**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-29518-2024
Date of decision: 20.11.2024**

LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER

......Petitioner

VERSUS

SUSHIL AND ANOTHER

.......Respondents

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

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Present: - Mr. Piyush Sharma, Advocate
for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge is to the Award dated 04.06.2024 passed by the Permanent Lok Adalat (Public Utility Services), Sonipat on the ground of the same being perverse and based upon misreading of the evidence available on record.

2. Briefly summarized the facts of the present case are that Wazir -father of the respondent-applicant purchased a Life Insurance Policy from the petitioner-Insurance Company in which he was appointed as a nominee. Wazir died on March 30, 2019 whereafter a claim for the life insurance benefits was lodged by the respondent-applicant, however, the said benefits

were denied and the claim was repudiated on the ground that there was a concealment of facts by deceased Wazir. Aggrieved thereof, an application under Section 22 (C) of the Legal Services Authorities Act, 1987 was preferred by the respondent-applicant before the Permanent Lok Adalat (Public Utility Services), Sonepat.

3. The petitioner-Insurance Company entered appearance and raised various objections with respect to the maintainability of the application defended its actions and decision on the merits. It was specifically asserted by the petitioner-Insurance Company that the medical record reveal that insured Wazir was suffering from a pre-existing disease of Asthma for the last 15 years and had a history of PTB for last two years. The said material facts had been concealed by Wazir at the time of securing the policy in question. He was hence in violation of the terms and conditions of the policy and as a necessary consequence of the mis-declaration about the pre-existing diseases, the repudiation order passed by the petitioner Insurance Company was well justified.

4. Efforts for amicable resolution of the dispute by way of conciliation under Section 22 (C)(4) to (7) of the Legal Services Authorities Act, 1987 failed to fructify, hence, adjudication under Section 22 (C)(8) of the Legal Services Authorities Act, 1987 was undertaken.

5. On consideration of the respective pleadings, arguments as also the evidence led by the respective parties, the Permanent Lok Adalat (Public Utility Services), Sonepat allowed the application preferred by the respondent-applicant after recording a finding that the petitioner-Insurance

Company could not establish its case about material concealment. Only a photocopy of the proposal form, claimed to have been filled by Wazir, was placed on record and that even the said photocopy was illegible and was highly blurred and vague. It was also recorded that even though the answers were written in hand are visible, however, in the absence of the questions being legible and discernible, the answers cannot be assigned any meaning. The operative part of the Award passed by the Permanent Lok Adalat (Public Utility Services), Sonepat is extracted as under:-

> *9. Now the sole question to be decided by this Court is as to whether the respondents was justified in repudiating the claim for compensation submitted by the petitioner upon the above said ground.*
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> *10. It is the respondents who are alleging that the insured Vazir had suppressed material facts relating to his pre- existing diseases while replying to the questions asked from him in the proposal forms. Accordingly, the onus of proving the above-said fact would shift upon the respondents themselves. Accordingly, it is necessary to refer to the proposal-form filled up by the insure Vazir while purchasing the requisite insurance policy from the respondents.*
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> *11. The respondents have placed on record the alleged copy of the requisite proposal-form filed up by the insured vazir as Ex. R4. The above-said document Ex. R4 is a photocopy of the alleged original proposal form filled up by the insure Vazir while purchasing the requisite insurance policy. We have carefully examined the above- said photocopy Ex. R4 placed on record by the respondents. The second page of the above photocopy Ex.*

R4 is highly blurred and vague. The print of the matter photocopied on the second page of Ex. R4 is so faded and blurred that despite our best efforts we have not been able to read as to what exactly were the questions asked from the insured Vazir Singh on this page. No doubt, the answers recorded in hand are visible but the alleged questions that are alleged to have been put to the insured are not clearly visible to us despite out best efforts. In this background, when we do not know what were the questions put to the insure Vazir, the alleged answers given thereto have no meaning. Accordingly, we are fully satisfied that this alleged photocopy Ex. R4 does not prove the allegation of respondents that the insured Vazir had given any false answers to the questions put to him in the proposal form.

12. We have further examined the entire remaining documentary evidence comprising of documents Ex.R1 to Ex. R3 and Ex R5 to Ex. R22 adduced by the respondents. We are satisfied that the above said remaining documentary evidence of the respondents also does not prove that the insured Vazir had given any false answers to the questions put to him in the proposal form for the purchase of requisite insurance policy.

13. Under these circumstances, it is apparent that the respondents were not justified in repudiating the claim for compensation submitted by the petitioner upon the above said ground.

14. Consequently, the petitioner has clearly become entitled to recover the insurance claim of

Rs.three lacs upon the death of his father Vazir in terms of the above said insurance policy.

15. Hence, the petition of the petitioner is allowed. An award is passed directing the respondents to pay the insurance- claim of Rs. Three lacs to the petitioner alongwith interest of 9% per annum from the date of institution of petition up to the date of realization. Parties are left to bear their own costs."

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

7. Learned Counsel appearing on behalf of the petitioner has vehemently argued that the pre-existing medical condition of deceased Wazir became known through the medical record which has not been disputed by the respondent-applicant. He contends that the Life Insured having made a mis-declaration about the pre-existing diseases, the petitioner-Insurance Company would be within its right to repudiate such a claim since the policy itself had been obtained by practicing fraud.

8. On a specific query posed to him as to whether the proposal form was legible and as to whether the findings recorded by the Permanent Lok Adalat can be said to be perverse or be stated to be incorrect, he fairly submits that the photocopy of the proposal form put up before the Permanent Lok Adalat was not legible insofar as the questions/information sought is concerned. The original of the proposal form has also not been appended by the petitioner-Insurance Company with the present writ petition.

9. Thus, the finding recorded by the Permanent Lok Adalat cannot be confronted from the original record itself and cannot be held to be bad or perverse. The petitioner-Insurance Company having chosen to

withhold the best document i.e. the original proposal form which is undisputedly in its possession cannot take a benefit for itself. Since not in dispute that the original proposal form ought to have been in the possession of the petitioner-Insurance Company itself, the burden lay upon the petitioner-Insurance Company to establish its case to fall in the exclusions. The failure to bring on record the original proposal form and to establish the circumstances as to why secondary evidence, in the form of photocopy of the original proposal form, be taken into consideration have also not been explained. Under the given circumstances, the failure being of the petitioner-Insurance Company to lead primary evidence it cannot be capitalized by it. Once the questions are illegible, it cannot be presumed from the answers that there was a mis-declaration. The burden was upon the petitioner-Insurance Company and no negative burden can be cast upon the respondent-applicant.

10. I find that the petitioner-Insurance Company failed to discharge its primary burden by leading primary evidence, which was undisputedly in its own possession and by failing to produce the original proposal form or legible copy of the proposal form itself, an adverse inference has been rightly drawn against it.

11. Further, as per Section 22 (D) of the Legal Services Authorities Act, 1987, a Permanent Lok Adalat is guided by the principles of natural justice, objectivity, equity, fairness and other principles of justice. I do not find as to how the view taken by the Permanent Lok Adalat can be said to be unacceptable under the given scenario and totality of the circumstances and on consideration of the evidence adduced by the petitioner. Finding no

illegality, perversity or misreading or mis-appreciation of the evidence adduced before the Court, the ***present writ petition is dismissed in limine.*** The Award dated 04.06.2024 passed by the Permanent Lok Adalat (Public Utility Services), Sonepat in ***case No. 308 dated 16.10.2020*** titled as ***"Sushil versus Life Insurance Corporation of India and another***" is accordingly affirmed.

(VINOD S. BHARDWAJ)
NOVEMBER 20, 2024 **JUDGE**
Vishal Sharma

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