2024:PHHC:127121

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-23504-2024
Date of decision: 16.09.2024

LIFE INSURANCE CORPORATION OF INDIA .....Petitioner

VERSUS

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES) AND ANOTHER

.....Respondents

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

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Present: - Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate
for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge before this Court is to the Award dated 30.01.2024 passed by the Permanent Lok Adalat (Public Utility Services), Rohtak directing the petitioner-Insurance Company to pay an amount of Rs. 12,00,000/- less the amount already paid towards the settlement of the claim to the respondent No.2, in her capacity as nominee/wife of deceased Sudhir Nagpal alongwith interest @ 6% per annum, from the date of institution of the case till its realization. A further direction had also been issued to pay Rs. 15,000/- towards mental pain and Rs. 3,100/- as litigation expenses.

2. Learned Counsel for the petitioner contends that respondent

No.2-applicant (wife of deceased Sudhir Nagpal) had approached the Permanent Lok Adalat (Public Utility Services), Rohtak averring that her husband was an agent of the petitioner-Insurance Company vide agency code No. 06963 and that the policy No. 179832567 had been issued to him under Plan and Term 814-20 for sum assured of Rs. 12,00,000/- commencing w.e.f. 28.03.2014. The said policy however lapsed due to non-payment of the premiums regularly. The policy was revived on 26.05.2016, after depositing two yearly instalments of premiums and relying on the personal declaration regarding health made by the deceased life insured. Sudhir Nagpal-Insured, however, died on 23.07.2016 whereafter a claim was lodged with the petitioner-Insurance Company by the respondent No.2 but the same was repudiated since the life insured was suffering from Cancer and that he had suppressed the said fact at the time of issuance of the policy. The amount of premium was however ordered to be refunded through NEFT on 18.12.2017. An appeal was preferred by her to the Appellate Authority but the same was also rejected as intimated vide letter dated 28.08.2018. Aggrieved thereof, the application was preferred by her before the Permanent Lok Adalat (Public Utility Services), Rohtak under section 22-C of the Legal Services Authorities Act, 1987.

3. On notice, the petitioner-Insurance Company filed its reply taking the preliminary objection that the policy had lapsed due to non-payment of the premiums regularly and the same was revived on 26.05.2016 after depositing two yearly instalments of premiums and by submitting wrong answers to the following questions:-

Since the date of your proposal for the above mentioned policy.	Answer Yes or No	If yes give details of ailment such as nature of illness, date of onset, duration of illness.

Have your ever suffered from any illness/disease requiring treatment for a week or more?	No.	-------
Did you ever have any operation, accident or injury?	No.	-------
Did you have undergone ECG, X-ray, Screening, Blood, Urine or Stoll examination?	No.	-------
Are you are present in sound heatlh	Yes	-------

4. A reference was also made to Form No. 3816 issued by the Rajiv Gandhi Cancer institute, Rohini where the deceased was diagnosed with Carcinoma in March, 2016 i.e. much prior to the date of seeking revival of the policy and he was under treatment from 23.05.2016 to 23.07.2016. It was thus submitted that there was a deliberate mis-statement made by the life insured and material information had been withheld from the petitioner-Insurance Company pertaining to his health, at the time of seeking revival of the policy. The claim was accordingly rightly repudiated and the amount of Rs. 2,15,004/- against the premiums already received was paid to the respondent-applicant towards full and final settlement of the claim.

5. Efforts were made for an amicable resolution of the dispute, however, on failure thereof, the parties led their respective evidence. On consideration of the said evidence and the arguments advanced by the parties, adjudicatory order under Section 22-C (8) of the Legal Services Authorities Act, 1987 was passed by the Permanent Lok Adalat (Public Utility Services), Rohtak allowing the application and directing the petitioner to pay the amount as referred to in the preceding paras. The operative part of the Award reads thus:-

9. Arguments have been heard in detail. Entire

records has also been properly perused and examined and similarly, whatever the documentary evidence has been led during the proceedings of the petition, has also been appreciated.

10. The Ld. Counsel for the applicant submitted that Sh. Sudhir Nagpal, the husband of the applicant, took the ***Insurance Policy, Annexure P1,*** *with commencement date 28.03.2014 for sum assured* ***Rs. 12,00,000/- (Twelve lacs only).*** *However, Sudhir Nagpal died on 23.07.2016. Thereafter, the applicant informed the respondent and requested for payment of amount of claim under the said policy but the same was repudiated vide* ***letter dated 12.12.2017, Annexure P6*** *on the ground that life assured was suffering from disease and he has suppressed the facts at the time of issuance of policy. It was submitted that Sudhir Nagpal was not having any pre-existing disease and hence repudiation of the claim of the applicant was illegal and wrong.*

11. However, the Ld. Counsel for the respondent submitted that since the DLA has suppressed his pre-existing ailment i.e. Cancer in the said personal statement and has not disclosed the same in the declaration form at the time of revival of the said policy, repudiation of claim is legal and valid. It was submitted that apart from other questions, he has also replied as under:-

Since the date of your proposal for the above mentioned policy	*Answer* *Yes or No*	*If yes given details or ailment such as nature of illness, date of onset, duration of illness.*
Have you ever suffered from any illness/disease requiring treatment for a week or	*No.*	------

more?		
Did you ever have any operation, accident or injury?	*No.*	*------*
Did you have undergone ECG, X-ray, screeing, Blood, Urine or Stoll examination?	*No.*	*-----*
Are you are present in sound health?	*Yes.*	*------*

12. The Ld. Counsel for the respondent also referred to the death summary of DLA issued by ***Rajiv Gandhi Cancer Institute and Research Centre, Sector-V, Rohini, Delhi-110085, Annexure R2,*** *wherein the diagnosis of aforesaid DLA Sudhir Nagpal is reported as* ***METASTATIC CARCINOMA URINARY BLADDER STATUS RCP & NEO BLADDER ON 30.05.2016.*** *Further reference was also made to the* ***Discharge Summary of Max Super Speciality Hospital, New Delhi, Annexure R4,*** *which shows that DLA received first cycle and cycle 2 day 1 of Chemotherapy from 19.03.2016. He completed cycle 2 day 1 of Chemotherapy from* ***19.03.2016 to 09.04.2016.*** *It is also mentioned that DLA was started on 3rd cycle of Chemotherapy on 30.04.2016 and received for two days.*

13. Hence, it is clear that DLA undergone Chemotherapy in the year 2016. He was also diagnosed of Carcinoma in March, 2016. The ***Policy Annexure P1*** *in question was taken on 28.03.2014. So, the aforesaid cancer ailment was diagnosed after about two years of taking the said policy.*

14. Admittedly, policy in question lapsed and therefore, same was revived on 26.05.2016, after

depositing of two yearly installments of premiums. Respondent has taken into consideration the health condition of the deceased as found in the year 2016 i.e. before revival of the policy in question on 26.05.2016 for repudiating the claim of deceased as DLA was under treatment from ***23.05.2016 to 23.07.2016*** *which was not disclosed in the Personal Statement at the time of revival of the policy in question.*

15. However, the respondent has failed to place on record any document from which it can be inferred that DLA was suffering from Cancer ailment or any other ailment at the time of taking the policy in question in the year 2014. The DLA has not disclose any such disease in the ***Proposal Form or Declaration of Good Health Form****.*

16. It was submitted that the applicant Smt. Neeraj Nagpal, was the agent, the policy in question which was got issued in favour of her husband Sh. Sudhir Nagpal. She is also the nominee of her husband in the said policy. It was also submitted that in the ***Proposal Form****,* ***Annexure R5*** *the name of agent is given as Neeraj,* ***Code 06963176.*** *This Neeraj is none other than wife of the DLA.*

17. The respondent have also placed on record status of ***Smt. Neeraj, Annexure R7,*** *wherein the date of appointment Smt. Neeraj is 24.05.2007 and date of exit is 01.06.2016. The application for Licence/Renewal of Licence to act as an* ***Insurance Agent Annexure R10,*** *shows that name of the agent is Neeraj W/o Sudhir, DLA. Even otherwise, it is not in dispute that it is the applicant, being agent of Life Insurance Company, got issued the said policy in favour of her husband Sh. Sudhir Nagpal, DLA. It was submitted that in the* ***Agent Confidential Report, Dated 31.03.2014, Annexure R8,*** *she has stated that she knows the Life Proposed for the five years. She*

has also stated that she is not related to the Life Proposed. So, it is clear that applicant, despite being agent in the aforesaid policy, has given false information regarding her husband Sh. Sudhir Nagpal, DLA with mala fide intention to make false claim. It was also submitted that applicant, who was the agent in the aforesaid policy, got misplaced the ***Declaration of Good Health Form*** *of the DLA from which it could have been ascertained as to whether DLA has given false information regarding his pre-existing disease i.e. Cancer at the time of revival of the policy in question on 26.05.2016.*

18. However, this contention for the respondent is not tenable because agent is not the custodian of the records of Life Insurance Company. Applicant was only agent of the respondent and not the employee of the Life Insurance Company. When the applicant was not the custodian of the record, how it can be assumed that it was the applicant who got misplaced the ***Declaration of Good Health Form of DLA*** *which was allegedly given by him at the time of revival of the said policy. There is no finding from any agency that the applicant, being agent, had access to the record of DLA in the office of the respondent. Respondent have also not got registered any criminal case against the applicant for misplacing the record concerning her husband/DLA for her involvement, if any, in the alleged misplacement of the* ***Declaration of Good Health Form of DLA.*** *Therefore, it can not be presumed that it was the applicant, who actually got misplaced the aforesaid form, if any, filed by DLA at the time of revival of policy.*

19. Therefore, fact remains that respondent has failed to prove on record any ***Declaration of Good Health Form of DLA,*** *if any, given to the Life Insurance Company office, or the agent of the LIC. Therefore,*

simply mentioning the column of the ***Declaration of Good Health Form of DLA*** *in the written statement does not mean anything unless same is produced on the file. Hence, it is presumed that DLA has not given any such* ***Declaration of Good Health Form of DLA*** *at the time of revival of the policy in question on 26.05.2016. Therefore, on the revival of the policy, it relates back to the date of issuance of policy in question and therefore, the* ***Declaration of Good Health Form of DLA*** *or information given in the Proposal Form shall be considered for deciding the claim of DLA given at the time of taking the policy.*

20. The ***Proposal Form*** *given by the DLA at the time of taking the policy in question as* ***Annexure R5,*** *wherein he has denied having any ailment and stated himself to be in good health. No documents has been filed by the respondent/Insurance Company to show that when he took the policy in question, he was suffering from any disease. The aforesaid* ***Proposal Form*** *containing personal history regarding his ailment etc. is countersigned by the Doctor, who was holding M.B.B.S., M.D., D.M.R.D., F.L.A.M.S., degrees. Therefore, the condition of the DLA is not to be seen on the date of revival of the policy on 26.05.2016 rather his health condition on taking the policy in question in the year 2014. As stated above, there is no proof of any pre-existing disease to the DLA at the time of the taking the policy in question. Therefore, Insurance Claim, on his death, could not have been repudiated by the respondent merely by stating that he was cancer patient, which he did not disclose at the time of revival of the policy in question because there is no such declaration made by DLA at the time of revival of the policy in question.*

21. Admittedly, DLA, in the ***Proposal Form, Annexure R5,*** *has stated his children to be 23 & 19*

years. However, in the ***Confidential Report*** *by agent/applicant, she has stated that she knows the Life Proposed for five years. Therefore, when she gave this* ***Confidential Report, Annexure R8****, qua the DLA. Sudhir Nagpal/her husband, she was already married on the date of taking the aforesaid policy by the DLA in the year 2014. She also denied to be having any relation in the DLA in the aforesaid* ***Confidential Report, Annexure R8.*** *So, it is clear that she has concealed the facts that DLA was her husband. However, no instructions or letter has been brought to the notice of the Court whereby the wife or relation of a Proposer is barred from acting as an agent. If she has mis- communicated in the policy of her husband, then respondent/Insurance Company is/was at liberty to proceed against the applicant as per rules of the department in her capacity as the agent of the Life Insurance Company. However, no fault can be found qua the case of DLA.*

22. So, the present case has to be seen from the angle of DLA, whose claim case is being considered, filed by the applicant, in her capacity as the nominee/wife of the DLA and not from the angle of agent of the respondent/Insurance Company. Therefore, rightful claim of DLA cannot be denied merely because of the fact that applicant, in her capacity as an agent, has concealed some information from the Life Insurance Company qua her relation with her husband in the ***Proposal Form and Confidential Report.*** *Of course, the applicant will be taking the benefits of the said policy of the DLA but not in her capacity as an agent of Life Insurance Company, but in her capacity as a nominee/wife of the DLA, Sudhir Nagpal.*

23. The Ld. Counsel for the respondent has relied upon case titled as ***"Branch Manager, Bajaj Allianz Life lusurance Company Ltd. and others Versus Dalbir***

Kaur", Civil Appeal No. 3397 of 2020, Date of Decision 09.10.2020, *wherein* ***Hon'ble Supreme Court*** *of India has observed that contract of insurance is one of utmost good faith. The Proposer, who seeks to obtain policy of* ***Life Insurance****, is duty to disclose all material facts bearing upon issue as to whether insurer would consider it appropriate to assume risk which is proposed. However, Proposer failed to disclose vomiting of blood which had taken place barely month prior to issuance of policy of insurance and of hospitalization which had been occasioned as consequence and accordingly, it was held that assured was suffering from pre-existing ailment and therefore, Judgment of* ***NCDRC*** *directing payment of sum insured was set aside. Further reference was made to the case titled as* ***"Sunita Rani & Ors. Versus Life Insurance Corporation of India", Revision Petition No. 2179 of 2010, Decided on 20.09.2010*** *wherein* ***Hon'ble National Consumer Disputes Redressal Commission, New Delhi,*** *has also made similar observations. Further reference was also made to the case titled as* ***"LIC of India & Anr. Versus Naveen Dhingra", Revision Petition No. 897 of 2001, Decided on 15.03.2002, wherein Hon'ble National Consumer Disputes Redressal Commission, New Delhi,*** *it has been observed that insurance has been held to be a contract of utter good faith. In this case, in our view, the deceased knowingly gave incorrect information on the personal health in the Personal Statement in the revival of lapsed policy form. In our view, the petitioner was right in repudiating the claim. The order of the State Commission, cannot be sustained and is set-aside, the order of the District Forum is restored. No order on costs.*

24. However, as discussed above, there is no evidence on the file that when the DLA took the policy in

the year 2014, he was suffering from cancer or any other ailment which has been concealed in the ***Proposal Form.*** *Of course, there is evidence of Cancer ailment to the deceased in the year 2016, when the policy was revived. However, there is no such Personal Statement of DLA on the file from which it can be ascertained that DLA has concealed any information regarding his pre-existing disease at the time of revival of the said policy.*

25. Therefore, Ld. Counsel for the respondent cannot much help from this aforesaid authorities that despite there being no dispute about the proposition of law as laid down therein.

Relief:-

26. In view of the above discussion the present application in hand is allowed. The respondent/Insurance Company is directed to release the sum assured i.e. Rs. ***12,00,000/- (Twelve lacs only)*** *minus amount already paid towards the settlement of claim to the applicant in her capacity as nominee/wife of the deceased Sudhir Nagpal alongwith interest @ 6% per annum from the date of institution of the case till its realization.*

27. The respondent/Insurance Company is further directed to pay ***Rs. 15,000/- (Fifteen thousand only)*** *towards mental pain and sufferings and to pay* ***Rs. 3,100/- (Three thousand one hundred only)*** *as litigation expenses. Award is passed accordingly.*

28. This Award is final and shall not be called in question before any Civil Court by the parties. This Award is executable by any Civil Court as if it is decree passed by such executing Court itself.

29. Copy of this Award be supplied to the parties free of costs as per rules. Fiie be completed and consigned to record room after due compliance.

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

7. Learned Counsel has also referred to the discharge summary issued by the Max Health Care Institute in which the diagnosis of TCC Urinary Bladder, Local Advanced cT3N1M0 has been mentioned and that the DLA received 1st Cycle and 2nd Cycle of chemotherapy on day 1 from 19.03.2016 onwards. He has also referred to the application submitted by the respondent No.2-claimant for seeking benefits under the policy wherein it has been averred by her that the deceased first complained of not being in usual good health as early as 05.07.2016. He contends that the above said disclosure of the date by the claimant was incorrect since the deceased had already undertaken Chemotherapy on 19.03.2016. He contends that the questions pertaining to health were part of the standard form and that being a case of mis-declaration, the claim was rightly declined but the Permanent Lok Adalat failed to take into consideration the effect of mis-declaration considering that a contract of insurance is based upon *Uberrimae fidei* i.e. utmost good faith and Section 45 of the Insurance Act, 1938.

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

9. The Permanent Lok Adalat (Public Utility Services), Rohtak has recorded in para No. 24 of its Award that the renewal application/proposal has not been brought on record by the petitioner Insurance Company. Learned Counsel for the petitioner on being confronted with the same, fairly submits that the said application/proposal could not be traced in the office of the petitioner-Insurance Company. He was also confronted that the documents reflecting diagnosis about Cancer at best would relate to March, 2016 and that the policy in question was initially

issued in the year 2014 and that there is no evidence to establish that at the time of issuance of the policy, there was any material concealment. He fairly submits that there is no such evidence available in possession of the petitioner-insurance company as would establish that the ailment had been detected prior to availing of the policy in the year 2014 itself. He, however, contends that the standard questions which are posed about the pre-existing disease had not been disclosed even at the time of seeking revival of the said policy.

10. I however find myself unable to accept the said contention. There can be no presumption of a fact about mis-declaration at the time when the deceased Sudhir Nagpal had sought revival of his policy and/or that there was any material concealment on his part. The petitioner-Insurance Company was in possession of the said document i.e. the revival application (proposal) submitted by the deceased and yet it chose not to produce the same before the Court. An inference thus has to be drawn against the petitioner-Insurance company for withholding the best document which were in its possession and custody.

11. Counsel for the petitioner was posed with a question as to whether in the absence of the primary document, the general practice or a standard form can be taken as a primary document to decline a claim made by the respondent-claimant, he is unable to refer to any precedent judgment in this regard. He has also been posed with a question as to whether a wrong averment in an application submitted by the claimant before the Insurance Company pertaining to the date when the ailment was detected could be sufficient to repudiate a claim, he is not in a situation to refer to any precedent judgment in this regard. The claim raised by the respondent No.2

has to be assessed from the documents assessed on record. The claim was repudiated by the petitioner Insurance Company was prior to the respondent moving an application before the Permanent Lok Adalat and as such on wrongful mentioning of the date in the application would have no bearing. The merits of the stand of neither party is dependent on the above. It is thus an objection raised for name sake and without demonstrating as to how it has the impact on denying the claim.

12. All the objections raised by the petitioner-Insurance Company have already been considered and onus to prove due and lawful repudiation has been placed on the petitioner Insurance Company who was custodian of the said documents.

13. It is thus apparent that the petitioner-Insurance Company is now seeking to persuade this Court to draw an adverse inference against the respondent-claimant despite the petitioner-Insurance Company having failed to produce the primary document which is in its possession and when it could have duly established the case in its favour. The factual aspect as regards mis-declaration is not a fact that can be assumed or inferred and is rather required to be proved by the Company repudiating the claim. Having chosen not to do so, the argument advanced by the petitioner cannot be accepted, the repudiation was hence wrong and the claim has been rightly allowed.

14. I find that there is no illegality, impropriety or perversity in the Award passed by the Permanent Lok Adalat (Public Utility Services), Rohtak in Petition No. 698/2020 dated 30.01.2024 that could be pointed out by the petitioner. There is no mis-reading or mis-interpretation of any evidence and in the absence of the supporting documents to substantiate the

argument being put-forth by the petitioner- Insurance company, the claim of the respondent-applicant has been rightly accepted by the Permanent Lok Adalat. The present writ petition is accordingly dismissed in *limine.*

(VINOD S. BHARDWAJ)

SEPTEMBER 16, 2024 **JUDGE**

Vishal Sharma

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