
(2008) 05 P&H CK 0081
In the Punjab And Haryana At Chandigarh

Birla Sun Life Insurance Co. Ltd.

APPELLANT

Vs

Keshav Lal and Others

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Legal Services Authorities Act, 1987 — Section 20

Citation : (2008) 151 PLR 481 : (2008) 3 RCR(Civil) 637

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Birla Sun Life Insurance Company has filed this revision challenging the order of Permanent Lok Adalat (Public Utility Services), Gurgaon directing the petitioner to pay the amount of Rs. ten lacs along with interest at the rate of 12% per annum. This liability arises out of insurance claim filed by respondent No. 1 in regard to the death of his son insured with the petitioner. The respondent Keshav Lal had filed an application at pre-litigation stage before the Lok Adalat for payment of this insurance claim. How the Insurance Companies are first alluring people to buy their policies and leave them to contest in various courts for getting the benefit thereof is well exemplified in the present case. This is noticed to be usual practice almost with all Insurance Companies. They are seemed to be repudiating the claims almost universally on one pretext or the other making the persons to fight for their legal dues. This mind set on the part of the Insurance Company must change. They seem to be relying on one technicality or the other, which of course are required to be ignored.

2. The facts in this case would reveal the agony of a person, whose son had bought this insurance policy.

Deceased Puneet had obtained life insurance policy on 9.2.2006 in the sum of Rs. ten lacs from the petitioner. He was subjected to thorough medical

examination by panel of doctors before policy was issued to him and after detailed verification and medical examination, policy No. 000564990 was issued to deceased Puneet. Having got this policy in February, 2006, Puneet breathed his last on 21.12.2006 due to vomitus aspiration. His father respondent Keshav Lal, nominee under the policy, applied for claim on account of death of his son as per the terms and conditions of the policy. The ever obliging Insurance Company repudiated the claim on 10.7.2007. It is revealed that investigator was appointed by the petitioner-company, who has reported that the insured person was known case of bronchitis and had been undergoing treatment for this ailment for the last 2-3 years. This, however, was seriously disputed by the respondent-father, who maintained that insured never suffered from any ailment and the report given by the investigator is false. When the Insurance Company did not listen to his cries, which became loud on account of the unreasonableness of action on the part of the Insurance Company, he filed the present application.

3. The Insurance Company has stuck to its stand that the insured was a known case of bronchitis. It is pointed out that he had consulted Dr. Anand Bhayana for treatment. The Insurance Company also relied on the statement of Dr. Bhayana that he was having repeated attacks of bronchitis. It is then mentioned that while obtaining the policy, the insured had replied in the negative to a question whether he remained on diet or on any medicine prescribed by any doctor or ever consulted any doctor or had sought advice for asthma, chronic cough, pneumonia, shortness of breath, T.B. or any other respiratory or any lung disorder. Claiming that the insured amounted to suppression of material facts, the claim was repudiated.

4. Though the petitioner-company had basically relied upon the statement of Dr. Anand Bhayana to repudiate the claim by saying that the deceased was a known case of bronchitis, Lok Adalat examined the said doctor. Before the Lok Adalat, Dr. Bhayana stated that deceased Puneet had come to him only three times in three years. It is accordingly noticed that this three visits in three years to a family doctor would not reveal any serious disease suffered by the insured and the ailment, if any, even for bronchitis, would be a casual infection, which was curable with routine antibiotics. It is also noticed by the Lok Adalat that the insured-deceased had died due to vomitus aspiration, i.e., inhaling of vomit and his death has no relation or nexus whatsoever with the mild and annual or seasonal complaint of bronchitis. It has been rightly noticed by the Lok Adalat that vomit aspiration occurs suddenly and per chance with no root of any sort existing earlier. The Lok Adalat had made reference to the statement of Dr. Bhayana that he noticed first indication of ailing health of Puneet on the very date of his death. It is further noticeable that no question was ever put to the insured at the time of selling policy in regard to bronchitis. Accordingly, even if the insured was suffering from diseased of bronchitis, he cannot be accused of suppressing any material facts in any deceitful way. The late insurer was expected to answer the question which was put to him and no suppression can either be urged or noticed from the reply given by the insured to the questions

addressed to him as has been noticed above. Even otherwise, in my considered opinion, this would have made difference only if the death had resulted on account of bronchitis or any such disease, which, as per the allegations was not disclosed. The death of the insured is not related to any such disease which he was expected to disclose in response to questions addressed and that being the position, the Insurance Company is totally unreasonable and unjustified in repudiating the claim. This is only a farce on the part of the Insurance Company to deny a genuine claim and is aimed at escaping the liability, which would arise on account of having sold this policy to deceased.

5. The petitioner-company can rightly be expected to do lot of explaining. It had sold this policy to late Puneet after subjecting him to a thorough medical examination by panel of doctors. One can understand if he had been given this policy without being subjected to medical examination and only on the basis of answers given by the insured. Once the panel of doctors deputed by the petitioner company could not detect or notice the defect, which is being held against the insured, certainly the Insurance Company cannot be allowed to take advantage of these false, frivolous and unreasonable pleas. In fact, this action on the part of the Insurance Company to say the least needs to be condemned. The insensitivity on the part of the Insurance Company to compensate the insured is clearly noticeable. They are more concerned about earning premium and saving the liability rather than sticking to the agreed terms. Surely, the Insurance Company has no clause to show in support of their action in ordering an investigator to go and question the doctor, who was the family doctor of the deceased-insured and then rely on his version that too totally out of context. The false plea raised by the Insurance Company on the basis of some report given by their investigator was exposed when the Lok Adalat summoned the doctor concerned to know the exact details. How efforts are being made by the Insurance Company to raise false pleas to repudiate the claims can really be noticed from the facts of the present case. This conduct must stop and the message must go to the companies to be fair in their dealings and not to make an attempt to cheat their clients in the manner it is usually being done by sticking to some hidden clauses while selling insurance policies. In another case, this Court very recently has advocated simplification of these clauses, which should be made clear to the proposed insurer for him to decide if he would wish to buy such policies in terms of those conditions. It was accordingly further suggested that all these conditions should be simplified to avoid reoccurrence of such like incident and repudiation on the part of the Insurance Company. Except for repeating the same, perhaps nothing can be done.

6. When confronted with such uncomfortable facts, the counsel representing the Insurance Company resorted to another technicality. He would contend that Lok Adalat did not have the jurisdiction to pass this award and in support has referred to cases of State of Punjab and Anr. v. Jalour Singh and Ors. 2008 150 P.L.R. 261 (S.C.), State of Punjab and Ors. v. Ganpat Raj 2006(4) R.C.R. 497 and Sham Lal Sharma v. State of Haryana 2002(2) S.C.T. 287 (P&H) to urge that the

Lok Adalat would not have adjudicatory or judicial functions. Their functions relate only to conciliation. No doubt, in these cases, it is observed that a Lok Adalat can determine a reference on the basis of compromise or settlement between the parties and that when the parties do not reach, a compromise or settlement, no award is to be made and the case required to be returned to the court. In my view, the ratio of law laid down in these cases would not be attracted to the facts of the present case. Jalour Singh s case (supra) was a case where Tribunal had awarded a sum of Rs. 1,44,000/- as a compensation against Rs. five lacs claimed by the claimant. In an appeal filed before the High Court, the case was referred to Lok Adalat organised where the Lok Adalat decided to enhance the compensation without the consent of Roadways. The observations of the Hon"ble Supreme Court were made in this background and thus apparently would not apply to the facts of the present case. Ganpat Raj (supra) was a case where a writ petition filed for claiming interest on the delayed payment of pension and arrears was referred to the Lok Adalat. The Lok Adalat awarded 12% interest without the compromise or settlement. In this context, it was said that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties while interpreting Section 20 of the Legal Services Authority Act, 1987. Similar is the proposition of law laid down in the case of Sham Lal Sharma (supra). The present case is the one which has been decided by Permanent Lok Adalat (Public Utility Services), Gurgaon under the provisions of Section 22(c)(8) of the Act, 1987. This is not a case which was referred to Lok Adalat for settlement or conciliation. The matter went to permanent Lok Adalat at the pre-litigation stage and the decision came to be passed on the merits of the controversy having regard to the different pleas v raised by the parties.

7. The petitioner-Insurance company never raised the plea regarding jurisdiction of the Lok Adalat to decide this matter. The Insurance Company had made detailed reference to number of judgments on merits justifying its action of repudiating the claim but never raised any objection in regard to the jurisdiction of the Permanent , Lok Adalat to decide this matter in the manner it did. Thus, the Insurance Company acquiesced to the jurisdiction of the Permanent Lok Adalat and thus cannot now be allowed to turn around and challenge the jurisdiction of the same forum as has been done before this Court. In fact, the challenge to the validity of Section 22(c)(8) of the Legal Services Authorities Act, 1987, whereby Chapter IV-A has been inserted, was challenged before the Hon"ble Supreme Court, but the constitutional validity thereof was upheld vide an order 28.10.2002 in a Writ Petition (Civil) No. 543 of 2002 S.N. Pande v. Union of India and Anr. Perhaps it is because of this reason that the Insurance Company never raised the jurisdiction issue before the Permanent Lok Adalat, which went on to decide this case. Even otherwise, first acquiescing to the jurisdiction of the Permanent Lok Adalat to decide the case and then to challenge its jurisdiction is a mode which is neither appreciable or permissible under law. Would the Insurance Company had done so if the order had gone in their favour? Answer would be surely "No". I would, thus, reject this line of reasoning raised

on behalf of the petitioner company. The revision petition deserves to be dismissed with costs, which is assessed at Rs. 10,000/- Since the petition is being dismissed in limine without notice to the respondents, the cost be deposited in the account of Legal Services Authority, Haryana within a period of one month from the date of receipt of the copy of the order by the petitioner-Insurance Company.