
(2003) 10 KL CK 0043
In the High Court Of Kerala
Case No : O.P. No. 10095 of 2002

John, K.O.

APPELLANT

Vs

United India Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Constitution of India, 1950 — Article 39
Insurance Act, 1938 — Section 2, 64

Citation : (2003) 10 KL CK 0043

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : Jose J. Mathaikal, for the Appellant; N. Nandakumara Menon, for the Respondent

Judgement

A.K. Basheer, J.—Can the Insurance Company refuse to renew a mediclaim policy on the ground that the "claim ratio" is very high? This is the short question that has come up for consideration in this Original Petition. A brief reference to the relevant facts may be necessary.

2. Petitioner and his wife were issued with mediclaim insurance policy by M/s United India Insurance Company Ltd., (for short, the Insurance Company). The period of insurance was with effect from November 27, 2000 to November 26, 2001. The sum insured was Rs. 25,000 each. An annual premium of Rs. 833 was paid for the policy. The true photocopy of the policy has been produced as Ext. P-1.

3. There is no dispute that on November 20, 2001 an application was submitted by the Petitioner for renewal of the above policy along with a cheque for a sum of Rs. 880 towards the premium. The cheque was returned to the Petitioner. While returning the cheque, the Insurance Company informed the Petitioner that the Company could not "afford to have policies with high claim ratio in future". It was further stated that the above decision was taken "as part of loss minimisation in respect of mediclaim policies in which case claims have been reported repeatedly

and the claim ratio is very high". According to the Insurance Company, mediclaim policy issued to the Petitioner belonged to the category in which claim ratio was very high. A copy of the communication issued by the Insurance Company dated November 21, 2001 is on record as Ext. P-2. Though the Petitioner raised objection to the stand taken by the Insurance Company there was no favourable response. But later, by Ext. P-3 communication dated December 31, 2001 the Insurance Company informed the Petitioner that a few individuals cannot be allowed to exploit the schemes established for the welfare of the insuring public.

4. However by communication dated January 14, 2002 the Petitioner was informed that the Insurance Company "would consider issuing mediclaim policy covering" the Petitioner and his wife for a sum of Rs. 25,000 each if a premium of Rs. 4,597 was paid. He was further informed that "pre-existing diseases/conditions will be excluded from the scope of cover of the policy". A true photo copy of the above communication has been produced as Ext.P-4.

5. The above offer was not acceptable to the Petitioner, since according to him, he and his wife were suffering from diseases at that particular point of time, which, if excluded from the purview of the policy would result in serious prejudice and hardship to them. Therefore the Petitioner submitted a detailed complaint before the Regional Manager of the Company, Respondent No. 1, reiterating his demand for renewal of the policy with retrospective effect from November 26, 2001. The Insurance Company in its reply dated March 13, 2002 informed the Petitioner that his policy cannot be renewed as demanded by him; but the Petitioner would be entitled to take a fresh policy at a premium of Rs. 4,597 with the exclusion of all pre-existing diseases/conditions from the "scope of cover of the policy". The above communication/reply is produced as Ext. P-6.

6. The Petitioner prays for issue of a writ of certiorari to quash Exts. P-2, P-3, P-4 and P-6. He further prays that the Respondents be directed to renew Ext. P-1 mediclaim policy with retrospective effect from November 26, 2001 accepting the premium of Rs. 880 with the inclusion of the diseases/conditions as indicated in Ext. P-1 policy.

7. In the counter-affidavit filed by Respondents 1 and 2 the stand taken by them in their correspondence with the Petitioner has been reiterated. It is further stated that the Insurance Company is statutorily precluded from effecting retrospective renewal in view of Section 64(v)(b) of the Insurance Act. It is also stated that the condition regarding exclusion of all pre-existing diseases is a clause contained in all mediclaim policies. Petitioner cannot insist that the Insurance Company should enter into a contract containing terms which are contrary to the provisions of the Insurance Act. Renewal of a policy can only be by mutual consent. The Company had not issued any renewal notice to the Petitioner. In short, it is contended by the Respondents that the Petitioner cannot insist that he is, as of right, entitled to get the mediclaim policy renewed at the same rate of premium.

8. Learned Counsel for the Petitioner has placed reliance on a decision of the Supreme Court in *Biman Krishna Bose Vs. United India Insurance Co. Ltd.*, . It may be profitable to refer to the facts in the above case briefly. The Appellant and his wife had approached the Calcutta High Court challenging the order passed by the Insurance Company refusing to renew the mediclaim policy. The Writ Petition was allowed and the Insurance Company was directed to renew the policy. This decision was challenged by the Insurance Company before the Division Bench. The Division Bench agreed with the view taken by the learned Single Judge. However, the court directed the Appellant to take a fresh policy since it was of the view that renewal cannot be granted with retrospective effect in respect of a mediclaim policy as the period had already expired. In the appeal, the Supreme Court set aside the order of the Division Bench of the High Court to the extent it directed the Appellant to take a fresh policy. The court directed the Insurance Company to renew the policy if the Appellant paid the premium for the expired period. It was noticed by the Supreme Court that the Appellant had applied for renewal of the policy well in time and he had also sent the cheque towards its premium. Their Lordships observed that arbitrariness was writ large in the action of the Respondent Company when it refused to renew the mediclaim policy on the ground of "the past conduct" of the Appellant. The Supreme Court took the view that the fact that the Appellant had filed a case against the Respondent Insurance Company against the refusal to reimburse the medical expenses was not a justifiable ground on which the Insurance Company could have refused to renew the policy. The Appellant had laid the claim for reimbursement by virtue of the right conferred on him under the mediclaim policy. The Apex Court held that under such circumstances the Insurance Company was not justified in holding that the past conduct of the Appellant disentitled him from requesting for renewal of the policy.

9. In this case the Insurance Company has refused to renew the policy as part of a declared objective to minimise the loss of the Company. It is contended by the Insurance Company that the Appellant had been "consistently" making claims under the policy during the previous years. It is pointed out that during the period from 27th November 1998 to 26th November 1999, 27th November 1999 to 26th November 2000 and 27th November 2000 to 26th November 2001, the Petitioner had paid only a total premium of Rs. 2,499 towards the mediclaim policy. But the Petitioner had claimed a total sum of Rs. 44,338 during the above 3 year period. This, according to the Insurance Company, resulted in a disproportionately high claim ratio. A policy decision was taken by the company to minimize loss. Consequently, the company had not made any offer to the Petitioner for renewal of his policy, since it was found that over the three years, Petitioner had made huge claims, though the premium paid was too low.

10. The above contention cannot be accepted. When a policy is issued after accepting the premium, the insurer is bound to indemnify the insured in terms of the policy conditions. In the mediclaim policy in question, the insured is entitled to claim reimbursement of medical expenses upto a maximum limit of Rs. 25,000

during the validity of the policy. The premium of a policy that is payable by the insured is fixed by the insurer who offers the policy. When the offer is accepted and premium is paid by the insured, the contract is complete. The insurer is thereafter bound to honour the contractual obligation. The insurer cannot be heard to say that the claim rate under the policy over a period of time is higher than what was anticipated. In a medicaid policy the insured is entitled to get reimbursement of the medical expenses incurred by him/her in terms of the policy conditions upto the limit for which the policy has been taken. It is puerile for the insurer to contend that the insured under a medicaid policy has been consistently claiming reimbursement of medical expenses for consecutive years. When a claim for reimbursement is made by the insured, no Insurance Company releases the amount without necessary verification/enquiry. Undoubtedly, the insurer is entitled to do so. The insured cannot demur if payment is made to him only after complying with all necessary formalities. But it is wholly unfair and immoral for the insurer to say that the policy holder has been making claims under the policy "consistently". The very purpose of a medicaid policy is to meet the exigencies of unexpected expenditure due to diseases, hospitalisation, etc. The claim made for reimbursement would be perfectly legitimate, if it is in terms of the policy conditions. Therefore, the Insurance Company was not justified in refusing to renew the policy of the Petitioner on the ground that he had consistently made huge claims as compared to the quantum of premium paid by him over the period of three years in question. If there is a provision for renewal of a medicaid policy, the Respondents are bound to adhere to the said clause. The Respondents are not entitled to deny the benefit of renewal of the policy on an extremely unethical ground.

11. It is true that the policy is liable to be renewed by mutual agreement. Issuance of a policy comes within the realm of a contract. It is governed by the general rules of contract. There has to be an offer and an acceptance. It is pointed out by Learned Counsel for the Respondents that Clause 5-9 of the policy clearly stipulates that the policy may be renewed by mutual consent. The company is not bound to give notice that the policy is due for renewal. The company is also empowered to cancel the policy after giving 30 days notice, in which event the company is bound to refund to the insured the prorata premium for the unexpired period of insurance. Similarly, the insured is also entitled to cancel the policy if he/she chooses to do so. Thus, it is contended by the Learned Counsel that no right is vested in the insured to insist that he is entitled to get the policy renewed on the same terms and conditions under which the policy was originally issued.

12. On the contrary, it is contended by Learned Counsel for the Petitioner that refusal by the Respondents to renew the policy is arbitrary, illegal and unjust. It is true that the Respondents have "offered" to issue a new medicaid policy. But they have demanded premium which is more than five times the rate at which the policy was issued to him on earlier occasions. More importantly, the Insurance Company has insisted that pre-existing diseases/conditions would be

excluded when the new policy is issued. It is conceded by the Petitioner that he and his wife might have developed some new health problems/diseases after the policy was issued initially. If pre-existing diseases/conditions are excluded as on the date when new policy is issued, it necessarily implies that Petitioner and his wife would be left with no effective benefit under the new policy.

13. The Respondents have not explained on what basis they have claimed a sum of Rs. 4,597 as premium if a new policy is to be issued to the Petitioner. Admittedly, the previous policy was issued to the Petitioner on a premium of Rs. 880. For the previous two years also the company had collected only Rs. 880 each as premium. Therefore, it is contended by the Petitioner that the attempt of the Insurance Company is evidently, to deter the Petitioner from renewing the policy.

14. The business of insurance in India has been regulated and codified under the General Insurance Business (Nationalisation) Act, 1972. It is true that the insurance sector is also now being "opened up" as part of the so called "liberalisation policy". It may also be true that there is stiff competition in the insurance sector with more and more players including multi national companies entering the field. In that perspective, the proposed objective of "loss minimisation" may be a laudable object for the company. That may make a good business sense too. But mediclaim policy like any other insurance policy has a larger social objective to be achieved. The Act of 1972 was enacted "in order to serve better the needs of the economy by securing the development of general insurance business in the interests of the community and to ensure that the operation of economic system does not result in the concentration of wealth to the common detriment", (emphasis supplied). Section 2 further declares that "the Act is for giving effect to the policy of the State towards securing the principles specified in Clause (c) of Article 39 of the Constitution". Thus the Act envisages that "the State shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment". The issue involved in this case has to be addressed in the above legislative backdrop.

15. In the case on hand, the Petitioner was issued a mediclaim policy for the first time in 1998. He had been renewing it regularly. But the company refused to renew the policy when it was due for renewal with effect from November 27, 2001. The company refused to renew the policy on the ground that the claim rate was very high. But the Petitioner was told that a fresh policy can be issued to him albeit on certain new terms and conditions. The company insisted that the Petitioner should take out a new policy at the enhanced rate of premium of Rs. 4,597. The more onerous condition was that the pre-existing diseases/conditions would be excluded as on the date of issue of the fresh policy. In Biman Krishna Bose's case (supra), the Supreme Court has, in an almost identical situation, held thus:

Where the mediclaim policy of an insured is not renewed, any disease which an

insured contacts during the period the policy is not renewed cannot be covered under a fresh insurance policy in view of the exclusion clause. If we take the view that the mediclaim policy cannot be renewed with retrospective effect, it would give a handle to the Insurance Company to refuse the renewal of the policy on extraneous consideration thereby deprive the claim of the insured for treatment of diseases which have appeared during the relevant time and further deprive the insured for all time to come to cover those diseases under an insurance policy by virtue of the exclusion clause. This being the disastrous effect of wrongful refusal of renewal of the insurance policy, the mischief and harm done to the insured must be remedied.

Therefore the refusal by the Respondents to renew the policy of the Petitioner on the specious plea that the claim ratio was high cannot be countenanced.

16. But it is contended by Learned Counsel for the Respondents that the above dictum cannot be applied in this case. It is urged that in Biman Krishna Bose's case (*supra*) the refusal to renew the policy by the Insurance Company was for the so-called unpalatable past conduct of the insured. It is contended by the Learned Counsel that even assuming that the refusal to renew the policy in the above case can be termed to be for extraneous reasons the said rationale cannot be applied in this case. It is pointed out by the Learned Counsel that the Respondents had not refused to issue a mediclaim policy to the Petitioner. They had only informed the Petitioner that a new policy can be issued on payment of a higher rate of premium and also on exclusion of pre-existing diseases/conditions. These conditions cannot be termed as onerous or unreasonable. Issuance of a policy results from a contractual relationship. It has to necessarily satisfy the rules governing a contract. Either of the contracting parties cannot insist that the other party should agree to all the terms and conditions that may be dictated by any one of them.

17. There is some force in this contention. But in my view, the dictum laid down by the Supreme Court in Biman Krishna Bose's case lends support to the contention of the Petitioner that insistence for a totally new set of terms and conditions to issue a fresh mediclaim policy will necessarily imply that the Insurance Company was dictating its own terms. In other words, the Insurance Company being in an advantageous position, it could not have insisted that the policy can be renewed only if a higher rate of premium (which is more than 5 times the existing one) is paid, and that too on exclusion of the pre-existing diseases/conditions. As observed by the Supreme Court, the Insurance Company cannot be given a handle to dictate terms when it comes to renewal of a policy which is renewable at the option of the parties. Of course, it cannot be said that the Insurance Company cannot hike the premium of an existing policy. But that could have been done after giving prior notice to the insured and in forming him well in advance that hence forth renewal can be had only if the insured paid a higher rate of premium. Regarding exclusion of the pre-existing diseases/conditions also, the insured ought to have been put on notice sufficiently early.

But in this case the Respondents have approached the issue from purely a business angle only. In Ext. P-2, it was pointed out by Respondent No. 2 that the Petitioner had "taken a claim of Rs. 44,338 in the last three years as against the premium of Rs. 2,499". Petitioner was further reminded that "few individuals exploiting the scheme under various pretext cannot be allowed in the overall interest of the insuring public". In this context the reply given by Respondent No. 2 in Ext. P-6 also clearly reveals the "business policy" of the Respondents.

As your good self will understand, the concept of commercial insurance is collecting premium from many and pay claim to a few affecting claimants. Please note the commercial Insurance Companies are not for social security or for charity to transact insurance business for the welfare of the entire insuring public. Please kindly understand that we are discharging this noble cause as commercial insurers and we also expect to be prudent administrators of common fund generated by way of premium of the insuring public.

Whatever be the "concept of commercial insurance", such hyperbolic jargon may be of little significance to those who seek to get protection of a mediclaim policy. A mediclaim policy has more relevance in these days since there is phenomenal rise in medical expenses. The plight of an ordinary individual can be visualized if any member of the family requires immediate hospitalization, surgery etc. in such situations, the efficacy of a mediclaim policy assumes greater relevance and significance. It is seen mentioned in Ext. P-6 that commercial Insurance Companies like the Respondents are not supposed to render any service "for social security or for charity". But it has to be remembered that every citizen has a right to avail of health care services available in the country. May be, "commercial insurance" has its own business compulsions so far as an insurance company is concerned. But in a larger perspective, these companies, especially after the insurance sector has been brought under the umbrella of the General Insurance Business (Nationalisation) Act are also bound to ensure that they serve the public in securing health care. The Insurance Companies cannot totally ignore or forsake their obligations to the society since they are admittedly dealing with common fund generated by way of premium of the insuring public. In the above view of the matter, the contention raised by the Respondents that they are not bound to renew the mediclaim policy of the Petitioner is not tenable. Having regard to the peculiar facts and circumstances of this case, I am inclined to allow the Original Petition in part.

The Original Petition is therefore disposed of with a direction that the Respondents shall renew Ext. P-1 mediclaim policy with effect from 27th November 2001 for a period of one year at the premium rate of Rs. 880 per annum, if the Petitioner remits the premium amount for the relevant year. Any claim which might have arisen by virtue of the retrospective renewal shall be processed by the Respondents in accordance with the terms of the policy. If the claim is legitimate, the Respondents shall reimburse the medical expenses payable to the Petitioner without any delay.

In the peculiar facts and circumstances of the case, the parties shall bear their respective costs.