IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CWP-7349-2014 (O&M)
Date of decision: 27.02.2024

Chief Post Master General, Haryana Circle, Ambala, Department of Posts.

...Petitioner

VERSUS

Permanent Lok Adalat (Public Utility Services), Hisar and another

...Respondents

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

Present :- Mr. Indresh Goel, Senior Panel Counsel, for the petitioner.

Mr. P.S. Jammu, Advocate for respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 29.10.2013 passed by respondent No.1-Permanent Lok Adalat (Public Utility Services), Hisar, in application No.154/2012, whereby the application filed under Section 22 (C) of The Legal Services Authorities Act, 1987, by respondent No.2-applicant has been accepted and the petitioner has been directed to disburse the insurance claim of the husband of respondent No.2-applicant to the tune of Rs.2 lakhs along with interest @ 6% per annum from 13.12.2010 till it realization.

2. Briefly summarized facts of the case are that Jai Narain, husband of respondent No.2-applicant had purchased a Postal Life Insurance (PLI) Policy bearing No.HY-155170-CS for a sum assured of Rs. 2 lakhs on

27.02.2009. He deposited the premium upto September, 2010, however, he died on 13.12.2010 due to an ailment of brain tumor in Govt. Hospital, Sirsa. An insurance claim was thereafter submitted by respondent No.2-applicant with the petitioner.

3. It is further submitted that a DDR in this regard was entered (wrongly referred to as FIR) wherefrom it transpired that the deceased was suffering from brain tumor for about two and a half year i.e. before 27.02.2009 when the policy was purchased by him and that the said fact had been concealed from the petitioner, at the time of purchase of said policy. The same was considered to be in violation of the conditions of POIF Rules and violative of Uberrima Fides. The claim was thereafter rejected on 23.08.2011. Aggrieved whereof, the application under Section 22-C of The Legal Services Authorities Act, 1987, was submitted by respondent No.2-applicant before the Permanent Lok Adalat (Public Utility Services), Hisar.

4. The petitioner entered appearance before the Permanent Lok Adalat (Public Utility Services), Hisar, and filed its response highlighting the concealment of material information by the insured, at the time of availing the policy and justifying the act of repudiating the claim of respondent No.2-applicant on account of breach of fundamental conditions of the Contract.

5. The Permanent Lok Adalat (Public Utility Services), Hisar, upon consideration of the pleading as well as the evidence adduced by the respective parties, passed an award in favour of respondent No.2-applicant. Aggrieved thereof, the present petition is filed.

6. During the course of arguments, this Court made an attempt for

resolution of the dispute and posed a specific query to the learned counsel for the petitioner as to whether there is a possibility of an amicable settlement of the issue and as to whether the petitioner has any offer to be made to respondent No.2-applicant for settlement of the issue. Learned counsel for the petitioner however contends that since the specific stand of the petitioner-department is that there was a concealment of the fact, there cannot be any possibility of making any offer to pay any amount by ignoring the said stand. It seems that there is no possibility of conciliation at all in the present petition.

7. Learned counsel for the petitioner has vehemently argued that the DDR as recorded by the petitioner-authorities clearly establishes that the deceased was suffering from a brain tumor, however, the above said relevant fact had not been disclosed by the insured at the time of availing insurance policy.

8. In response to the above, learned counsel for respondent No.2-applicant contends that the petitioner has failed to bring on record any concealment/mis-declaration made by the deceased. So much so the application form and/or the policy documents have also not been attached. He contends that in the absence of any such mis-declaration being established against the deceased insured, the claim could not have been repudiated by the department.

9. I have heard the learned counsel for the respective parties and have gone through the documents available on record.

10. Before proceeding further in the matter, it is relevant to notice that the Permanent Lok Adalat (Public Utility Services) had specifically

framed an issue as to whether the insured was suffering from brain tumor for two and a half year prior to the incident and suppressed any material information, if so, to what effect.

11. After considering the evidence led by the parties including the petitioner-Department of Posts, the Permanent Lok Adalat (Public Utility Services) recorded a finding that petitioner, in cross examination had admitted that the medical examination of the insured was conducted at the time of obtaining insurance policy. It was acknowledged that medical examination was conducted even in the present case and a report was obtained from the Doctor. There was nothing on record on the basis whereof it can be said that the death in question had occurred as a result of any history of brain tumor and that the finding recorded is that the deceased Jai Narain was not suffering from any ailment and he died a natural death. The relevant extract of the award passed by the Permanent Lok Adalat (Public Utility Services), Hisar, is as under:-

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> ***From the pleadings of the parties following issues were framed on 15.03.2013 for adjudication:***
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> 1. ***Whether Jai Narain Nagar had obtained the PLI insurance Policy bearing no. HY-155170-CS for Rs.2,00,000/- and the applicant being his wife and nominee, if so, to what effect? OPP.***
> 2. ***If issue no.1 proved, whether the petitioner is entitled to receive the payment of insurance claim along with interest, as alleged? OPP***

3. Whether the insured was suffering from Head Tumor for last about two and half years and suppressed the material information, if so, to what effect? OPR

4. Relief.

In order to prove the petition, the petitioner examined herself as PW-1 and tendered affidavit PW-1/A and thereafter the evidence of the petitioner was closed after tendering a copy of death certificate of Jai Narain Nagar, Ex. P-3 vide a separate statement of the counsel for the petitioner dt. 1.5.2013.

On the other hand, the respondent examined Sh. Harish Kumar Verma, SDI as RW-1 and he tendered his affidavit RW-1/A and thereafter closed the evidence of the respondent on 01.7.2013 vide a separate statement of the counsel for the respondent.

We have heard the arguments advanced by the counsels for the parties.

Issues no.1 and 2 are taken together for adjudication being interconnected. In order to prove these issues, the petitioner tendered the affidavit Ex.PW-1/A in examination in chief and contents of the affidavit are as follows:

That the husband of the deponent namely Jain Narain had obtained the PLI insurance Policy bearing No.HY-155170-CS for Rs.2,00,000/- and the applicant is his wife and nominee. So, the applicant is competent to file the present application.

That all of sudden the husband of the deponent fell ill and he was admitted in the hospital on 13.12.2010.

That the deponent, after the death of her husband lodged the claim with the respondent and completed all the formalities for giving the claim under the said insurance policy.

That at the time of taking the insurance policy the husband of the deponent was not suffering from any disease and at the time of proposing for insurance he was also medically examined. It is further submitted that the claim of the applicant was rejected vide letter no.LI/HY-155170-CS/CC-2 dated 23.08.2011 is quite illegal and arbitrary.

In cross-examination, she stated that on 13.12.2010 her husband suffered pain in abdomen. Thereafter, he was brought the Government Hospital, Sirsa and her husband died. She could not tell what was done by the police because she was suffering from shock due to death of her husband.

On the other hand the respondent examined Sh. Harish Kumar SDI. He tendered his affidavit Ex. RW-1/A and the contends of the affidavit are as follows:

That Jai Narain s/o Sh. Baru Ram purchased a PLI policy bearing No. HY-155170-CS for Rs.2,00,000/- on 27.2.2009. He deposited his PLI premium upto 09/2010. He expired on 13.12.2010 and a claim was received in the office of CPMG "HR" Circle Ambala from the nominee Smt. Sunita

Devi w/o the deceased insured.

It is further submitted that while examining the FIR, it was found that the insured was suffering from Head Tumor about two and half years ago i.e. before 27.2.2009 date of purchase of the said policy and was also under treatment at Jindal Hospital Sirsa. He expired on 13.12.2010 due to the disease at Civil Hospital, Sirsa. This fact was concealed by the insured at the time of purchasing of PLI policy. The insured violated the conditions of POIF Rules. As such the claim was rejected vide this office letter dated 23.8.2011.

It is further submitted that the insured was suffering from Head Tumor for last about two and half years and this fact was concealed by the insured. In cross-examination, he admitted it correct that medical examination of the insured is conducted at the time of obtaining insurance policy. He also admitted it correct that the medical examination was conducted according to the report of Doctor. He denied all the suggestions as wrong put up by the counsel for the petitioner.

The counsel for the petitioner contended that the death of Jai Narain is admitted fact. He further contended that Jai Narain died on 13.12.2010. He also contended the date of insurance policy was 27.2.2010. He also contended that Jai Narain was not suffering from any aliment and he died of natural death.

On the other hand the respondent admitted the insurance policy was taken by the deceased Jai Narain. It is also admitted the petitioner is the nominee of deceased Jai Narain. RW-1 Harish Verma also admitted in the cross examination that the medical examination of Jai Narain was conducted prior to the issuance of insurance policy.

In view of the above discussion and by keeping in view, statement of PW-1 and also keeping in view cross examination of RW-1, we are of the considered opinion that Sh. Jai Narain Nagar had obtained the PLI insurance police bearing No.HR-155170-CS and the petitioner is his nominee being wife. We are also of the opinion that the medical examination of Jai Narain was got conducted prior to the issuance of insurance policy and in such circumstances, it can not be said that the deceased Jai Narain was suffering from any ailment at the time taking the policy.

In view of the above discussion both the issues are proved by the petitioner and decided in favour of the petitioner and the petitioner is entitled for an amount of Rs.2,00,000/- (two lakh) the insurance policy amount along with interest @ 6% per annum from the date of death insured Jai Narain i.e. 13.12.2010 till the realisation.

Issue no.3, the onus to prove this issue was on the respondent and the respondent only stated in examination in chief that insured was suffering from Head Tumor for last

about two and half years but in cross-examination, he stated that the medical examination of the insured was got conducted prior to the issuance insurance policy and as such, this issued is decided accordingly against the respondent.

Relief.

In view of the above discussion the petitioner is entitled for insurance claim of her husband to the tune of Rs.2,00,000/- (two lakh) alongwith interest @6% per annum from 13.12.2010 till its realisation petition stands allowed accordingly.

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12. It is evident that only emphasis of the petitioner for justifying its stand of repudiation of the claim is that the deceased was suffering from Brain Tumor, however, no evidence has been adduced by the petitioner-Department of Posts before the Court, on the basis whereof it can be even presumed that the deceased was actually suffering from Brain Tumor and that he died on account thereof. A mere entry in the DDR to that effect can be taken as a proof of the disease to establish concealment or be deemed as establishing a fact that the deceased suffered from Brain Tumor. Further, another essential aspect required to be established was that there was a concealment of a fact which was material by the life assured despite the department specifically asking for the said information. The policy document and/or application form submitted by the insured would have been very relevant documents to establish the claim of the petitioner and assist this Court in determining as to whether there was any concealment or not.

For the reasons not known, the petitioner has chosen not to adduce said primary evidence. Besides, no medical history or documents have been produced on record on the basis whereof it can be ascertained that the death in question has taken on account of Brain Tumor of that he was suffering from the disease prior to the policy.

13. Further, the specific case of the petitioner-Department was that a medical examination of the deceased was duly conducted and he was not found suffering from any ailment at the time of taking policy. Any subsequent diagnoses about any disease cannot per se be said to be a concealment of material information. The entitlement of insurance company to repudiate a claim comes into picture only where there is an active concealment and a wrong information has been furnished by the insured, who is fully conversant and aware that the information so furnished by him being wrong. There can be no presumption of such a fact and the burden is required to be discharged by the insurance company before the claim can be repudiated and the stand be accepted.

14. I feel that the petitioner has failed to discharge the burden cast upon him and to establish either that the death occurred on account of Brain Tumor or that there was a concealment of material information by the insured at the time when the policy was obtained.

15. Under the given circumstances, this Court is not inclined to accept the argument advanced by the counsel for the petitioner or to hold that the finding recorded by the Permanent Lok Adalat (Public Utility Services), Hisar, was in gross disregard to the evidence adduced on record.

16. Finding no illegality, impropriety or perversity in the findings so recorded, the award passed by the Permanent Lok Adalat (Public Utility Services) cannot be held to be bad. The present writ petition is accordingly dismissed. The award dated 29.10.2013 passed by respondent No.1-Permanent Lok Adalat (Public Utility Services), Hisar, in application No.154/2012, is hereby affirmed.

(VINOD S. BHARDWAJ)
JUDGE

27.02.2024
Mangal Singh

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