IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-7513-2018 (O&M)
Date of decision: 31.01.2024

Tata AIA Life Insurance Company Ltd. (formerly known as TATA AIG Life Insurance Co. Ltd.) and another

...Petitioners

VERSUS

Prem Nath and others

...Respondents

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

Present :- Mr. Nitin Thatai, Advocate with
Ms. Shruti Sharma, Advocate for the petitioner.

Respondents stands *ex-parte* vide order dated 12.03.2020.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 15.12.2017 passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra in case No.25 of 2017 whereby the application preferred by respondent No.1-applicant has been allowed and a direction has been issued to refund the premium amount to the tune of Rs.61,584/- within 45 days failing which the respondent would be entitled to interest @ 12% per annum.

2. Briefly summarized facts of the present case are that respondent No.1-applicant claimed to have purchased a policy bearing No. C156481052 dated 21.02.2011 of the petitioner company through their agent i.e. respondent No.3-Pawan Kumar Goyal @ Vishu. An amount of Rs.61,584/- had been deposited by him as a premium for the insured amount.

Respondent No.1-insured, however, could not continue to make the subsequent payments of premium amount and discontinued the same. An application was thereafter preferred by respondent No.1-applicant on 29.03.2017 for seeking refund of the said premium amount, after 06 years.

3. The petitioner- insurance company had entered appearance and raised objections with respect to maintainability of the petition on merits as also the claim being beyond the period of limitation and the free look period provided in the regulation.

4. Upon failure of conciliation to fructify in an amicable settlement, the adjudication under Section 22 (C) (8) of the Legal Services Authorities Act, 1987 was undertaken. Upon consideration of the evidence led by the respective parties, the following award was passed:-

> ***"8. Arguments have been advanced by Sh. Gaje Singh, the Ld. Counsel for the petitioner as well as Sh. Sekhar Kapoor, the Ld. Counsel for respondents No.1 and 2. With their kind assistance, the entire record as well as documentary evidence has been led during the prosecution of the petition has also been properly perused and examined.***
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> ***9. As per the contentions raised on behalf of petitioner as well as the contesting respondents, it is not in dispute that the petitioner had purchased one policy no.C156481052 on 21.02.2011 through respondent no.3 and paid a premium of Rs. 61,584/-. Due to certain constraint reasons, the petitioner could not make the payment and had to continue it. It has further been contended by the Ld. Counsel for the petitioner***

that though the petitioner could not continue to make the payment of the premium regularly for the specified period, for which the policy was due but still, the petitioner is at least entitled for refund of the amount of the premium which he had already paid because of the amount of the premium has been utilized by the contesting respondent for sufficiently long period.

10. While refuting the contentions raised on behalf of petitioner, it has further been argued by Sh. Sekhar Kapoor, the Ld. Counsel for the contesting respondents that there was a free look period for which, the petitioner could have exercise his right to withdraw the policy but since, it has not been exercised and only one premium has been paid but no reasons have been explained as to why the premium could not be paid as per terms and conditions of the insurance policy and as such, the petitioner is not entitled to get the refund of the said amount since the amounts stands forfeited for non-compliance of the terms and conditions of the insurance policy. In fact, the insurance policies stands terminated for non-compliance of the terms and conditions and for not depositing the premiums regularly. Inspite of fact that two notices were issued against the petitioner to revive the policy but did not bother even to respond the notices. Under these circumstances, the petitioner is not entitled to get any amount.

11. Facing such a situation and the circumstances as narrated above which have not been disputed, it is true that the petitioner had deposited an amount of Rs.61,584/-on 21.02.2011 for purchase of policy no.C156481052. Further the petitioner was not in a position due to lack of financial sources to continue to make the payment of the premium and had to discontinue. It is true that all terms and conditions are to be incorporated in the insurance policy regarding forfeiture of the percentage of the amount which has been deposited as a premium. A perusal of the policy Ex.P2 as well as the proposal form placed on the record and tendered in the evidence as Ex.R1, does not reflect or indicate any clause vide which, there could be an legal impediment not to refund the amount of the premium. It is also equally to make a reference here that since the amount was deposited in the year of 2011 and this amount has been properly utilized by the respondents for a sufficiently long period more than five years, it would be in the interest of justice, if the amount of the policy which was paid as a premium to the tune of Rs.61,584/- is refunded to the petitioner. Hence, while accepting the petition to toto, the directions are issued to the contesting respondents no.1 and 2 to refund the premium amount of Rs. 61,584/- within the period of 45 days, failing which the petitioner would further be entitled to get the interest@12% p.a. for the defaulting period. On these lines,

the award be drawn accordingly.

12. 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."

5. Aggrieved thereof, the present petition has been filed.

6. The matter came up for preliminary hearing on 27.03.2018 when, while issuing notice of motion, it was ordered as under:-

"Learned counsel for the petitioners has raised two issues in this petition. Firstly, the Permanent Lok Adalat has committed an error in passing the order of refund after 6 years of the purchase of the policy by respondent No.1, on the ground that the petitioner has failed to point out any provision of the insurance policy to the contrary and in this regard he has referred to the terms and conditions of the policy available at page 42 of the petition referred to as 'Guaranteed Surrender Value'. It is submitted that the insured, who has purchased the policy, can surrender the policy for the purpose of reimbursement after the premium paid by him for at least three consecutive years, whereas in the case of the respondents only one premium has been paid. Secondly, it is submitted that respondent No. 1 has approached the

Permanent Lok Adalat after a delay of six years in seeking refund but his claim is barred by limitation and has relied upon a decision of the Division Bench of this court in the case of 'Hind Motors India Ltd. v. Permanent Lok Adalat (Public Utility Service) and others, 2008(2) PLR 91'.

Notice of motion for 22.5.2018.

In the meantime, operation of the impugned order shall remain stayed.".

7. Despite having been served, the respondents have chosen not to enter appearance. The matter remained pending for two years approximately to enable appearance on behalf of the said respondent. Vide order dated 12.03.2020, they were ordered to be proceeded against *ex-parte.*

8. The matter was adjourned still further to enable an opportunity of appearance to the respondents, however, no one has chosen to appear or contest the claim. The petitioners are being heard on merits.

9. Learned counsel for the petitioners has argued that the insurance policy in question was availed by respondent No.1-applicant by depositing the premium in the year 2011. There is a free look period provided under the Regulations notified by the Insurance Regulatory Authority i.e. IRDA (Protection of Policyholders' Interest) Regulations, 2002 according to which an insured may exercise his option to seek refund of the premium within a period of 15 days from the date of issuance of policy documents. He contends that the insured never exercised his option, as per the regulations, and continued to be in default. The said policy was for a period of 15 years and the premium of Rs.61,584/- was required to be paid

every year, however, respondent No.1-applicant did not deposit any premium amount after the first premium in the year 2011. He however moved an application for seeking refund of his first premium amount, after a lapse of nearly six years. It is argued that the maximum period available for a person to approach Permanent Lok Adalat (Public Utility Services) for seeking refund as per the limitation prescribed under the Limitation Act, 1963 is 03 years. The application in question was filed beyond the period of limitation prescribed and no decision has been taken by the Permanent Lok Adalat (Public Utility Services) on the issue of limitation despite the same having been specifically raised. The said question was required to be determined by the Permanent Lok Adalat (Public Utility Services).

10. Heaving heard counsel for the party and after going through the award as well as the arguments raised therein, it is evident, from a perusal of the impugned award, that an objection as regards the claim being barred by limitation had been raised and noticed by the Permanent Lok Adalat (Public Utility Services) in Para No.3 of its award, however, while passing the final award, the Lok Adalat has chosen not to advert to the said objection or to record any finding as to how the claim/application would be within limitation.

11. Further, a Division Bench of this Court in CWP-2041-2008 decided on 12.02.2008, the matter of '**Hind Motors India Ltd.** V. **Permanent Lok Adalat, Public Utility Services and others**' reported as 2008(36) RCR (Civil) 656 upheld the decision of Permanent Lok Adalat (Public Utility Services), Chandigarh dismissing an application when the claim was lodged beyond the limitation period prescribed.

12. The period of limitation is a fundamental aspect which is required to be kept in mind and to be determined by a Court. Operation of law of limitation, in proceedings arising under the Legal Services Authorities Act, 1987, is not prohibited. Once the law of limitation applies, a remedy to institute proceedings before a Court seizes to exist. The law of limitation takes away the statutory remedy and institution beyond the period would be barred. The application could not have thus been entertained and adjudicated by the Permanent Lok Adalat (Public Utility Services).

13. I find that the award in question has been passed disregarding the laws of limitation. The period for seeking refund of an amount is 03 years from the date when an amount is paid or becomes payable. The Permanent Lok Adalat (Public Utility Services) also chose not to refer to any evidence, on the basis whereof it could be construed that on account of any act/conduct of the petitioner, the period of limitation had been extended. The defect of lack of jurisdiction or a claim being barred by the limitation is an incurable defect and would vitiate the award. The Permanent Lok Adalat (Public Utility Services), Kurukshetra thus ignored the basic law. The award in question is accordingly held to be bad.

14. **The present petition is hence allowed**. The award dated 15.12.2017 passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra in case No.25 of 2017 is hereby set aside.

(VINOD S. BHARDWAJ)
JUDGE

31.01.2024
Mangal Singh

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