IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

207

CWP-11065-2016 (O&M)
Date of decision: 28.10.2024

Tata AIA Life Insurance Co. Ltd. and another ...Petitioners

VERSUS

Permanent Lok Adalat (PUS), Bathinda and others ...Respondents

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

Present :- Mr. Nitin Thatai, Advocate and
Ms. Monika Thatai, Advocate for the petitioners.

Mr. Naveen Sharma, Advocate for respondent No.2.

Ms. Ekta Chauhan, Advocate for respondent No.3 (through V.C.).

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VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the instant petition is for quashing of impugned award dated 20.02.2015 passed by the Permanent Lok Adalat (Public Utility Services) Bathinda in application bearing No.325 of 2014.

2. Briefly summarized, the facts of the present case are that respondent No.2-applicant/Surinder Kumar had preferred two applications before the Permanent Lok Adalat (Public Utility Services) Bathinda i.e. application No.323 of 2014 as well as application No.325 of 2014. Application No.323 of 2014 had been preferred against M/s Cholamandalam Investment and Finance Co. Ltd., Bathinda (hereinafter referred to as '**the Finance Co.**') and M/s Cholamandalam MS General Insurance Company whereas application No.325 of 2014 had been preferred against the petitioner-Tata AIA Life Insurance Co. Ltd. (hereinafter referred to as '**the**

Insurance Co.') and the Finance Co. Since there is no challenge to the award passed against M/s Cholamandalam MS General Insurance Company and the Finance Co. in application No.323 of 2014, hence, the facts of the said case are not being adverted to. Reference is thus being made only to the facts as are necessary for adjudication of instant writ petition arising out of application No.325 of 2014.

3. Sh. Jagan Nath @ Jagan Lal, father of respondent No.2-applicant/Sh. Surinder Kumar, had purchased a tractor which was got financed from M/s Cholamandalam Investment and Finance Co. Ltd. for a sum of Rs.3 lakhs and the above said loan amount was to be repaid in 36 equal installments. In order to secure the amount of loan, the Finance Co. had also taken a Life Group Single Premium Personal Loan Reducing Term Insurance Protection Plan bearing policy No.DGCL000033 in its name. The premium was paid by the Finance Co., on behalf of the father of respondent No.2-applicant, and the policy was valid for a period of 03 years commencing from 29.02.2012 to 28.02.2015 for a sum assured of Rs.59,311.48. The premium of Rs.3,499.99 was duly deposited and respondent No.2-applicant was the nominee in the said policy that had been purchased for the benefit of the life insured. However, after payment of 20 installments, father of respondent No.2-applicant died on 06.10.2013. A claim was accordingly lodged by respondent No.2-applicant alongwith all the relevant documents required by the Finance Co., which had obtained the policy for the father of respondent No.2-applicant, to process the claim. The same was forwarded on completion of the documentation to the petitioner-Insurance Co. for settlement of the claim but instead of doing the needful,

the petitioner-Insurance Co. sent a letter dated 20.03.2014 repudiating the claim on the ground of the evidence obtained during investigation of the claim indicating that the insured had not disclosed his correct age at the time of obtaining the Insurance Policy and had there been no misrepresentation about the age, the policy would not have been issued. Dissatisfied with the ground of repudiation and claiming that there was no mis-declaration or mis-representation on the part of the insured, the application under Section 22C of the Legal Services Authorities Act, 1987 was filed before the Permanent Lok Adalat (Public Utility Services) by respondent No.2-applicant praying that the amount of Rs.59,311.48 together with bonus and ancillary benefits, if any, accrued be released alongwith interest and to also grant compensation towards mental agony, financial losses and the litigation expenses.

4. The petitioner-Insurance Co. entered appearance before the Permanent Lok Adalat (Public Utility Services) and raised preliminary objections that the application is not maintainable and that there was mis-declaration by the life insured i.e. father of respondent No.2-applicant at the time of obtaining the policy. It was averred that the Finance Co. had obtained the Life Group Single Premium Personal Loan Reducing Term Insurance Protection Plan for a period of 03 years vide enrollment form dated 25.02.2012 duly signed by the life insured in favour of the petitioner-Insurance Co. The deceased-life insured had mentioned his date of birth as 01.01.1962, according to which he was 50 years of age on 25.02.2012, when the enrollment form for obtaining the insurance cover was submitted. A Voter Id card bearing No. JGK1079060 reflecting his date of birth as 01.01.1962 had also been appended, however, at the time of submission of

claim, the same ID number reflected the date of birth of life insured as 1948. Hence, the deceased was 64 years of age as on 25.02.2012. A further investigation was accordingly conducted by the petitioner-Insurance Company and Aadhar Card of the life insured was also collected wherein the year of birth had been mentioned as 1946 and the date of preparation of the Aadhar Card was 17.08.2011. Hence, as per the Aadhar Card, the life insured was 65 years of age in the year 2011. Thus, there was a concealment of material information regarding the age which reflected the age to be 64/66 years at the time of obtaining the insurance cover whereas as per the contract with the Finance Co., the maximum age for obtaining group insurance was 60 years. Had the correct facts been disclosed, the enrollment form would not have been accepted and the policy would have not been issued. There was thus suppression of material facts and that the contract of Insurance being of utmost good faith, the petitioner would be entitled to repudiate a claim in the event of concealment of such information.

5. After completion of record, the application was taken up for re-conciliation but neither the Finance Co. nor the petitioner-Insurance Co. were ready to admit the claim of respondent No.2-applicant or any portion thereof. Since no settlement could be arrived at, hence, adjudication under Section 22 C (8) of Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services).

6. After consideration of the rival submissions and the evidence adduced on record by the respective parties, the application was allowed by the Permanent Lok Adalat (Public Utility Services), Bathinda against which the instant writ petition has been filed. The operative part of the award

passed by the Permanent Lok Adalat (Public Utility Services) reads thus:-

> *"8. We find that the submission of the applicant the respondent no.1 may not be rejected in its entirety. As noticed above, the very case of respondent No.1 is that the claim against the insurance company in application no.325/2014 stood rejected on the grounds of furnishing incorrect information relating to the age of the insured/consumer. The applicant's father was stated to have disclosed his date of birth 1.1.1962 in February 2012. However, at the time of investigation of the claim, age of the deceased was alleged to be beyond 60 years in February, 2012. The respondent no.1 had not produced its complete record relating to both the cases and the tie-up agreement with insurance companies aforesaid. Hence, it has to be concluded that the deceased had indicated his date of birth as 1.1.1962 in the loan case and in insurance proposal of case no.323/2014. No bank or finance company would entertain an application for loan without proof age. It is clear that the documents of age stated false in case 325/2014 stood annexed with the loan case and insurance case of the M/s Cholamandalam Insurance Company.*
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> *9. The close scrutiny of the record revealed that the respondent Finance Company had not apprised the customer of the details of Insurance Cover of both the cases. With a view to safeguard its interest, the Finance Company had gone in for insurance cover of the customer. The submission of the respondent no.1 that the insured had himself gone in for insurance cover from two different insurance companies could not be upheld for obvious reasons. The respondent no.1 Cholamandalam Finance Company and Cholamandalam insurance company are intimately connected. The reply and*

affidavit of respondent no.1 is clear for clearing its sister concern of the liability in question, it has been stated the claim against the respondent no.2 (in case no.323/2014) was not payable even though the insurance was in the nature of credit shield of the amount of loan.

10. The insurance companies in both the cases had supplied the insurance policy papers (not legible) and other details to the respondent no.1. The respondent no.1 did not produce insurance policy of its sister concern even though the insurance papers of case 325/2014 had been produced. The respondent no.1 had also not got comprehensive insurance cover covering all the risks of the insured as required under the tie up agreement and had also kept the customer in dark. It has where been stated that the insured had not been prepared for getting insurance cover in the nature of comprehensive credit shield. The insured had been directed to pay for insurance cover for two Insurance policies of two different insurance companies. He could well have paid for the third insurance cover as well. when the applicant had applied for relief against the loan in question to this court much there after the respondent no.1 had initiated action for recovery against the applicant under the Arbitration and Conciliation Act in clear contravention of the provisions of Section 22 C (2) of the Act.

11. Without first setting the insurance claims of the loan in question, the respondent no.1 could not have gone in for recovery of the balance amount of loan. The respondent no.1 could not have treated the insurance claims invalid at its own level. Certainly the respondent no.1 had indulged in malpractices to some extent in sanctioning the loan and in going in for insurance cover

at its own level. Finance Companies or their officials do carry on insurance business as well for obvious reasons.

12. The above discussion clearly makes out a case of deficiency in service on the part of the respondent no.1 Cholamandalam Investment and Finance Company Ltd. After consideration of the facts and circumstances of the case, the respondent no.1 is directed to pay compensation of Rs.30,000/- to the applicant within 45 days from today failing which it shall pay simple interest at the rate of 12% p.a. from the date of institution till payment. The amount of Rs.30,000/- shall be adjusted against the loan account of the deceased. Also the respondent no.1 shall not charge penal interest from the legal heirs of the deceased. Application No.323/2014 is accordingly disposed of.

12. Now application 325/2014 is taken up for consideration. The applicant had stated that his father had been got insured in the sum of Rs.59311/- from respondent no.1 TATA AIA Life Insurance Company by M/s Cholamandlam Investment & Finance Company. The insured had died on 06.10.2013. The applicant had supplied necessary documents to the finance company who had forwarded them to the respondent no.1. The respondent 1 had repudiated the claim on the ground of furnishing of incorrect Information of date of birth of the insured.

13. On the basis of available evidence on record, we find that the insured had not furnished incorrect information of his date of birth. The applicant's father had supplied copy of his ID Card issued by Election Commission of India to the respondents. The copy of the ID Card duly attested by Ms. Manjeet Kaur Advocate Notary Public had been produced by the insurance

company. In this card, the date of birth of the insured had been recorded 01.01.1948. The insurance company had stated that at the time of investigation, the age of the insured in the same ID Card No.JGK 1079060 had been recorded 55 years as on 01.01.2000. In the Adhar Card copy on record produced by the insurance Company, year of birth of the insured had been recorded 1946. In the books of the Gram Panchayat the age of the insured had been recorded 66 years.

14. We find that it had not at all been established that ID Card in support of the age of the insured produced at the time of commencement of the insurance cover had been false. It was clearly that Original ID Card had been available and had been examined by the notary where after attestation had been done. The ID card sought to be declared false by the Insurance company had been issued on 01.01.2006. Whereas the investigator had collected copy of the ID proof stated to have been issued on 30.6.2001. Original Adhar Card or books of the Gram Panchayat had not been produced. The books of the Gram Panchayat (Patwar Register) also did not indicate the year to which the card pertained the date of birth of the insured from the books of Registrar of birth and death had not been collected in books of the finance company, date of birth of the insured had been recorded 01.01.1948. The respondent no.1 in case No.323/2014 had nowhere stated that date of birth of the insured recorded in its books was wrong. The Finance company was holder of the insurance policy in question in both the cases. When it did not assail the correctness of the date of birth, the Insurance company could not be permitted to say so. The respondent no.1 and 2 in case no. 325/2014 had been wrong in repudiating the claim on

the ground of furnishing incorrect information of date of birth of the insured.

15. The Insurance Company had stated that the insured had purchased insurance policy in the sum of Rs.59.311/- Claims of the insurance company was to be confined to the amount of Rs.59311/-. This submission of the insurance company is devoid of substance. The insurance company had sold the group single premium personal loan reducing term insurance protection plan policy no.DGCL000033 policy to the finance company. This policy had been effective w.e.f.24.11.2010. It is very case of the insurance company that this policy had been renewed on payment of premium and had been in force in 2013 as well. The Finance Company had paid requisite premium for renewal of the insurance cover as per this policy. In the policy sum insured has been stated as follows.

> *"The sum insured in respect of each insured Member shall be an amount equal to his loan outstanding at the effective date of his coverage that is indicated in his application for membership and authenticated by the policy holder and accepted by the company. The Total sum insured under this policy on the life of any Insurance member at any given time for any single loan combination of loans shall not, if any event exceed an amount of Rs.1,50,000/-.*

16. The Finance Company had purchased insurance policy in the nature of credit shield from the respondent no.1 & 2 in case No. 325/2014. As such whatever amount was outstanding against insured at the time of his death was required to be paid by the Insurance company. The liability of the Insurance

company could not be confined to Rs.59311/- only. The respondent no.1 and 2 in case no.325/2014 are directed to pay the balance amount of loan outstanding against the insured at the time of his death Rs.30,000/- ordered to be paid by the finance company as noticed above. The respondent no.1 and 2 in case 325/2014 are directed to adjust the outstanding amount of loan of the insured Rs.30,000/- within 45 days from today, failing which they shall be liable to pay simple interest @ 12% PA from date of institution till payment. The application is accordingly disposed off."

7. Aggrieved thereof, the present writ petition has been filed.

8. Learned counsel for respondent No.2-applicant filed his reply defending the award passed by the Permanent Lok Adalat (Public Utility Services) and re-iterated that there has been no concealment on the part of the father of respondent No.2-applicant. The IDs submitted by Sh. Jagan Nath was not found to be false or forged and that a different ID card issued on a separate date has been relied upon by the Insurance Co. to dispute the claim made by respondent No.2-applicant. In the absence of any finding about the genuineness and validity of the document(s) appended by the father of respondent No.2-applicant at the time of securing the policy cover, the claim of the Insurance Co. that there was a mis-declaration on the part of the life insured is invalid.

9. A separate reply had also been filed by the Finance Co. wherein it supported the claim of respondent No.2-applicant and has averred that the petitioner-Insurance Co. failed to prove that the age of insured was more than 60 years at the time of submission of enrollment form. It was also

stated that the Finance Co. had forwarded all the documents to the petitioner-Co. and it issued the policy only after feeling satisfied about the same.

10. No replication to the written statements has been filed.

11. Learned counsel appearing on behalf of the petitioner-Insurance Co. has argued that the Permanent Lok Adalat (Public Utility Services) committed a grave error in appreciating the facts and circumstances of the present case as also the evidence adduced before it. It is argued that the proposal form was submitted by the insured on 25.02.2012 whereupon a certificate of insurance was issued by the petitioner-Insurance Co. for a total insured sum of Rs.59,311.48. Respondent No.2-applicant was nominee of the said policy and that even at the time of submission of the claim before the Permanent Lok Adalat (Public Utility Services), respondent No.2-applicant had prayed for release of Rs.59,311/- only alongwith the compensation and litigation expenses. The relief sought by respondent No.2-applicant in application No.325 of 2014 is extracted as under:-

> *"**It is, therefore, prayed that the opposite party may please be directed-***
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> ***(a) To pay Rs.59311.48p together with bonus, benefits if any accrued or to credit the amount in the loan account of the complainant with Cholamandal Investment & Finance Co. together with interest @ 12% per annum from the date of withdrawal till its actual payment.***
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> ***(b) to compensate the complaint for acute harassment, mental agony, financial lossess to the tune of***

Rs.20000/- with litigation expenses of Rs. 5000/-

(c) any other relief which this Hon'ble Forum deems proper in the facts and circumstances of the case."

12. It is argued that notwithstanding the sum insured, the Permanent Lok Adalat (Public Utility Services) has directed the petitioner-Insurance Co. to pay the entire outstanding loan amount. In doing so, the Permanent Lok Adalat (Public Utility Services) travelled not only beyond the terms & conditions of the policy but also beyond the prayer made in the application. It is argued that the Finance Co. had obtained the said Protection Plan and as per the terms & conditions of the policy documents, the detail about sum insured is culled out as under:-

Sum Insured	*The sum insured in respect of each insured member shall be an amount equal to his loan outstanding at the effective date of his coverage that is indicated in his application for membership and authenticated by the Policy-holder and accepted by the company. The Total sum insured under this policy on the life of any insured member at any given time for any single loan or combination of loans shall not, in any event, exceed an amount of Rs.15,00,000/-*

(***emphasis supplied***)

13. He refers to the policy document issued by the Insurance Co. as per which the sum insured was Rs.59,311.48 and contends that the policy

document has to be read in the context with the policy issued. Since the insurance coverage was on a reducing balance, hence, merely because the total sum insured under this policy on the life of any insured member was not to exceed an amount of Rs. 15 lakhs, it cannot be read as fastening a liability to the loan amount outstanding as on the date of coverage. The said clause requires the acceptance of insurance coverage by the Insurance Co. as well. The acceptance of the insurance coverage, as conveyed by the petitioner-Insurance Co., was Rs.59,311.48. The Permanent Lok Adalat (Public Utility Services) completely ignored the said aspect while reading the clause and directed the petitioner to pay the outstanding loan amount rest the amount already deposited. It is argued that respondent No.2-applicant was fully aware of the aforesaid riders of the policy and it was for the said reason that the application had been submitted for claiming a sum of Rs.59,311.48 only. He further argues that the petitioner-Insurance Co. specifically made a reference to the different age as mentioned in the documents issued against the life insured. While the insured submitted a document reflecting his age as 50 years on the date of submission of enrollment form, the supporting documents revealed during investigation established that the deceased-Sh. Jagan Nath was more than 60 years of age as on the date of submission of the enrollment form and obtaining the policy. Since the contract prescribed a maximum permissible age for availing an insurance policy at 60 years, the insured having acquired an age beyond the same, the risk would not have been undertaken at all. There was thus a material concealment on the part of respondent No.2-applicant and that the claim had rightly been declined.

14. During the course of arguments, learned counsel for the petitioner-Insurance Co. adopted a fairly equitable stand and contended that he has obtained instructions at this stage not to contest the claim to the extent of Rs.59,311/- i.e. the sum insured as per the policy documents and as claimed in the application but confines his challenge to the award to the extent whereby the Permanent Lok Adalat (Public Utility Services) had directed payment beyond the risk accepted by the petitioner-Insurance Co. and for the outstanding loan liability.

15. Learned counsel for contesting respondent No.2-applicant re-iterated the submissions noticed above and defended that the policy documents had been rightly dealt with by the Permanent Lok Adalat (Public Utility Services) as per the terms & conditions incorporated therein and the award has rightly been passed as per the guiding principles on natural justice, objectivity, equity, fair-play and other principles of justice as enshrined in Section 22D of Legal Services Authorities Act, 1987.

16. Learned counsel appearing on behalf of the Finance Co. also supported the arguments of respondent No.2-applicant and contends that the petitioner-Insurance Co. has not denied the receipt of the premium and that if it has no objection to the payment of a sum of Rs.59,311.48, it cannot dispute its liability for the remaining amount as well. It was also argued that all the documents were duly forwarded by the Finance Co. and that there had been no concealment on their part. He contends that the petitioner-Insurance Co. would not be justified in denying the benefits of the insurance coverage at this juncture.

17. No other argument has been raised on behalf of the respective

parties nor any judgment cited.

18. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition with their able assistance.

19. In so far as the controversy pertaining to the validity and genuineness of the documents submitted by respondent No.2-applicant at the time of submission of proposal/enrollment form is concerned, the same are not being gone into at this juncture in view of the submissions advanced by the learned counsel for the petitioner-Insurance Co. that it would have no objection in case the amount, as claimed by respondent No.2-applicant in his original application, i.e. Rs.59,311.48 as awarded. Hence, the legality or validity of different identity cards submitted by respondent No.2-applicant is not required to be gone into.

20. The same thus leads this Court to examine as to what relief could be granted to respondent No.2-applicant by the Permanent Lok Adalat (Public Utility Services).

21. Although it is not in dispute that the sum insured, as per the clause mentioned in the terms & conditions of the policy extending insurance coverage, the amount is equal to the outstanding loan, at the effective date of his coverage indicated in his application for membership and authenticated by the policyholder and accepted by the Company to a maximum of Rs.15 lakhs, however, the objective and dispassionate reading of the said document shows that the insurance coverage had to be read alongwith what had been indicated in his application for membership and as "accepted by the company". Acceptance being a primary requirement under

the Contract Act, an insurance coverage has to be read in the context of the coverage accepted by the Insurance Co. The serial number of the petitioner was 33 in the insurance account, as maintained by the Finance Co., and that on a proportionate reducing balance, the sum insured had been specifically conveyed as Rs.59,311.48.

22. The specific part of acceptance of a risk by the petitioner-Insurance Co. cannot be ignored by merely reading the risk coverage. For an enforceable contract, the consent and acceptance gains significant importance. Seemingly, the Permanent Lok Adalat (Public Utility Services) was swayed by the extent of coverage and in its overt sympathy to the life insured, it travelled beyond the acceptance conveyed by the petitioner-Insurance Co. and even failed to appreciate that respondent No.2-applicant had himself confined his relief against the petitioner-Insurance Co. to the tune of Rs.59,311.48.

23. Learned counsel appearing on behalf of respondent has also not been able to respond as to why the prayer had been made only for releasing Rs.59,311.48 in case he was entitled to a higher compensation. He failed to respond to the same. Obviously, the only inference which flows from the same is that respondent No.2-applicant was fully aware about the extent of benefit to which he is entitled to and is now wanting to defend the claim which has been awarded beyond the claimed amount despite being conscious that he is not entitled to the said benefit.

24. For the foregoing reasons, I find that there was a mis-appreciation of the fundamentals of the law of contract and the extent of acceptance of risk by the petitioner-Insurance Co. and also failure to

appreciate the relief claimed by respondent No.2-applicant by the Permanent Lok Adalat (Public Utility Services). Hence, the present writ petition is **partly allowed**. The benefit as awarded by the Permanent Lok Adalat (Public Utility Services), Bathinda in favour of respondent No.2-applicant is confined to the sum of Rs.59,311.48 alongwith interest @8% per annum from the date of filing of the application till its actual disbursement.

25. Let the above said amount be released in favor of respondent No.2-applicant by the petitioner within a period of three months from the receipt of a certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

28.10.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No