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Summary

Mediclaim Policy and Pre-existing Diseases

- **Burden of Proof on Insurance Company:** The insurance company must prove non-disclosure of a pre-existing condition by the policyholder. Mere suspicion is insufficient to repudiate a claim without concrete evidence.
- **Evidence in Medical Prescriptions:** A doctor's note mentioning a past complaint does not necessarily prove concealment of a pre-existing condition by the policyholder.
- **Heart Disease Specifics:** There's no evidence that the claimant knowingly concealed a heart condition. The onset of heart disease can be sudden and unknown to the insured, and mere inquiry about symptoms does not imply awareness of a pre-existing condition.

Senior Citizens Policy

- **Awareness of Risks by Insurance Companies:** Insurance companies issuing Senior Citizens Red Carpet Insurance policies are presumed aware of the associated risks, especially since these policies often have higher premiums and sometimes waive pre-medical check-ups.
- **Obligation of Insurers:** Insurers must demonstrate a breach of policy terms by the beneficiary. Failure to do so implies acceptance of the risk by the insurer.

Legal Services Authorities Act, 1987, Section 22D

- **Role of Permanent Lok Adalat (Public Utility Services):** PLA must adhere to principles of equity, fairness, natural justice, and objectivity. The High Court should not interfere with its decisions unless they are unsustainable based on evidence and proper interpretation.

(2023-4)212 PLR 196

Star Health And Allied Insurance Company Ltd. v. Anant Ram

PUNJAB AND HARYANA HIGH COURT

Before : Justice Vinod S. Bhardwaj.

STAR HEALTH AND ALLIED INSURANCE COMPANY LTD. – Petitioner

Versus

ANANT RAM and another – Respondents

CWP-11522 of 2023 (O&M)

(i) Insurance - Mediclaim policy - Pre existing disease - Non-disclosure - Burden of proof - Prescription - Burden of proving a non-disclosure of information by the policy holder lies upon the Insurance company - Suspicion does not par take need for proof - Suspicion can not merely be the basis to allow repudiation without any tangible evidence to substantiate their claim and to corroborate the decision - A mere mentioning in the prescription by the doctor in his clinical assessment details about the previous history of similar complaint would not amount to establishing a concealment - Legal Services Authorities Act, 1987 (39 of 1987), Section 22D.

[Para 10]

(ii) Insurance - Mediclaim policy - Pre existing disease - Non-disclosure - Burden of proof - Heart disease - Prescription - A mere mentioning in the prescription by the doctor in his clinical assessment details about the previous history of similar complaint would not amount to establishing a concealment - No document produced by Insurance company to prove that claimant was suffering from any heart disease for last several years - Heart ailment may occur at any point of time and insured may not be aware of any past medical history - Merely because certain symptoms are asked for before a treatment is extended and response to the same would not amount to establishing the fact that the insured had knowledge of his past medical condition or previous history - No document to suggest that insured had been taking any medication and/or had been subjected to any treatment at any time prior to him securing a medical insurance policy -The quick succession in which a person has been admitted to a Hospital for the coronary disease cannot itself be sufficient to establish that the policy document had been obtained by deception and to secure a policy - Claim payable - Legal Services Authorities Act, 1987 (39 of 1987), Section 22D. [Para 9, 10, 11]

(iii) Insurance - Senior Citizens policy - Pre-medical check-up - Mediclaim policy - Pre existing disease - Non-disclosure - Insurance company having issued the Senior Citizens Red Carpet Insurance policy would be presumed to be fully aware of the risks that it under writes and having opted to waive of the requirement of undergoing a pre-medical check-up was thus conscious - The premium of such policies is generally higher as compared to other medi-claim policies - Insurer to discharge burden of satisfying that there has been a breach of the material terms and conditions of the policy document by the beneficiary despite being obligated to make such a disclosure - Since the needful was not done, the Insurance company was allowed to under write the risk - Liable - Legal Services Authorities Act, 1987 (39 of 1987), Section 22D.

[Para 11]

(iv) Legal Services Authorities Act, 1987, Section 22 (D) - Permanent Lok Adalat (Public Utility Services) has to decide the matters as per guidelines laid down in S. 22 (D) - Is guided by the principle of equity, fairness, principles of natural justice, other principle of justice and objectivity - If a conclusion drawn by Permanent Lok Adalat (Public Utility Services) is sustainable on a meaningful reading and an interpretation of the evidence brought before it, such exercise of discretion would not normally be interfered with by the High Court in exercise of its review jurisdiction - Unless the conclusions drawn by the PLA are not sustainable the discretion so exercised should not be ordinarily interfered with or set aside. [Para 12]

Mr. Neeraj Khanna, for the petitioner.

Vinod S. Bhardwaj, J. (ORAL) - (16.10.2023) -

CM-17492-CWP-2023

The present application has been filed under Section 151 of the Code of Civil Procedure for placing on record the Circular dated 22.07.2020 issued by Insurance Regulatory and Development Authority of India as Annexure P-5.

Application is allowed as prayed for and Circular dated 22.07.2020 issued by Insurance Regulatory and Development Authority of India is taken on record as Annexure P-5.

1. Challenge in the present petition is to the order dated 19.12.2022 (Annexure P-1) passed by respondent-Permanent Lok Adalat (Public Utility Services), Gurugram directing the petitioner Insurance company to pay a sum of Rs. 2,33,572/- alongwith interest @ 6% per annum.

2. Briefly summarized, the facts of the present case are that the respondent No.1-Insured Anant Ram had taken a medi-claim Insurance policy bearing No. P/161116/01/2015/003442 for the period 28.11.2014 to 27.11.2015 from the petitioner-Insurance company. It is averred that on 22.04.2015, father of respondent No.1 was admitted in Alchemist Hospital, Gurugram after suffering from acute Cad/post PTCA and was discharged on 23.04.2015. The respondent incurred an expenditure of Rs. 1,50,000/- approx. for the above treatment. His father had to be re-admitted in Metro Heart Institute on 17.05.2015 and was discharged on 21.05.2015. An amount of Rs. 2,50,000/- was spent on the above treatment. He was again readmitted on 22.05.2015 in Samwit Health Care, Sohna Road, Gurugram. The father of the respondent eventually passed away on 22.05.2015 at 12:10 p.m. A further sum of Rs. 50,000/- was spent this time on the treatment. Hence, total expenditure incurred was of Rs. 4,50,000/- towards treatment, transportation etc. A cashless treatment claim was lodged by the respondent No.1. with the petitioner-Insurance company which was however declined on the ground of non-disclosure of material facts. Consequently, an application under

Section 22 (C) of the Legal Services Authorities Act, 1987 was filed by the respondent No.1 before the Permanent Lok Adalat (Public Utility Services), Gurugram.

3. The petitioner-Insurance company entered its appearance and raised various objections to the claim application on the ground of maintainability, cause of action, concealment of true and material facts and also replied that the applicant had past medical history of heart disease since 2008 and undergone PTCA. The admission record shows that the applicant was a known case of coronary artery disease and that the said aspect had not been disclosed at the time of inception of the policy. The conduct of the respondent was thus in breach of the terms and conditions of the policy and that the denial of the cashless authorization on the ground of non-disclosure of the past arterial disease was valid. The Insurance contract being a contract of utmost good faith, suppression of any such information entitles the petitioner -Insurance company to repudiate the said claim. It is further averred that the medi claim policy being a senior citizen red carpet policy, special privileges were offered to the senior citizens to obtain the policy without a pre-medical screening and only on the basis of the declarations made in the proposal form. Non-disclosure of the past medical history in the proposal and at the time of inception of the insurance policy about Budhi Ram-father of respondent No.1, the Insurance company was within its rights to repudiate the said claim.

4. After the efforts of amicable resolution of the dispute failed to resolve the issue, adjudication under Section 22 (C) (8) of the Legal Services Authorities Act, 1987 was initiated.

5. Upon consideration of the contentions raised on behalf of the respective parties, the Permanent Lok Adalat (Public Utility Services), Gurugram allowed the application and directed the petitioner-Insurance company to pay the claim amount of Rs. 2,33,570/- alongwith interest @ 6% per annum from the date of filing of the application till its realization and to also pay of Rs. 5500/- towards litigation expenses. The operative part of the said award reads thus:

"8. After perusing the documents placed on the file by both the parties, it reveals that the applicant had taken the mediclaim policy in the name of his father as per copy of policy (Annexure A) from respondents, valid from 28.11.2014 to 27.11.2015 and assured the sum of Rs. 3 lacs. Father of the applicant suffered from Acute CAD/post PTCA on 22.04.2015 due to which he was got admitted in Alchemist Hospital, Sector 53, Saraswati Kunj, Gurugram and discharged on 23.04.2015 and spent Rs. 1,50,000/- approx. Thereafter his father Budhi Ram again admitted in Metro Heart Institute with Multispecialty Sector 16A. Faridabad on 17.05.2015 and discharged on 21.05.2018 and spent Rs.2,50,000/-. Thereafter the health condition of Budhi Rama was become critical and admitted in Samvit Healthcare, Sohna Road. Islampur, Gurugram where he was declared dead on 22.05.2015 and the applicant spent Rs.50,000/- approximately on the treatment and transportation etc. The applicant has incurred a sum of Rs. 4,50,000 on his treatment but as per record produced by the applicant as Annexure B to X for sum of Rs. 2,33,572/ only. The applicant submitted all the treatment record and bills with the respondent for reimbursement of the amount which was incurred by the applicant on the treatment of his father but the respondent did not pay any

amount rather repudiated the claim of the applicant on 18.05.2015 (Annexure O). It is not disputed that under the policy no. P/161116/01/2015/003442 covering Budhi Ram for the period 28.11.2014 to 27.11.2015 for the sum insured of Rs. 3 lacs to the Senior Citizen Red Carpet Insurance policy medical examination as the anti-age must be above 60 years of age.

9. There is no document on the file produced by the respondents if the applicant was suffering from any heart disease since last 7 years or since 2007. Merely mentioning in the prescription of the doctor (Annexure 1) Dr. Madhukar Pandey that is the clinical assessment details about previous history of the similar complaint PTCA 2007, does not matter in this case as no other record produced by the respondents that Budhi Ram was suffering from heart disease since 2007 and having any medicine from hospital. The heart ailment can be occurred at any time without previous knowledge of the insured. Hence, rejection of pre-authorization of cashless treatment (Annexure-0) vide letter dated 18.05.2015 is not justified and genuine. In the proposal form (Annexure A) if the heart disease is not mentioned, it does not mean that the applicant is not entitled to the expenses spent on health of insured. In the preauthorization request form it is mentioned that he was heart patient since 2008 and 2009 is also mentioned in the proposal form, does not mean that he is not entitled to the claim as per terms and conditions of the policy as no other document produced by the respondent about taking the medicine from any hospital for the above said disease since last 6 or 7 years.

10. As per terms and conditions of the Senior Citizen Red Carpet policy issued by the respondents, the pre-existing disease which are specifically declared in the proposal form are covered under the policy. There is no prescription of the doctor produced on file by the respondents regarding past medical history of heart disease since 2008 to father of applicant. It is not mentioned in the terms and conditions that any patient with heart disease or who underwent PTCA cannot claim amount from the insurance company. Therefore, the denial of cashless authorization on 18.05.2015 on the grounds of nondisclosure of heart disease is not justified and genuine. Therefore the rejection letter dated 18.05.2015 is not justified. The age of Budhi Ram father of the applicant was clearly mentioned in the Senior Citizen Red Carpet insurance policy as 69 years 10 months and sum was insured as 3 lacs. Hence, the applicant is entitled to receive the amount 2,33,572/- as per bills submitted and produced by the applicant amount was incurred by applicant on the treatment of his deceased father Budhi Ram. Non-payment of bills amount by respondents and that there is deficiency in service on part of the respondent has been proved on file.”

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

7. Learned counsel appearing on behalf of the petitioner-Insurance company has vehemently argued that the contract of Insurance being that of an *Uberrimae Fidei* i.e. utmost goodfaith, concealment of any information on the part of an insured for securing a policy disentitles him to the benefits under the policy. The past medical record including the arterial disease was not disclosed in a proposal by the respondent. Being a senior citizen policy, the medical examination of the insured had been dispensed with and that the

respondent has taken benefit of the red carpet insurance policy issued for the senior citizens.

8. I have heard learned counsel for the petitioner and have gone through the award passed by the Permanent Lok Adalat (Public Utility Services), Gurugram.

9. A perusal of the aforesaid award clearly shows that a finding has been recorded by the Permanent Lok Adalat (Public Utility Services), Gurugram that there was no document on the file produced by the Insurance company to disclose that the applicant was suffering from any heart disease for last 07 years or since 2007. A mere mentioning in the prescription by the doctor in his clinical assessment details about the previous history of similar complaint would not amount to establishing a concealment.

10. The burden of establishing that there was a non-disclosure of information by the policy holder lies upon the Insurance company and they cannot be allowed to repudiate a claim merely on the basis of a suspicion *de hors* absence of any tangible evidence to substantiate their claim and to corroborate the decision. It was also noticed that heart ailment may occur at any point of time and insured may not be aware of any past medical history. Merely because certain symptoms are asked for before a treatment is extended and response to the same would not amount to establishing the fact that the insured had knowledge of his past medical condition or previous history. There is also no document on record to suggest that the insured had been taking any medication and/or had been subjected to any treatment at any time prior to him securing a medical insurance policy with the petitioner-Insurance company.

11. It is well established law that a suspicion does not par take need for proof. The insurance company has to discharge its burden of satisfying that there has been a breach of the material terms and conditions of the policy document by the beneficiary despite being obligated to make such a disclosure. Since the needful was not done, the Insurance company was allowed to under write the risk. The quick succession in which a person has been admitted to a Hospital for the coronary disease cannot itself be sufficient to establish that the policy document had been obtained by deception and to secure a policy. The petitioner-Insurance company having issued the Senior Citizens Red Carpet Insurance policy would be presumed to be fully aware of the risks that it under writes and having opted to waive of the requirement of undergoing a pre-medical check-up was thus conscious. The premium of such policies is generally higher as compared to other medi-claim policies.

12. It is also noticed that Permanent Lok Adalat (Public Utility Services) has to decide the matters as per guidelines laid down in Section 22 (D) of the Legal Services Authorities Act, 1987 and a Permanent Lok Adalat (Public Utility Services) is guided by the principle of equity, fairness, principles of natural justice, other principle of justice and objectivity. If a conclusion drawn by Permanent Lok Adalat (Public Utility Services) is sustainable on a meaningful reading and an interpretation of the evidence brought before it, such exercise of discretion would not normally be interfered with by the High Court in exercise of its review jurisdiction. Unless the conclusions drawn by the Permanent Lok Adalat (Public

Utility Services), Gurugram are not sustainable on a meaningful reading and interpretation of the evidence brought before it, the discretion so exercised should not be ordinarily interfered with or set aside, I find that there is no such misreading of the evidence.

13. The award passed by the Permanent Lok Adalat (Public Utility Services), Gurugram thus does not suffer from any illegality, perversity, impropriety, misappreciation of evidence or from non-appreciation of the evidence available on record. The present writ petition is accordingly dismissed in *limine*. No order as to costs.

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