

(2017) 02 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 4550 of 2006

N.M. Bijlani, IAS (RETD)

APPELLANT

Vs

New India Assurance Co Ltd.

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) AIR(Gujarat) 57

Hon'ble Judges : Mr. Mohinder Pal, J.

Bench : Single Bench

Advocate : Mr. Bhaskar P Tanna, Sr. Advocate with Ms. Mahrook N. Kerawala, Advocate for Tanna Associates, Advocate, for the Petitioners No. 1; Mr. Vibhuti Nanavati, Advocate, for the Respondents No. 1 - 2; Ms. Dharmishta Raval, Advocate, for the Respondents No. 3

Final Decision : Allowed

Judgement

Mr. Mohinder Pal, J.(Oral)—By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the inaction of respondent no. 2 in not reimbursing the medical expenses incurred by the petitioner on the treatment of his wife (also a policy holder) on the ground that there was exclusion clause in the policy at the time of renewal and his wife jointly, without exclusion clause.

2. The petitioner had taken the medi-claim policy on 20.4.2001 jointly with his wife Smt. Rani Bijlani for an insured sum of Rs. 3,50,000/- each, after undergoing prescribed detailed medical check-up through the approved doctor of the New India Assurance Co. Ltd. The policy was subsequently renewed for a period of one year from 20.4.2003 on the same terms and conditions. That during the currency of the insurance policy, the wife of the petitioner was diagnosed for Ovarian Cancer Stage III (c) in February, 2002 and was admitted in Jashlok Hospital, Mumbai for treatment. The treatment continued up to August, 2003. During this period, the term of the mediclaim policy expired on

19.4.2002 and the policy was renewed by the company on the same terms and conditions without any exclusion. The petitioner vide his letters dated 3.7.2002 and 28.8.2002 submitted reimbursement claim to the respondent no. 2 ? Insurance Company.

3. After issuance of the medicaid policy by the Insurance Company on 20.4.2001, the policy was subsequently renewed for four times. The last renewal was on 20.4.2005. The details of the policy and each renewal is given at page 34 of the petition.

4. It is further the case of the petitioner that in April, 2003, the petitioner was called by Mr. C.P. Parwani, the then Senior Divisional Manager of the respondents- Insurance Company asking for giving undertaking in writing to the effect that the petitioner agrees to renewal of the Medicaid Policy with the "exclusion clause" for Ovarian Cancer in case of his wife. The petitioner was further informed that it was the policy of the company to renew the medicaid policy with exclusion clause in the cases where compensation was claimed and paid by the insurance company, and in case, the petitioner did not agree with such undertaking in writing, the medicaid policy will not be renewed as the renewal was at the sole discretion of the Insurance Company. The petitioner has strongly protested regarding incorporation of the exclusion clause, however, he has to give undertaking in view of the assurance given by the said officer. Ultimately, on giving undertaking in writing by the petitioner, the policy was further renewed up to 19.4.2004 with exclusion clause of Ovarian Cancer in case of wife of the petitioner. The petitioner has further pleaded that the policy was renewed from time to time. However, the exclusion clause was kept in all the renewal.

5. As per the case of the petitioner, he issued a protest letter/representation to the respondent ? Insurance company on 11.8.2004 after coming of one judgment of High Court having similar facts. The relevant portion of such representation is reproduced as under:

1. Insured has an option and right to get renewal of Medicaid insurance by payment of renewal premium in time.
2. Insurance company is bound to renew the policy without excluding any disease already covered under the existing policy which may have been contracted during the period of the policy in force.
3. In case the insured seeks to raise the sum insured at the time of renewal, it has to be done on the same conditions, but exclusion can be different so far as the increased sum insured is concerned.
4. Renewal of Medicaid insurance policy cannot be refused, despite timely payment of renewal premium on the ground that continuance of the cover would become more onerous or burdensome for the insurer due to the insured contracting a covered disease during the period of existing policy.
5. Renewal can be refused only on the ground like misrepresentation, fraud or

nondisclosure of material facts that existed at the inception of the contract.

6. The government insurance companies continue to be "State" within the meaning of Article 12 of the Constitution of India notwithstanding the private companies in the field of insurance, ending their monopoly by virtue of insertion of Section 24A in the Act of 1972, and they cannot arbitrarily cancel or refuse to renew an existing policy.

6. As per petitioner, during the currency of this mediclaim policy, the wife of the petitioner was once again diagnosed Ovarian Cancer in September, 2004 and she was admitted in Jashlok Hospital, Mumbai on 11.10.2004 for undergoing surgery followed by chemotherapy cycles as per advise of the hospital. On discharge from the hospital, she was advised 2nd line chemotherapy treatment consisting of in all six chemotherapy cycles (each cycle consisting of 3 chemos) at intervals of approximately one month. After discharged from the hospital on this occasion, the petitioner has again written to the Insurance Company for reimbursement of his mediclaim. The relevant portion of representation is reproduced as under:

i) Immediate settlement of my claim for Rs. 3,24,393/- put up vide my letter dated 5.11.2004. This claim amount was spent on treatment of my wife for the period from 20.9.2004 to 26.10.2004 and that till date I have spent further amount of more than Rs. 3.0 lacs on her subsequent treatment for which claim under Mediclaim Policy has not been submitted as total cover under the policy is limited to Rs. 3.5 lacs only.

ii) Treatment of my wife is still continuing and in the meantime the Mediclaim Policy will be due for renewal for further period of one year from 20.4.2005 and that the same be renewed without any exclusion clause as per judgment of the Hon"ble High Court on payment of loaded premium amount (as may be intimated to me).

7. It is the grievance of the petitioner that despite the representation and submission of bills by the petitioner, the respondent no. 1 ? Insurance Company has failed to reimburse the mediclaim. The details of which are claimed in para-4(d) of the reliefs in the writ petition.

8. Learned counsel for the petitioner has submitted that at the time of getting mediclaim policy, the wife of the petitioner was not suffering from any disease and respondents got conducted medical check-up through their doctor in this regard. It has been argued that after initial insurance, the mediclaim policy has been renewed without any exclusion clause. If the wife of the petitioner has suffered from a disease during the pendency of the currency period, the respondents-Insurance Company cannot add exclusion clause at the time of renewal of such policy. It has been submitted that at the time of second renewal mediclaim policy in April 2003 undertaking was taken from the petitioner under duress and such writing was given under misleading information that it was a policy of the company that such an undertaking was necessary. Finally, it has been argued that Divisional Manager in his last letter dated 24.2.2005 has fairly

stated that the policy can be renewed without exclusion clause after the policy's terms are revised by the competent authority. It has been submitted that despite representation and remainders, the policy in question has not been revised. The petitioner took up his grievance before the Insurance Company, however, Insurance Ombudsman expressed his helplessness in the matter and returned the same with an observation that his office was not having jurisdiction to decide such matter. The learned counsel for the petitioner has relied upon the decision of the Apex Court passed in the case of United India Insurance Company v. Manubhai Dharasinhbhai Gajera and others, reported in (2008) 10 SCC 404, in support of his arguments.

9. The arguments raised by the learned counsel has been controverted by the learned counsel for the respondent ? Insurance company, merely on the ground that once the authority has renewed the policy subject to certain exclusion clause and agreed upon by the insurer then the exclusion clause will remain in force for forever and for any claim repudiated for disease will not be considered. It has been argued that since the policy has been renewed with exclusion clause of ovarian cancer, the wife of the petitioner was not entitled for mediclaim because of that disease. It has been argued that the policy for exclusion clause has expired after 12 months, and thereafter, the next policy has been renewed with the same exclusion clause, meaning thereby, the petitioner has agreed for the exclusion at the time of renewal of the policy and under these circumstances he is not entitled to mediclaim .

10. This Court has considered the submissions of both the sides. The facts of the case are not in dispute. However, there is dispute regarding exclusion clause which seems to have been added at the time of renewal of the policy. The petitioner, on various occasions has made representations to the respondents-Insurance Company, wherein, he has reproduced the finding of this Court, wherein, in similar circumstances, despite exclusion clause being there at the time of renewal, the Insurance Company was directed to make payment of the medical claim. Learned counsel for the respondents-Insurance company has tried to draw a distinction from the judgment passed by the High Court on the point that immediately at the time of incorporation of exclusion clause, the petitioner in that case has approached the Court by way of Special Civil Application, however, in the case on hand, the wife of the petitioner preferred to go for second renewal being aware of the fact that exclusion clause was there, and in view of this exclusion clause, the Insurance Company will not be liable to pay the medical claim.

11. The contention raised by the learned counsel for the Insurance Company cannot stretched any further in view of the clear cut finding by the Apex Court in a decision in the case of United India Insurance Company Limited v. Manubhai Dharmasinhbhai Gajera and others, reported in (2008) 10 SCC 404, wherein, it has been held that "as per the terms of the prospectus and the insurance policy in the present case what was necessary for non-renewal was a pre-existing

disease when the cover was incepted for the first time. Hence, only because the insured had contracted or come to suffer a disease during the currency of the insurance policy, the same would not mean that the said disease shall be excluded or that renewal could be denied on that ground." It has been further held that "if the insured had made some claim in each year, the insurance company should not refuse to renew insurance policies only for that reason. In the same judgment, it has been held that "Insurance companies cannot either in their prospectus or in the terms of the policy lay down any condition which would be derogatory to the terms and conditions approved by IRDA."

12. This case can be viewed from other angle. The disease acquired by the wife of the petitioner was during the pendency of the Insurance Policy. The respondents-Insurance Company renewed the policy with loaded premium and with an assurance that if the petitioner pays this loaded premium, the exclusion clause will not be there in the renewed policy. However, the respondents seem to have backed out from their promise, as they charged the loaded premium and kept the exclusion clause in the renewal policy despite the fact that the disease was acquired during the pendency of the policy. We are living in a welfare State. All these rules and policies are meant for the welfare of the human beings. The authorities are not expected to stick to technicalities and adopt a wooden attitude while dealing with the human beings. Once the respondent-Insurance Company has insured a person for mediclaim, they cannot be allowed to shift the burden on the insurer and refuse the mediclaim at the time when person suffers from a disease.

13. In view of the foregoing discussion, this petition is allowed. The respondents ? Insurance Company will be liable to pay the medical reimbursement as claimed by the petitioner in para-4(d). However, while calculating such claim, cap of medical reimbursement which the petitioner has agreed at the time of getting policy will be taken into consideration.

14. Respondent-Insurance Company shall reimburse the medical claim (without interest) to the petitioner within a period of one month from today. However, if such payment is not paid within one month, the respondent-Insurance company shall be further liable to pay interest @ 12% per annum from the date of submission of medical claim, till its realisation.