(2013) 06 CAL CK 0043

In the Calcutta High Court

Case No : Writ Petition No. 1180 of 2005

Anindya Datta APPELLANT

Vs

The New India Assurance Co. Ltd. and Others RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Citation : (2013) 4 CHN 670 : (2013) 3 WBLR 794

Hon'ble Judges : Indra Prasanna Mukerji, J

Bench : Single Bench

Advocate : Pramit Roy, Saunak Ghosh and Rajib Mullick, for the Appellant;N.R. Mukherjee and Sourya Mukherjee, for the Respondent

Judgement

Indra Prasanna Mukerji, J.—This is a writ arising out of a medical insurance policy. It concerns one Anindya Datta, the writ petitioner. The claim arises out of an angioplasty procedure performed on him at the Rabindranath Tagore International Institute of Cardiac Science on 16th April, 2003.

2. The total expenses incurred by the writ petitioner was Rs. 89,713/-. This claim was lodged by him with the respondent insurer. But it was rejected by them by their letter dated 25th June, 2004. It stated that in respect of an earlier policy valid from 12th November, 1997 to 11th November 1998, the disease hypertension was not covered. The claim of the writ petitioner was taken by them to be arising out of or directly related to hypertension. Therefore, the claim was rejected.

3. Hence, this writ which has been pending in the file of this Court since 2005.

4. The most interesting thing is that this medical policy was renewed by the writ petitioner from year to year. The first policy was taken out from 12th November, 1997, and was valid till 11th November, 1998. During the subsistence of this policy, the writ petitioner had to undergo an identical angioplasty procedure. It was in this policy that there was a reference to the exclusion of hypertension from the scope of the policy. Despite that, the entire claim was accepted and

paid by the under-writer.

5. At the outset, Mr. Mukherjee for the insurance company tried to resist the writ application principally on two grounds.

6. The first was the availability of an alternative remedy. He submitted that there were disputed issues involved which had to stand trial. It could only be resolved in a suit. He cited the case of 1985 ACJ 657 (SC) In that case, in the special disputed facts mentioned by the Supreme Court, but not specified in detail, it was of the opinion that the remedy was only before a civil Court. In Rewant and Others Vs. Divisional Manager, Life Insurance Corporation of India, Nagpur and Another, , a Division Bench of the Bombay High Court was also of the same view.

7. Mr. Mukherjee also relied on the more general case of Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others, which said that a contractual right could not be enforced under Article 226 of the Constitution of India.

8. But the more recent cases were cited by Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another, and Biman Krishna Bose Vs. United India Insurance Co. Ltd.,

9. From the above judgments of the Supreme Court, I can say that where there is no dispute in facts, where the action of the government or government agency is arbitrary or malafide or most unreasonable in resisting a bonafide claim of insurance, then the Court has the power under Article 226 of the Constitution of India to provide the proper remedy.

10. Facts cannot be simpler than this case we find a total absence of dispute. In an identical surgical procedure, the claim of the petitioner was paid in full. The claim for this operation which is identical to the other one, has been withheld.

11. Therefore, in my opinion, Article 226 was the proper remedy chosen by the writ petitioner.

12. The next point taken by Mr. Mukherjee was that this Court had no territorial jurisdiction. But I find that there is a pleading in paragraph 14 of the writ petition that the records of the case are lying within the jurisdiction of this Court. This fact was disputed on the ground that no part of the cause of action arose within any office of the insurer within the jurisdiction of this Court. The head office of the insurer was in Bombay and the branch office through which transactions were made was in Howrah, it was argued.

13. I find that there is no contradiction of the pleading that the records of the case are lying at the office of the insurer within the jurisdiction of this Court. This makes the writ petition maintainable. Moreover, this writ application has been pending in this Court for eight years. There does not seem to be any dispute that part of the cause of action has arisen in Howrah. At this point of time relegating this writ application to the Appellate Side of this Court would be most unjust. In fact, in my opinion, there is no difference between a writ application on the

Original Side and one on the Appellate Side.

14. As far as the merits of the claim are concerned, as I have already said, that on an identical claim in 1997-98 payment was made, although it was argued by Mr. Mukherjee that there Was the pre-existing disease of hypertension at that time and that the payment under the said claim was obtained by fraud citing Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, , I find that no steps were taken by the insurer to seek refund of the payment made or take any step against any officer responsible for the alleged fraud. At least no such action is on record.

15. When the claim in similar circumstances had been paid, there was no justification for withholding this claim.

16. Secondly it was argued by Mr. Mukherjee that the parent policy was of 1997-98 and the exclusion of hypertension also covered the instant policy. However, I do not find any mention of this exclusion in the policy of 2003 as pointed out by Mr. Roy. Even taking Mr. Mukherjee''s submission to be correct, rejecting a claim for an angioplasty procedure on the ground that the claim arises out of hypertension is preposterous. In that case, each and every claim could be resisted by the insurer on the ground that the patient suffered from hypertension. Moreover, it is nowhere on record that the writ petitioner had undergone treatment for the primary cause of hypertension. In order to resist a claim on the ground of a disease which is excluded, that disease must be the primary cause of the claim or that disease must be directly related to the claim. This type of remote connection of angioplasty with hypertension will not do.

17. Therefore, the action of the insurer was most arbitrary and I unreasonable.

18. For all those reasons, this writ application has to succeed.

19. I direct the respondent insurance company to immediately process and pay the claim of the writ petitioner arising out of angioplasty in Rabindranath Tagore International Institute of Cardiac Science in 2003 which is the subject matter of this writ application, within a period of three months from date.

20. The insurer will also pay interest at the rate of 10% per annum simple interest calculated for the period commencing one month after lodging of the claim till the date of payment.

21. This writ petition is accordingly allowed. All parties concerned to act on a signed photocopy of this order upon the usual undertakings.