07.05.2025
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Ct.No.7
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WPA 7104 of 2022

Dipankar Biswas
Vs.
Union of India & Ors.

Mr. Timir Baran Saha
.....for the petitioner

Mr. Dipak Ranjan Mukherjee
..... for the Insurance Company

Mr. Abhishek Banerjee
..... for the Bank

The petitioner, by invoking the extraordinary jurisdiction of this Hon'ble Court, challenges the legality and justifiability of the award dated 28th February, 2022, passed by the Insurance Ombudsman, whereby the petitioner's claim was rejected.

Briefly stated, the facts that led to filing of the writ petition is that the petitioner had purchased a life insurance policy from Bajaj Allianz Life Insurance Company Limited on 6th March, 2018, to insure the life of his wife, Mrs. Manika Mondal (since deceased), with a sum assured of Rs. 12,95,000/-.

Mrs. Mondal, the life assured under the said policy, passed away on 8th July, 2020. Following her demise, the petitioner submitted a claim for settlement of the insured amount and forwarded all necessary documents to the insurer through United Bank of India.

However, the insurance company repudiated the claim on the ground that the deceased had allegedly been suffering from a "Malignant Brain Tumor' prior to obtaining the policy, and that this material fact was wilfully suppressed at the time of policy inception. Aggrieved by the repudiation of the claim, the petitioner approached the Insurance Ombudsman for redress. The Ombudsman, by an order dated 28th February, 2022, rejected the petitioner's claim. Aggrieved by the order dated 28th February, 2022, the petitioner has now approached this Hon'ble Court for appropriate relief.

Mr. Saha, the learned advocate appearing on behalf of the petitioner, submits that although an insurance policy is, in essence, a contractual matter, the enforcement of rights arising under such a policy may nonetheless be sought under Article 226 of the Constitution of India in appropriate cases. In support of this contention, he places reliance on the decision of the Hon'ble Supreme Court in *Life Insurance Corporation of India & Others vs. Asha Goel (Smt.) & Another*, reported in (2001) 2 SCC 160.

Mr. Mukherjee, the learned advocate appearing for the respondent Insurance Company, has raised a preliminary objection regarding the maintainability of the present writ petition. He submits that the petitioner has an alternative and efficacious remedy available before the appropriate forum, and that the present dispute involves disputed questions of fact and as such, the same is not maintainable.

Mr. Banerjee, learned advocate representing the Bank, concurs with the contention advanced by Mr. Mukherjee.

Heard the learned advocates representing all the parties and perused the materials on record.

Admittedly, the insurer repudiated the petitioner's claim on the ground that, upon receiving the application for settlement of the policy claim, certain investigations were conducted which revealed, according to the insurer, that the life assured had been suffering from a 'Malignant Brain Tumor' (Stage-II) prior to the submission of the proposal dated 6th March, 2018.

It was further alleged that this material fact had been deliberately and fraudulently suppressed in the proposal form with the intent to deceive the insurer and induce it to issue the policy. Based on this, the insurer contended that such suppression amounted to fraud. The petitioner, aggrieved by the insurer's repudiation of the claim, preferred an application before the Insurance Ombudsman, who ultimately affirmed the decision of the insurer.

Therefore, in order to effectively adjudicate the issues raised in the present writ petition, the following three questions require determination at the outset:

i) Whether the disease viz. 'Malignant Brain Tumor' was developed as pre-proposal stage;

ii) Whether this event was within the knowledge of the proposer at the time of inception of the policy;

iii) Whether there was a deliberate suppression to induce the insurer to issue the policy;

In the present case, the insurer has alleged that the suppression of the medical condition constitutes an act of fraud, which is essentially a question of fact.

Needless to observe, the determination of whether fraud was indeed practiced necessitates evaluation of certain evidence. It is admitted that the terminal disease in question was diagnosed at the second stage. Therefore, expert medical opinion is essential to ascertain whether it is medically plausible for a patient suffering from this particular illness to remain asymptomatic even after the disease has progressed to the second stage.

It cannot be said that the power of judicial review is entirely barred merely because the matter involves disputed questions of fact. However, where it is found that resolution of such factual disputes necessitates the appreciation of evidence, the Court will ordinarily exercise judicial restraint. This is because the proceedings under Article 226 of the Constitution, being primarily of a summary nature, are not the appropriate forum for conducting a detailed examination of evidence or making factual determinations that require expert or oral testimony.

In view thereof, I am of the view that the writ petition cannot be entertained and accordingly the same is dismissed.

It is clarified that the order and the award passed by the Insurance Ombudsman shall not preclude the petitioner to approach the appropriate forum for his remedy in accordance with law.

After giving dictation in open Court, Mr. Saha, learned advocate for the petitioner, submits that the petitioner intends to approach the Consumer Forum. This submission has necessitated to give further clarification that in the event the petitioner approaches the Consumer Forum, he shall be at liberty to raise the issue of pendency of this writ petition before this Court to justify his delay in approaching the Consumer Forum.

(Partha Sarathi Chatterjee, J.)