2024:PHHC:119380

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-14563-2017 (O&M)
Date of decision: 11.09.2024

Universal Sompo General Insurance Co. Ltd.

...Petitioner

VERSUS

Permanent Lok Adalat, Public Utility Services and others

...Respondents

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

Present :- Mr. Chandan Deep Singh, Advocate and
Mr. Sankalp Sharma, Advocate for the petitioner.

Mr. S. S. Momi, Advocate for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 22.02.2017 passed by the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra, whereby the application preferred by respondent No.2-applicant was allowed and the petitioner-Insurance Company was directed to reimburse the medical bills.

2. Learned counsel for the petitioner-Insurance Company submits that the respondent No.2-applicant had obtained a medi-claim policy for himself, his wife and his parents by paying premium amount of Rs.7053/- for a sum of Rs.2 lakhs. The father of respondent No.2-applicant suffered pain in the stomach on 07.11.2014 and he was taken to Moolchand Kidney Hospital where he was operated upon. The total expenses incurred for the treatment was for a sum of Rs.45,000/-. He submitted a claim for

reimbursement of the above expenses, however, the same being not maintainable, the same was declined. Hence, an application was filed under Section 22-C of the Legal Services Authorities Act, 1987.

3. The petitioner-Insurance Company entered appearance and raised various objections pertaining to the maintainability of the application and also on merits. It was submitted that the father of respondent No.2-applicant was suffering from Right Ureteric Calculi with c/o Right flank pain which was managed surgically-Right holmium laser dj stenting under general anesthesia. It was also stated that one year mandatory waiting period, for treatment of ureter stone, has been prescribed under the Policy before a claim is to be reimbursed. Since the Policy in question was issued on 03.05.2014 and the treatment for which claim has been made was availed on 07.11.2014, i.e. within a period of less than one year of the commencement of Policy, hence, claim being covered under the standard exclusion, it could not be reimbursed. He contends that even though a specific objection in this regard had been taken by the petitioner in its reply before the Permanent Lok Adalat (Public Utility Services), however, the same was not dealt with by it in its award.

4. Learned counsel appearing on behalf of respondent No.2-applicant on the other hand contends that the applicant was not made aware about the existence of the exclusion clause and that the denial of the claim on the said account was invalid and illegal. He defends the award passed by the Permanent Lok Adalat (Public Utility Services) and contends that all the objections have been duly taken into consideration by the Permanent Lok

Adalat (Public Utility Services) and the award has been rightly passed. He places reliance on the judgment dated 06.12.2021 passed by the Hon'ble Supreme Court in Civil Appeal No.8386/2015 titled as **Manmohan Nanda** Vs. **United India Assurance Co. Ltd. and another**. The relevant extract of the same reads as under:-

> ***"34. Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above. It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.***
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> ***35. The duty of the insured to observe utmost good faith is enforced by requiring him to respond to a proposal form which is so framed to seek all relevant information to be incorporated in the policy and to make it the basis of a contract. The contractual duty so imposed is that any suppression or falsity in the statements in the proposal form would result in a breach of duty of good faith and would***

render the policy voidable and consequently repudiate it at the instance of the insurer.

36. In relation to the duty of disclosure on the insured, any fact which would influence the judgment of a prudent insurer and not a particular insurer is a material fact. The test is, whether, the circumstances in question would influence the prudent insurer and not whether it might influence him vide Reynolds v. Phoenix Assurance Co. Ltd. (1978) 2 Lloyd's Rep. 440. Hence the test is to be of a prudent insurer while issuing a policy of insurance."

5. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record as well as the judgment cited.

6. Before proceeding further, it is essential to extract the operative part of the award dated 22.02.2017 wherein the Permanent Lok Adalat (Public Utility Services) has given its findings:-

"8. Arguments have been advanced by Sh. Vikramjit Singh, the learned counsel for the petitioner, Sh. K.K. Kaushik, the learned counsel for respondent no.1 and Sh. Atul Mittal, the learned counsel for respondent no.2. With their kind assistance, the entire case file has been properly perused and examined. Whatever the evidence has been laid by the parties in the given facts of the case have also been carefully examined. As per the contention raised by the

learned counsel for the parties, this fact is not disputed that a policy was issued in the name of the deceased and one installment has been paid. He was hospitalized and the bills in this regard are Ex.P8 to Ex.P17.

9. Now, the question arises is as to whether the petitioner is entitled to get the amount of the insurance policy as being policy holder. If this question is answered in affirmative, in that eventuality, whatever the amount has been found payable as per the terms and conditions of the insurance policy, it has to be paid to the petitioner and contrary to it, if this court comes to the conclusion that the terms and conditions of the insurance policy found ineligible the case of the deceased in that eventuality, as a natural corollary, the answer would be in negative. As referred above, the perusal of the entire case file reveal that infact the Insurance policy was issued in the name of Sourav Sharma, wherein, his wife was a nominee and covered the parents also. The details as per the record are Ex.P8 to Ex.P11 whereas, the case summary/discharge certificate of the Moolchand Kidney Hospital, Karnal is Ex.P9. Since, the father of the petitioner became ill and under the compelling circumstances, it was operated and as such, he remained hospitalized with effect from 10.11.2014 to 11.11.2014. Hence, the question has been raised or is to be answered by this court is in affirmative.

There is a sufficient oral as well as documentary evidence to establish the fact that Sh. Sourav Sharma in whose favour the policy was issued including the other formalities, he is found to receive the amount of Rs.45,000/- (Rupees Fourty five thousand only) alongwith interest of 9% per annum from the date of the admission of the father of the claimant till its realisation. Resultantly, the same is hereby allowed and the amount has referred above be paid by the respondent no.1 (hereinafter referred as) Indian Overseas Bank and respondent no.2 within the period of two months from the date of award and as such, the award may be drawn.

10. Under the provisions of the Act contained in Section 22E (1) and (4), the award made by this court is final and shall not be called in question in any original suit, application or execution proceedings. Further, as per clauses (2) and (5) of that provision, this award shall be deemed to be a decree of a civil court and thus shall be executable as if it were a decree made by that court.

11. Copy of this award be supplied to both the parties, free of cost. File be consigned to the records."

7. It would also be relevant to refer to the reply filed by the petitioner-Insurance Company before the Permanent Lok Adalat (Public Utility Services) and the specific objections taken by it in para Nos.10 and 11 of the same, which reads thus:-

"10. That the applicant has no locus standi to file the instant application as the applicant has withheld the true and correct facts from this Hon'ble Forum just to derive illegal financial gains contrary to the contract of insurance. The applicant knowing well that he was suffering from Right ureteric Calculi C/o Right flank pain diagnosed as Right Ureteric Calculi managed surgically-Right holmium laser dj stenting under general anesthesia. 1 year waiting period for treatment of ureter stone, 10.11.2014 ie. within 1 years of the commencement of the policy and the policy in question does not extend coverage for any expense incurred on investigation and treatment of ureter stone if diagnosed with in first years of policy, lodged a claim for reimbursement medical expenses incurred for the treatment of the said disease. The claim lodged by the applicant is neither covered nor admissible as per the terms and conditions of the policy. Thus, the said claim was legally and rightly repudiated being inadmissible vide letter dated 13.02.2015 strictly in accordance with the standard terms and conditions of the policy and the present application is prima-facie liable to be dismissed.

11. That no cause of action has arisen in favour of the applicant against the answering respondent as the Reports, Discharge Summary and Hospital Treatment Records of the Mool Chand Kideny Hospital Karnal and the

report of Dr. Sandeep Chaudhary Urologist Mool Chand Kideny Hospital Karnal confirmed that the applicant was a known case of Ureteric Calculus since 07.11.2014 and was diagnosed as a case of stone in the urinary (i.e. within 1 years of the commencement of policy on 02.05.2014) but the said diseases are the Standard Exclusions with in the Waiting Period of 1 years from the commencement of the policy. Thus, the request for the reimbursement claim lodged by the applicant for treatment of said diseases was legally and rightly repudiated by the respondent company as per the terms & conditions of the policy. The application as such is false, frivolous and without any merit and is liable to be dismissed at the outset.

11. That the terms and conditions of the "Health care Plus (Floater) policy number 2817/54058357/00/000 issued to the applicant are standard for all the customers through out India which are as per the approvals obtained from the Insurance Regulatory Development Authority (IRDA) and the said express and agreed terms and conditions of the policy are the basis of the contract of insurance between the applicant & the insurance company. The Relevant Clauses of the said terms and conditions of the policy read as under:

Exclusions:

2) Hospitalisation expenses incurred in the first year of the operation of the insurance cover on treatment of the following Diseases:

"Cataract "Benign Prostatic Hypertrophy "Myomectomy, Hysterectomy Hernia, Hydrocele Fistula in anus, Piles Arthritis, Gout, Rheumatism Joint replacement unless required due to accident Sinusitis and related disorders Stone in the uninary and biliary systems Dilatation and Curettage Skin and all internal tumors / cysts/nodules/polyps of any kind, including breast lumps unless malignant, adenoids and haemorrhoids * Disysis required for rental failure Surgery for tonsils and sinuses "Gastric and duodenal unclers.

The Company shall not be liable to make any payment if Hospitalisation or Medical Expenses or claims are attributable to, or based on, or arise out of, or are directly or indirectly connected to any of the following:

Hospitalisation and/or treatment within the Waiting Period and Hospitalisation and/or treatment following the diagnosis within the Waiting Period;

The claim of the applicant for expenses incurred on the treatment of Stone in the uninary which was diagnosed since 07.11.2014 ie, within 1 years of commencement of policy is neither covered nor admissible under the policy, as per the above stated Exclusion Clause. Thus, the respondent have

acted strictly in accordance with the terms and conditions of the policy and the application is liable to be dismissed on this score alone. The standard terms and conditions of the policy are annexed herewith for ready reference of this Hon'ble forum. "

8. It is evident from a perusal of the specific objection taken by the petitioner-Insurance Company by placing reliance upon the standard exclusion clause incorporated in the policy prescribing a mandatory waiting period of one year, however, the said objection has not even been superficially discussed by the Permanent Lok Adalat (Public Utility Services). The award thus suffers from non-appreciation of the specific material legal objection pertaining to the terms and conditions of the Policy and governing contractual liability/obligations inter se between the petitioner-insurance company as well as the insured.

Further, in so far as the judgment in the matter of **Manmohan Nanda** (supra) is concerned, the same is in relation to the concept of *uberrimae fidei* i.e. the utmost good faith requiring upon both the parties to make complete disclosures. I find that the reliance on the above said judgment is misplaced since the claim of the petitioner was not declined by the petitioner-Insurance Company on concealment of any information or on account of mis-declaration invoking Section 45 of the Insurance Act, 1938. The claim has rather been declined invoking exclusions clause.

An award that does not deal with the legal objection raised would be held as suffering from the failure of appreciation of the arguments

and evidence led by the parties. Failure to deal and discuss the same would render the award non-speaking and liable to be set aside.

Accordingly, the present writ petition is **allowed** at this stage. The award dated 22.02.2017 passed by the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra in application case No.29/15 dated 11.03.2015 is **set aside**. The matter is remanded to the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra for fresh consideration in the light of the pleadings amongst the parties.

Let the parties appear before the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra on **15.10.2024** whereupon further proceedings shall be conducted.

Since the award has been set aside solely on the ground of being non-speaking for not adverting to the specific objection taken by the petitioner-insurance company, hence, the other aspects pertaining to the merits are not being commented upon and the observations recorded herein above are solely for the adjudication of the present writ petition.

(VINOD S. BHARDWAJ)
JUDGE

11.09.2024
Mangal Singh

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