IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-31756-2019
Date of decision: 02.12.2024

POONAM JAIN ......Petitioner

VERSUS

THE INSURANCE OMBUDSMAN CHANDIGARH AND ANOTHER

.......Respondents

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

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Present: - Mr. Shobit Phutela, Advocate with
Ms. Sanya Kapoor, Advocate
for the petitioner.

Mr. Karan Pal Singh, Advocate
for respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the Award dated 08.02.2019 passed by the Insurance Ombudsman, Chandigarh in case bearing No. CHD-02-1718-0575 titled as *"Ms. Poonam Jain versus ICICI Prudential Life Insurance Co. Ltd."*. A further prayer is made for setting aside the repudiation of claim by the respondent-Insurance Company vide communication dated 03.04.2017.

2. Briefly summarized the facts of the present case are that Mr. Vinod Kumar Jain, husband of the petitioner had obtained a Life Insurance Policy from respondent-ICICI Prudential Life Insurance Company bearing

Policy No. 19095479 of 21.01.2015 for an assured sum of Rs. 25 lakhs with risk date as 21.01.2016. It had been averred that in the month of March, 2015 , the doctors suggested that the petitioner's husband had to undergo certain tests and informed it to be a suspected case of a Rectum Cancer. It was eventually diagnosed in the month of March, 2015 that her husband was suffering from Rectum Cancer. He eventually succumbed due to the aforesaid illness on 08.06.2016 at his home in Patiala, Punjab. A claim was accordingly filled by the petitioner before the Insurance Company for availing the benefit of the Life Insurance Policy No. 19095479 dated 21.01.2015 for the assured sum. The claim was, however, repudiated by the respondent-Insurance Company vide letter dated 03.04.2017 informing that the life insured did not make complete disclosures and that on account of a material concealment, the claim could not be approved. It was also informed that as per the investigations, the life insured was on treatment for Unresectable Rectal Cancer between January 05, 2015 to January 19, 2015 and that he had also opted for an extension of leave on the medical grounds from January 20, 2015 to January 31, 2015 which was further extended. The proposal in this case for seeking the life Insurance was submitted by the petitioner on 14.01.2015 but the disclosure about the health declaration as stipulated under question No.5 (a), (c), and (d) had been wrongly given. The health declaration and the response of the life insured is extracted as under:-

D.	**Health Declaration**	
Q.No.	**Question**	**Answer**
5a	Are you currently under medical treatment or being advised to take medical treatment and / or suffering from any physical mental	No

	impairment or congenital abnormality?	
5c	Have you ever undergone, any surgical procedure(s) including angioplasty, bypass surgery, brain surgery, heart surgery, organi transplant, excision of tumour or growth or been admitted to hospital for two days or more or received continuous medical treatment for five days or more (for reasons other than flu, common cold, throat infection, sprains, fever)	No
5d	Have you ever suffered or been diagnosed with or been treated for any of the following: ix) Cancer, tumor, cyst or growth of any kind?	No.

3. Aggrieved thereof, the petitioner filed a complaint before the Insurance Ombudsman, Chandigarh on 30.06.2017 to which reply was filed by the Insurance Company.

4. Upon consideration of the respective claims filed by the parties, the Insurance Ombudsman dismissed the complaint of the petitioner vide Award dated 08.02.2019 (Annexure P-1) by recording as under:-

> ***20) Result of Personal hearing with both parties (Observations & Conclusion):***
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> *On careful consideration of the various documents submitted by complainant including the copy of complaint dated 30.06.2017 and the copy of SCN submitted by insurance company, it is seen that the complainant's husband was covered under policy no. 19095479 for sum assured of Rs.25,00,000/- with risk date as 21.01.2016. The complainant's husband unfortunately died on 08.06.2016 and the death claim was filed by complainant i.e. nominee under the policy which was repudiated by insurance*

company vide letter dated 06.04.2017 on the ground that her husband was on medical leave from 05.01.2015 to 19.01.2015 and was on treatment for Unresectable Rectal Cancer. He further extended the medical leave from 20.01.2015 to 31.01.2015. During the course of personal hearing on 16.10.2018 the complainant reiterated the contents of the complaint and also that the repudiation of death claim filed by her has been done by insurance company on baseless grounds. Also her husband had not taken any treatment of cancer prior to taking the policy which was diagnosed only on 03.03.2015 and also referred to the Medical Certificate dated 05.01.2015 of Dr.P.S.Kathuria in support of contention that the life assured was only suffering from viral fever and had no major illness. The insurance company on another hand reiterated the contents of the SCN and also stressed on the ground that the life assured was on medical leave from 05.01.2015 to 31.01.2015. During personal hearing on 08.02.2019 referred to the information obtained by insurance company to establish that the life assured had concealed the material information about his ailment that was in existence prior to his taking the policy. It is evident from the documents submitted by insurance company and also the treatment taken by complainant's husband that he had availed medical leave during the period from 05.01.2015 to 19.01.2015 that was further extended to 31.01.2015 as per records obtained by insurance company under RTI from Employer of complainant 's husband. The life assured was also issued complicated chronic certificate disease on 11.03.2015 due to his illness i.e. rectal carcinoma by medical Board of Govt. Medical College Rajendra Hospital, Patiala. It is also seen from the records available in the file and submitted by insurance company including the medical certificate of Kathuria Clinic dated

5th January 2015, and the chronic complicated certificate issued by Rajendra Hospital, Patiala. The policy has been procured by complainant's husband vide proposal dated 14.01.2015 by online mode during the period he was on medical leave that establishes the intend of life assured in opting for a term policy. It is also seen that he has answered in negative to all the questions regarding his health details in application for. The consultation note issued by Fortis Hospital dated 26.02.2015 and March, 2015 also establishes that the life assured was a case of advance rectal growth. The chronic complicated certificate issued by Rajendra Hospital also establishes that the life assured had medical problem before inception of the policy since such certificate is issued only in cases of patient suffering from chronic ailment/disease that atleast has been in existence for few months. In view of discussion as above, the repudiation of death claim by insurance company is in order and does not call for any interference.

AWARD

Taking into account the facts & circumstances of the case ad the submissions made by both the parties during the course of hearing, the complaint is dismissed.

Hence, the complaint is treated as closed.

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

6. Counsel for the petitioner has vehemently argued that the Award suffers from failure to appreciate the facts and circumstances of the present case in correct perspective. It is submitted that there was no mis-declaration on the part of the life insured and that on the date, when the proposal form was submitted, he was not suffering from any critical disease and more particularly Rectum Cancer. The said diagnosis took place only in March, 2015, which

is much after the policy had already been issued in his favour. Hence, as on the date when the policy document was submitted, a correct disclosure and declaration had been made by the petitioner. He further submits that the respondents have unilaterally and arbitrarily termed URC as 'Unresectable Rectal Cancer' however, the term URC refers to common cold, inflammation of respiratory mucus and also known as pragnatise or the common cold while PUO as mentioned in the certificate is 'pyrexia of unknown origin' which in ordinary parlance means 'fever of unknown origin'. Hence, there was an unnecessary reference made to the certificate (Annexure P-4) issued by the treating doctor at the Fortis Hospital.

7. Counsel for the respondent-Insurance Company refers to the reply that has been filed on behalf of the Insurance Company and contends that the life insured had suppressed the material information and draws attention of this Court to a certificate issued by the treating doctor at the 'Kathuria Clinic' in Patiala dated 05.01.2015 wherein it was certified that he was suffering from the PUC and the URC i.e. 'Unresectable Rectal Cancer' and had been advised to take rest of 15 days for restoration of health. The relevant certificate is extracted as under:-

> "*Certified that Sh. Vinod Kumar, whose sign is given below is under my treatment from 05.01.2015. He is suffering from PUO & URC and is advised to take rest at least to 15 days to the restoration of Health.*"

8. It is submitted that the said treatment continued and the follow up as well as the medicine administered to the petitioner's husband were for Cancer. The biopsy samples had been specifically drawn for the Rectal Cancer. It is submitted that the entire sequence clearly shows that life insured was fully

aware of being suffering from 'Unresectable Rectal Cancer' and yet chose to conceal the said information as on the date of submission of the proposal form on 14.01.2015. Being fully aware of his medical condition on 05.01.2015 and having taken medical leave for the treatment, the principles of *uberrima fides* mandated the life insured to make a full disclosure about his health but he chose to withhold the vital information which was essential for taking a decision as to whether the risk was to be under-written or not. He further submits that in any case, disputed questions of fact as regards the contentions raised by the petitioner viz.-a-viz, the defence of the respondent-Insurance company would arise and that such disputed questions of fact cannot be gone into by the High Court in exercise of writ jurisdiction. The petitioner has an efficacious alternative remedy of impugning the Award passed by the Insurance Ombudsman before the consumer Fora, amongst others, and that a writ petition would ordinarily not be maintainable if an alternative efficacious remedy is available to him.

9. Counsel for the petitioner is unable to dispute that an alternative remedy is available to the petitioner to challenge the order passed by the Ombudsman.

10. In view of above, without commenting on the merits of the case, lest it may cause prejudice to the respective parties and taking into consideration that various disputed questions of fact arise in the present case, the present writ petition is disposed of with liberty to the petitioner to take recourse to the alternative remedies in accordance with law. Needless to mention that in the event of the petitioner approaching the Competent

Court/Fora for seeking redressal of his grievances, the period spent in pursuing the present *lis* shall be taken into consideration for computing limitation.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 02, 2024
Vishal Sharma

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