted to Holy Help Hospital, Hisar where he was treated by Dr. Ajay Singh and was discharged on 03.02.2015. An amount of Rs. 22,960/- was spent by him on his medicines, tests, treatment and hospitalization etc. He claimed that not being fully cured, he was further referred to higher medical care and was admitted in Fortis Escorts Heart Institute, New Delhi on 03.02.2015 where he was treated and operated by Dr. T.S. Kaler and his team. Two stents were planted by the doctors and he remained admitted to hospital till 05.02.2015. A further amount of Rs. 3,35,900/- was spent by him towards the treatment at Fortis Escorts Heart Institute, New Delhi. An intimation was thereafter sent by him to the petitioner-Insurance Company requesting it that his claim be processed under the cashless policy but the same was refused vide letter dated 05.02.2015 whereupon he formally lodged his reimbursement claim No. 11037635. A letter dated 16.04.2015 and 15.07.2015 were however received by the respondent-applicant from the Insurance Company repudiating the claim on the ground that the claim was excluded under the policy document. Aggrieved thereof, the application under Section 22 (C) of Legal Services Authorities Act, 1987 was preferred by the respondent No.1-applicant before the Permanent Lok Adalat.

3. The petitioner-Insurance Company filed its joint written statement raising preliminary objection with respect to the maintainability of the claim alongwith lacking cause of action and *locus standi*. It justified its

decision to repudiate the claim by relying upon exclusion clause 4.1 of the Insurance Policy read with Clause 4.2 which excluded the disease of hypertension if contracted during the currency of the policy for a period of two years from commencement thereof. It was also stated that the respondent-applicant concealed the pre-existing disease and as a result thereof, the benefit under the said policy could not be extended to him.

4. The Permanent Lok Adalat made an attempt at mediating a conciliation of the proceedings, however, as the efforts for settlement could not fructify, an adjudication under Section 22 (C)(8) of the Legal Services Authorities Act, 1987 was undertaken.

5. The parties led their respective evidence.

6. On consideration thereof, alongwith a purported affidavit Ex. PW1/A, submitted by the respondent-applicant, and claimed to have been executed by the treating Dr. Ajay Singh, the claim of the respondent-applicant was allowed and the petitioner-Insurance Company was directed to reimburse the sum assured to the extent of Rs. 3 lakhs alongwith interest @ 7% per annum. A further cost of Rs. 10,000/- was awarded towards compensation to the respondent-applicant for the mental agony.

7. Learned Counsel appearing on behalf of the petitioner Insurance Company refers to the proposal form submitted by the respondent-applicant wherein a specific query was posed to the respondent No.1 as regards the complaint regarding any ailment, hospitalization etc. to which he had submitted that he had a chest pain for the first time on 30.01.2015. Further, the name of the referral doctor to Fortis Escorts Heart Institute was also specified as Dr. A.K. Singh and to the question No.7 pertaining to the date

from which he was suffering from heart problem, it has been reported as January, 2015. A specific question No.12 was also posed to him as to for how long he was on treatment for hypertension before admission, to which the answer submitted was "NO". Counsel for the petitioner further refers to the medical history of the respondent-applicant No.1 prepared at the Holy Help Hospital, Tosham Road, Hisar dated 30.01.2015 wherein it has been recorded that the respondent-applicant No.1 is an old case of Coronary Artery Disease (CAD) with complaint of Hypertension (HT). She contends that Clause 4.1 of the policy document required a claimant to make an honest and complete disclosure with respect to his health condition and all pre-existing diseases and that in the event of non-disclosure thereof, even the complications that may arise as a result of any such disease would be excluded from the benefit of the Insurance policy. The relevant extract of the policy document relied upon by her reads thus:-

> *"4.1 Pre-existing health condition or disease or ailment /injuries: Any ailment / disease / injuries / health condition which are pre-existing (treated / untreated, declared / not declared in the proposal form), in case of any of the insured person of the family, when the cover incepts for the first time, are excluded for such insured person upto 3 years of this policy being in force continuously.*
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> *For the purpose of applying this condition, the date of inception of the first indemnity based health policy taken shall be considered provided the renewals have been continuous and without any break in period, subject to portability condition.*

This exclusion will also apply to any complications arising from pre existing ailments / diseases / injuries. Such complications shall be disease. considered as a part of the pre existing health condition or disease.

4.2 The expenses on treatment of following ailment/diseases/surgeries for the specified periods are not payable if contracted and/or manifested during the currency of the policy.

If these diseases are pre-existing at the time of proposal the exclusion 4.1 for pre-existing condition SHALL be applicable in such cases.

i.	*Benign ENT disorders and surgeries i.e. Tonsillectomy, Adenoidectomy, Mastoidectomy, Tymanoplasty etc.*	*1 year*
ii	*Polycystic ovarian diseases.*	*1 year*
iii	*Surgery of hernia.*	*2 years*
iv	*Surgery of hydrocele*	*2 years*
v	*Non infective Arthritis*	*2 years*
vi	*Undescendent Testes.*	*2 years*
vii	*Cataract*	*2 years*
viii	*Surgery of benign prostatic hypertrophy*	*2 years*
ix	*Hysterectomy for menorrhagia or fibromyoma or myomectomy or prolapse of uterus*	*2 years*
x	*Fissure/fistula in anus.*	*2 years*
xi	*Piles*	*2 years*
xii	*Sinusitis and related disorders*	*2 years*
xiii	*Surgery of gallbladder and bile duct excluding malignancy*	*2 years*
xiv	*Surgery of genito-urinary system excluding malignancy.*	*2 years*
xv	*Pilonidal Sinus.*	*2 years*
xvi	*Gout and Rheumatism*	*2 years*
xvii	*Hypertension*	*2 years*

xviii	*Diabetes.*	*2 years*
xix	*Calculus diseases.*	*2 years*
xx	*Surgery for prolapsed inter vertebral disk unless arising from accident.*	*2 years*
xxi	*Surgery of varicose veins and varicose ulcers.*	*2 years*
xxii	*Joint Replacement due to Degenerative condition.*	*3 years*
xxiii	*Age related osteoarthritis and Osteoporosis.*	*3 years*

[Emphasis Supplied]

8. She contends that as per Clause 4.2 of the policy document and the diseases tabulated thereunder, if there were pre-existing medical conditions at the time of submission of a proposal, the exclusion under Clause No. 4.1, for pre-existing condition, shall be applicable in such cases even in relation to hypertension since the exclusion was for a period of two years. She also contends that since the respondent-applicant was an old case of Coronary Artery Disease (CAD) with complaint of Hypertension (HT) and was already under treatment, hence, a conjoint reading of the exclusions in clauses 4.1 and 4.2 of the policy excludes the ailment Hypertension and the complications arising from such pre-existing disease to be beyond the cover of the insurance policy for a period of 02 years from obtaining the policy. Hence, the claim had been rightly declined.

9. Counsel for the respondent-applicant on the other hand contends that the aforesaid averment regarding the medical history of the respondent-applicant stood clarified by the treating doctor and he had also submitted an affidavit, which is Ex. PW2/A of Dr. Ajay Singh. He contends that the doctor had clarified that the respondent-applicant came for treatment

to the Hospital in respect of a complaint of Chest pain on 30.01.2015 only and he was admitted as a case of Coronary Artery Disease and he was not a case of hypertension. He further submits that hypertension is only one of the risk factors in Coronary Artery Disease and is not the sole causative reason for the said problem and that there are various other reasons that may cause the Coronary Artery Disease (CAD). It was also clarified that the drugs used in Coronary Artery Disease (CAD) and Hypertension (HT) are normally similar and as such, the exclusion clause would not be applicable. He contends that the Permanent Lok Adalat (Public Utility Services) has rightly passed the Award in the respondent-applicant's favour by setting aside the order of repudiation passed by the petitioner-Insurance Company.

10. He has also placed reliance on the judgment of this Court in the matter of ***"Oriental Insurance Co. Ltd. versus Naresh Sharma and others"*** passed in CWP-4695 of 2013 vide judgment dated 07.10.2014. The operative part thereof reads thus:-

> "*15. The consistent view of the Courts above, is that the terms of the insurance policy have to be incorporated in the language and spirit with which, both the parties have agreed. As per exclusion clause 4.3 at Serial No. XVII of policy (Annexure P-2), any claim for hypertension during first two years of the police was not reimbursable. This condition has been accepted by the claimant-respondent No.1 and any payment with regard to hypertension can be disallowed by the Insurance company, as the term hypertension' does not require any further clarification. The applicant-respondent No.1 was admitted in Madanta Hospital, Gurgaon on 03.01.2012. As per the documents submitted, he had suffered headache, giddiness and hypertension on 03.01.2012. After his admission in*

Madanta Hospital, Gurgaon, he was discharged on 07.11.2012. He was treated by Dr. Achint Malhotra for four days. Echo test was conducted upon him. As per the insurance policy (Annexure P-2), there are as many as 21 exclusion clauses therein. A careful reading of these clauses shows that certain usual diseases like arthritis, cataract, Piles, diabetes gout and rheumatism, surgery of gallbladder etc. have been excluded for first two years. A perusal of these clauses further shows that heart disease does not find mention in any of 21 exclusion clauses. The applicant-respondent No.1 was admitted in Madanta Hospital, Gurgaon with symptoms of giddiness. hypertension and headache. All the three conditions cannot be read at serial No. XVII of exclusion clause 4.3 of the policy (Annexure P-2). In normal course, a patient suffering from hypertension is not required to be admitted in a hospital Applicant-respondent No.1 was suffering from headache, giddiness-and hypertension. As per the medical bills (Annexure P-3), the investigation shows that the symptoms could lead to a heart disease. X-ray of the chest and Echo test of the patient was conducted on 04.01.2012. Hence, a prolonging treatment of four days could not be the result of simple hypertension. It could be the symptoms of heart disease or heart attack. Hence, the claim of respondent No.1 for reimbursement of medical bills could not be rejected by relying on exclusion clause 4.3 as mentioned in the insurance policy (Annexure P-2). The object of the insurance policy is to secure a patient when he is admitted in hospital in an emergent condition. The exclusion clause has to be read to the benefit of the patient in genuine circumstances"

11. Reliance is also placed on the Division Bench judgment of this Court in the matter of ***"IFFCO TOKIO General Insurance Company Ltd.***

versus Permanent Lok Adalat (Public Utility Services, Gurgaon and others" reported as ***2012 (1) R.C.R. (Civil) 901***. The operative part thereof reads thus:-

> *"5. Having heard learned counsel for the petitioner appellant we are of the considered view that no interference of this Court would be warranted in the view taken by the learned Single Judge as well as the Lok Adalat. The law is well settled with regard to the exclusion clauses in standard forms of contracts. When the bargaining powers of the parties is unequal and a consumer has no real freedom to contract then such a power may be considered unfair. The principle deducible from various precedents is that the Courts would not enforce and when called upon to do so, strike down such an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. For instance, the above principle would apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It would also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. The types of contract to which the principle formulated above applies to terms which are so unfair and unreasonable that they shock the conscience of the Court. They are opposed to public policy and require to be adjudged void. In that regard we may place reliance on the judgment of Hon'ble the Supreme Court rendered in the case of* ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, AIR 1986 Supreme Court 1571."***

Responding to the above, Counsel for the petitioner-Insurance

Company contends that the affidavit purportedly filed by Dr. Ajay Singh and on record as Ex.PW2/A is contrary to the documents that had been filed by the respondent-applicant alongwith his claim itself. Under the given circumstances, if any clarification was required to be made, the Doctor who is the author of the affidavit was required to have tendered the said evidence in person and subjected himself to the cross-examination. She, however, contends that the said affidavit was filed by the respondent-applicant alongwith his own documents and has been marked as an exhibit and that in the absence of the executant of the affidavit admitting and acknowledging the averments contained thereunder, the affidavit in question could not have been tendered as evidence to contradict the unimpeached documents including the medical history of respondent-applicant. It is also argued that notwithstanding anything said thereunder, the fact remains that there was a mis-declaration made by the respondent to the specific questions that were put to him which such fact stands duly corroborated by the medical history that has been placed on record by the respondent-applicant himself.

13. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.

14. It is evident from perusal of the questionnaire filled up by the respondent-applicant that specific questions with respect to the ailment/diseases suffered by the respondent-applicant and the time when the same was diagnosed had been put to him. The respondent-applicant specifically responded that the said ailment was detected for the first time only on 30.01.2015 and that there was no prior ailment/sufferance. In relation to a specific query as to for how long he had been on treatment for

hypertension before admission, the response submitted by him was 'NO'. When the aforesaid responses are compared with the medical history of the respondent-applicant prepared by the Holy Help Hospital, Hisar shows that the specific recording made by the treating doctor was that the respondent-applicant was an old case of Coronary Artery Disease (CAD) with complaints of Hypertension. A record which is seemingly being sought to be diluted on the strength of the affidavit Ex. PW2/A and appended alongwith the present petition as Annexure R-1/1.

15. Counsel for respondent No.1 is not in a position to refute that the said doctor had not stepped into the witness box and had not tendered the affidavit. The law requires no enunciation that an affidavit can only be tendered by a person who is author of such a document and that in the instant case, the attending doctor Ajay Singh had not stepped into the witness box to depose about execution of the said affidavit or about correctness of the averments therein. In the absence of the aforesaid affidavit having been proved by the executant of the document, the material particulars and the deviation from the medical record remains unexplained.

16. When the averments contained in the affidavit were at variance from the medical record, the doctor was required to have subjected himself to cross-examination for further clarification. The same having been not done, the affidavit tendered by the respondent-applicant and allegedly claimed to be executed by Doctor Ajay Singh could not have been accepted as a valid piece of evidence.

17. The case of the respondent-applicant has been allowed by the Permanent Lok Adalat solely on the basis of the aforesaid affidavit, which I

feel is a mis-appreciation of the evidence adduced on record and amounts to taking into consideration an evidence that is not established in a manner known to law.

18. In so far as the reference to the judgment of the Hon'ble Single Bench in the matter of "***Oriental Insurance Co. Ltd. versus Naresh Sharma and others"*** is concerned, I am afraid the said judgment would not be applicable in the facts of the present case. The response to the disclosures to be made and submitted by the respondent-applicant was in the negative to the specific questions put to him whereas the medical history is conflicting and establishes that the said response to be fallacious. Similar circumstance did not exist in the facts of the case cited by the respondent-applicant.

19. The contract of insurance being one of *uberrimae fidei*, the person seeking the insurance policy is required to make a complete and honest disclosure of all the material particulars sought for by an insurance company to enable it to take a decision whether a risk is to be under-written or not. It is evident that the respondent-applicant despite being an Advocate and being fully aware of the implications of such disclosure, has chosen to give a dishonest response to the specific questionnaire. The consequences thereof thus would fall on him.

20. So far as the reliance on the Division Bench judgment in the matter of *"IFFCO TOKIO General Insurance Company Ltd. versus Permanent Lok Adalat (Public Utility Services, Gurgaon"* is concerned, the proposition of law espoused therein is not a subject matter of dispute, however, the said legal proposition does not arise for determination in the present case and hence would not be applicable in the facts of the present

case.

21. Taking into consideration, the totality of the circumstances noticed above and also the fact that there was a material mis-declaration by the respondent-applicant, who is a practicing Advocate and is fully aware of the nuances of law and deemed to be aware of the responses furnished by him amounted to material mis-declaration. He concealed his pre-existing disease including an assessment about the complications arising therefrom, which such information was contemplated in the policy document under the exclusions as notified in Clause 4.1 and 4.2 read jointly. The eventual claim is also with respect to an artery disease and as such it can not be held that the information had no direct link or proximate impact making the information irrelevant. The exclusions are essential clauses in a contract of insurance and are fundamental to fastening a fiscal liability.

22. The clause contemplates exclusion for all pre-existing diseases as well as the complications arising from a pre-existing disease. Undisputedly “Hypertension” is a complication that may lead to CAD and hence was required to be disclosed. Considering it from the perspective of Hypertension, the exclusion was for a period of 02 years and for CAD it was 03 years. Taking stock of any period, the policy was less than 02 years old and hence the exclusion clause gets attracted. It was thus not a case of a naive and innocent non-disclosure but a case of a willful wrongful declaration.

23. For the foregoing reasons, I find that the discretion exercised by the Permanent Lok Adalat (Public Utility Services), Hisar suffers from perversity and mis-appreciation of the evidence including evidence that has

not been established or proved in a manner known to law and thus, the Award dated 14.12.2018 passed by the Permanent Lok Adalat (Public Utility Services), Hisar in case No. 700 of 20.08.2015 is liable to be set aside. The present writ petition is accordingly allowed.

(VINOD S. BHARDWAJ)

DECEMBER 09, 2024 **JUDGE**

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No