IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-26332-2021
Date of decision: 08.11.2024

PANKAJ SINGLA ......Petitioner

VERSUS

THE DIVISIONAL MANAGER, THE NEW INDIA ASSURANCE COMPANY LIMITED AND ANOTHER
.......Respondents

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

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Present: - Mr. Om Pal Sharma, Advocate
for the petitioner.

Mr. Nitin Gupta, Advocate
for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order dated 12.12.2019 passed by respondent No.2-Insurance Ombudsman, Chandigarh whereby the complaint of the petitioner regarding settlement of personal accident claim has been rejected and a further prayer has been made to direct the respondent-Insurance Company to release the amount of Rs. 52000/- claimed by the petitioner under the Insurance Policy dated 01.01.2018.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner was working as Senior Manager (Material) in National

Fertilizers Limited (hereinafter referred to as "NFL") at Bathinda. Being an employer of the petitioner, NFL had obtained a Group Insurance Policy for its employees from the respondent-the New India Assurance Company Limited for the period from 01.01.2018 to 31.12.2018 which promised of various benefits including salary for the period of absence due to injury. He submits that the petitioner met with an accident on 28.03.2018 due to which he suffered injury on his right leg. He obtained treatment from Dr. Major Rajesh Gupta at Bathinda, an approved doctor by the employer-NFL. A surgery was undertaken by the doctor on 28.03.2018 and an implant was inserted in his right leg. After having remained admitted, he was thereafter discharged from the hospital on 02.04.2018 but he continued to visit the doctor for follow up and remained under continuous follow up treatment upto 02.06.2018. On being declared fit to resume duty, he joined on 04.06.2018 (03.06.2018 being Sunday). The petitioner was thus unable to attend office for 67 days and he accordingly lodged a claim for a sum of Rs. 26,800/- with the respondent-Insurance Company. The payment in this regard was duly made.

3. The petitioner, however, claimed to have unfortunately slipped again on 14.07.2018 and sustained injury in the very same leg and immediately visited the doctor namely Dr. Major Rajesh Gupta who conducted X-Ray and told the petitioner that there was a fracture and that the implant had been broken. Since the injury was on the same leg and at the same spot resulting in breakage of the implant as well, the petitioner intimated about the incident to his employer on 16.07.2018 and visited the

NFL hospital at Bathinda. Taking note of the totality of the circumstances, the concerned doctor of NFL hospital referred the petitioner to the higher centre for further opinion. The petitioner accordingly visited Fortis Hospital, Mohali on 17.07.2018 for further treatment. The entire contemporaneous evidence, in the form of mail and other documents, has also been placed on record of this Court. The petitioner was initially not admitted in the Hospital on account of high BP, diabetes and infection in Urine etc. but was treated as an OPD patient from 17.07.2018 to 21.07.2018 and admitted on 22.07.2018 and was operated upon on 23.07.2018. He was eventually discharged from the Fortis Hospial on 26.07.2018 but was unfit to resume duty. He thus remained on leave from 15.07.2018 to 21.11.2018. Thus, there was a prolonged absence of merely 130 days. The petitioner joined his duty on 22.11.2018 whereafter, a claim was lodged with the respondent-Insurance Company, through the department, on 30.11.2018. The same was, however, repudiated by the respondent-Insurance Company on 05.03.2019 on an assumption and speculation that the claim is fraudulent. A reference to the reasons given by the respondents is extracted as under:-

> ***Sub: GPA claim no 32380042180190000021 A/c Mr Pankaj Singla***
>
> *Sir,*
>
> *With reference to the subject claim we wish to state that this claim was investigated for cause/nature/happening of the alleged accident.*
>
> *The investigator in his report has reveled that Mr Singla was first operated upon for fracture in his*

right leg in March 2018 with am implant in Bathinda. On 16th July 2018 he reported to the NFL Hospital with pain in the right leg, who referred him to Fortis Hospital, Mohali for further opinion.

The doctors there has diagnosed him as a case of IMPLANT FAILURE and which was later managed with an operation again on his leg in Fortis Hospital.

It is clearly evident that Mr Singla was operated upon for failure of the already implant in his leg and not as a result of fall as claimed by Mr Pankaj Singla. In light of the reveled facts we repudiate this claim under condition no.3 of the policy, which reads as,

> *"The Company shall not be liable to make any payment under this policy in respect of any claim, if such claim be in any manner fraudulent or supported by any fraudulent statement or device, whether by the Insured or by any person on behalf of the Insured".*

4. Giving a detailed description of the wrongful repudiation of the claim, the petitioner submitted a representation before the Insurance Ombudsman alongwith all supporting documents. The said complaint was also dismissed by the Insurance Ombudsman vide order dated 12.12.2019 by holding as under:-

Result of Personal hearing with both parties (Observations & Conclusion): *On perusal of complaint, SCN, written brief of complainant and submission made by insurance company during personal hearing it is* *observed that complainant has given complaint for repudiation of his claim and claimed that it is not a implant failure but accident/ fall in house which occurred on 14.07.2018. Insurance company and complainant relied upon the of X-ray report of Dr Major Rajesh Gupta who did X-ray immediately after fall and OPD file of Fortis Hospital, Mohali which mentioned "implant failure noticed about four days back" to prove their point. Whereas, insurance company relied upon the contents of discharge summary of Fortis Hospital, Mohali which pointed that "patient has now presented with chief complaint of pain in right distal femur and difficulty in weight bearing on lower right limb". On going through the discharge summary and OPD file of Fortis Hospital, it is seen that implant failure noticed about four days back itself indicates a failure of surgery for implant which was done 28-03-2018. Hence, the decision of the insurance company for repudiating the claim is in order. Keeping in view the above facts, the said complaint is hereby dismissed and no relief is granted.*

<u>AWARD</u>

Taking into account the facts & circumstances of the case and the submissions made by both the parties during the course of personal hearing, the said complaint is hereby dismissed on merits.

Hence, the complaint is treated as closed.

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

6. Counsel for the petitioner has argued that there is sufficient contemporaneous evidence which would reflect that the injury sustained by

the petitioner had actually resulted in implant failure and that the re-emergence of the fracture at the same spot is not fraudulent. There has been a continuous treatment and the medical record has been put-forth to the respondents to supplement the same. A distinction drawn by the respondents to the effect that the absence was not on account of any accident but was due to implant failure and that the same not being an outcome of an accident, the claim cannot be awarded is flawed as any fault or failure in the treatment extended to the petitioner or the implants undertaken by him (assuming for the sake of argument that the contention by the respondents is accepted to be correct) would be deemed to be a continuation of the original cause. Hence, it can not be said that in the event of the treatment having been failed, the petitioner would not be entitled to benefit for undoing the wrong that has occurred i.e. the failure of the implant in the present case. He further submits that the respondents have rejected the claim by wrongful interpretation of the terms and conditions of the policy to suit them. The reason for implant failure has not been stated to be on account of any other circumstance and that the petitioner having got himself examined from the renowned doctor and X-ray having been conducted on 14.07.2018 rather supports the claim lodged and to have happened in the manner as portrayed.

7. Counsel for the respondent-Insurance Company, however, relies upon the reasoning given by the authorities as also by the Insurance Ombudsman and contends that the terms and conditions of the policy did not entitle a claimant to seek reimbursement for the absence period when such absence is not for a reason directly attributable to an accident but on account

of some fault in the treatment extended/complications arising in the surgical implants.

8. No other argument has been raised nor any judgment cited.

9. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

10. Before proceeding further into the matter certain conditions that are referred to by the Counsel for the parties are extracted as under :-

> *Xxxx xxx xxx xxx xxx xxx xxx xxx*
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> *(d) If such injury shall, as a direct consequence thereof, immediately, permanently, totally and absolutely, disable the Insured person from engaging in being, occupied with or giving attention to any employment or occupation of any description whatsoever, then a lump sum equal to hundred percent (100%) of the Capital Sum Insured, stated in the Schedule hereto applicable to such insured person.*
>
> *Xx xxx xxx xxx xxx xxx xxx xxx*
>
> *<u>(f) If such injury shall be sole and direct cause of temporary total disablement,</u> then so long as the Insured person shall be totally disabled from engaging in any employment or occupation of any description whatsoever, a sum at the rate of one percent (1%) of the Capital Sum Insured stated in the Schedule hereto per week, but in any case not exceeding Rs. 3,000/- per week in all, under all personal accident policies covering such insured*

person. Provided that the compensation payable under the foregoing Sub-Clause (f) shall not be payable for more than 100 weeks in respect of any one injury calculated from the date of commencement of disablement and in no case shall exceed the Capital Sum Insured applicable to such insured person.

11. It is thus, evident from a reading of the said clauses that if the injury disables the insured person from engaging or giving attention to the employment or occupation of any description, the insured would be entitled to the benefits in terms thereof. Clause 'f' submits that if such an injury is the sole and direct cause of temporary total disablement, then so long as the person insured is disabled from engaging in any employment or occupation, the compensation shall be paid at the rate so prescribed but in any case not exceeding Rs. 3,000/- per week in all, under all personal accident policies covering such insured person provided that the same shall also not be payable for more than 100 weeks in respect of any injury calculated from the date of commencement of disablement and shall not exceed the capital sum assured applicable to such insured person.

12. It is evident from a perusal of the same that both the said clauses entitle an insured to be compensated to a maximum gap not exceeding 100 weeks in respect of any one injury, calculated from the date of commencement of disablement, and also subject to the claim not exceeding the capital sum insured applicable to such insured person. The Insurance Ombudsman denied the claim by observing that the implant failure did not take place as a result of accident/fall in the house and that

under these circumstances, the benefit under the policy cannot be extended on account of any implant/medical failure.

13. I find that the aforesaid clauses referred to, does not in any manner support the reasoning given by the Insurance Ombudsman. The pre-requisite for the benefit to be extended to is that he should have sustained the injury in an accident, thereafter, a continuation of the benefit cannot be denied due to treatment failure. The artificial distinction and classification carved out by the Insurance Ombudsman is actually not borne out from a meaningful reading of the terms and conditions of the policy. The respondent-Insurance company would thus not be justified in contending that even though the medical treatment extended to a person was on account of an accident, for which he is entitled to claim the benefit under the policy but in the event of any error/flaw later detected in the treatment and/or implant infused in a person injured, failure of such a treatment or undoing of such a flaw would disentitle a person from claiming such benefit. This selective reading would defeat the very object since a defective medical treatment or an error that may have occurred in the medical treatment due to any intervening/subsequent circumstances would nonetheless relate back to the original injury entitling the person to claim the benefits as the cause of injury remains undisputed. The respondent having undertaken to compensate a person for his absence on account of his treatment or complications arising therefrom, a failure of a device so implanted and/or the breakage of the implant infused would be a complication or inherent risk in the process of

treatment of the injury itself. Disentitling the insured of the said benefit is not justified and is not intended under the policy.

14. Having held so, the present writ petition is allowed, the order passed by the Insurance Ombudsman, Chandigarh is set aside. The respondents are directed to pay the amount of Rs. 52,000/- as claimed, for the period of absence of 130 days to the petitioner, within a period of two months of a receipt of certified copy of this order alongwith interest @ 6% per annum from the date of filing of the application before the Insurance Ombudsman till actual disbursement.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 08, 2024
Vishal Sharma

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