

(2011) 08 P&H CK 0297
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1537 of 2011 (O and M)

Iffco Tokio General Insurance Company Ltd.	APPELLANT
Vs	
Permanent Lok Adalat (Public Utility Services), Gurgaon and Others	RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22C

Citation : (2013) ACJ 1478 : (2012) 1 RCR(Civil) 901

Hon'ble Judges : M.M. Kumar, J; Gurudev Singh, J

Bench : Division Bench

Advocate : Neena Madan, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant appeal filed under Clause 10 of the Letters Patent challenges judgment dated 4.5.2011 rendered by the learned Single Judge dismissing the writ petition of the petitioner-appellant M/s IFFCO TOKIO General Insurance Company Ltd. (for brevity, "the Insurance Company"). Brief facts of the case are that Shri Naresh Aggarwal-respondent No. 2 had taken an individual medi-claim policy for himself and his wife from the Insurance Company, which was valid from 6.6.2007 to 5.6.2008 (P-2). In the terms and conditions of the policy there was a specific exclusion clause No. 1 under the heading "What is not covered", which reads as under:

What is not covered:

1. All Diseases/injuries which are in pre-existing condition when the cover incepts with us for the first time. However, this exclusion shall cease to apply for such Pre-existing Condition if You/Insured Person have maintained an Individual Medishield Insurance Policy with us for a consecutive 3-years period prior to the present policy coverage and no claim, care, treatment or advice has been recommended by or received from a Medical Practitioner in relation to such Pre-

Existing Condition during that 3-year period.

2. The said policy was renewed from 6.6.2008 to 5.6.2009 and again from 6.6.2009 to 5.6.2010. Respondent No. 2 was hospitalised from 10.3.2010 to 12.3.2010 for treatment of "Coronary Artery Disease" in Medicity, Sector 38, Gurgaon. He approached the Insurance Company through third party administrator under the policy i.e. M/s Paramount Health-respondent No. 3 with the request to provide cashless facility for treatment. On 11.3.2010, respondent No. 3 declined the request of Shri Naresh Aggarwal-respondent No. 2 on the ground that he was seeking treatment for the heart disease which he had been suffering for the last eight years. It was found to be a case of preexisting disease covered under aforementioned exclusion clause of the policy (P-6). Respondent No. 2 thereafter raised a claim for reimbursement of medical expenses incurred by him on his treatment (P-7). On 16.4.2010, his claim for payment was denied on the ground that his was a known case of coronary artery disease since 2002 (P-11). It is stated that the treatment of disease taken by respondent No. 2 in the year 2010 was not covered under the medi-shield policy as he was suffering from this disease prior to taking the policy. Feeling aggrieved, respondent No. 2 approached the Permanent Lok Adalat (Public Utility Services) Gurgaon (for brevity, "the Lok Adalat") by filing an application u/s 22-C of the Legal Services Authority Act, 1987, claiming a sum of Rs. 2,33,000- with interest @ 24% per annum from the date of claim application till payment with costs (P-17). On 8.12.2010, the Lok Adalat passed an order directing the petitioner-appellant to pay to respondent No. 2 a sum of Rs. 2,20,000/- along with interest @ 9% per annum from the date of institution of the claim till payment (P-1).

3. The only submission made before the learned Single Judge was that the claim has been declined in accordance with the terms and conditions of the policy and such a claim would not be admissible. However, the learned Single Judge rejected the defence pleaded by the Insurance Company and dismissed the writ petition by observing as under:

Sole submission before this Court is that claim has been declined in terms of the conditions of the policy and such a claim would not be admissible. This defence to me would sound highly unfair. Why would one take a policy of medi- claim if he is not to get his claim for genuine treatment taken? It is for the Insurance Company to see and not to issue a policy where they find that such person is not entitled to claim on account of treatment of the existing disease. The petitioner (respondent No. 2?) had been paying the premium for the last three years. He may be suffering from this disease since 2002 but need to seek treatment arose only in 2010. One would not take medi-claim policy just for the purpose of paying premium. The ground advanced by the petitioner to deny this claim is unfair and unreasonable. Respondent No. 2 had a valid policy from the petitioner and they must now honour the same. I do not find any justification to interfere in the order passed by the Lok Adalat.

4. Having heard learned counsel for the petitioner appellant we are of the

considered view that no interference of this Court would be warranted in the view taken by the learned Single Judge as well as the Lok Adalat. The law is well settled with regard to the exclusion clauses in standard forms of contracts. When the bargaining powers of the parties is unequal and a consumer has no real freedom to contract then such a power may be considered unfair. The principle deducible from various precedents is that the Courts would not enforce and when called upon to do so, strike down such an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. For instance, the above principle would apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It would also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. The types of contract to which the principle formulated above applies to terms which are so unfair and unreasonable that they shock the conscience of the Court. They are opposed to public policy and require to be adjudged void. In that regard we may place reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . In the present case the exclusion clause No. 1 would not apply to the consumer because premium for three years stand already paid and claim cannot be deemed to be made in respect of the period of three years. Moreover, the precondition existed in the year 2002, which was five years prior to acquiring the insurance policy. This result could be achieved if principle of interpretation known as "contra proferentem" is applied. "The application of these techniques means that any ambiguity in a clause excluding liability should be construed against the proferens and in favour of the party against whom the clause is pleaded." [See Chapter III, Control of Exclusion Clauses in England and India by M.M. Kumar] Moreover, we find that the exclusion clause No. 1 of the policy, as noticed in preceding para 2, on the basis of which the claim of respondent No. 2 was declined, is unfair and unreasonable clause, which cannot be acted upon by the Insurance Company. The instant appeal is, thus, devoid of merit and does not warrant admission. Dismissed.

Appeal dismissed.