

(2005) 12 DEL CK 0119
In the Delhi High Court
Case No : LPA No. 932 of 2004

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Talwinder Chaudhary and Others		RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Citation : (2006) 126 DLT 269

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Ram N. Sharma, for the Appellant; Prag Chawla, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 11.08.2004

2. Heard learned counsel for the parties and perused the record.

3. The petitioner took up a Medical Insurance Policy from respondent No. 2, the Oriental Insurance Company Ltd., whereby the petitioner was insured against any medical expenses incurred for the treatment of diseases or other exigencies. It is alleged that some time in the year 1998, the petitioner suffered from Cardiac arrest related problem, but the respondent No. 2 continued to renew the said Insurance Policy of the petitioner on the same terms and conditions. It is alleged that one Shri Trilochan Singh, Development Officer in the branch of respondent No. 2 used to get the Policy renewed from time to time and the premium was accordingly paid. The Policy was renewed up to the year 2002.

4. It is alleged in paragraph 6 of the writ petition that when the said Insurance Policy became due for renewal for 2003-2004, the said Shri Trilochan Singh negligently failed to turn up despite reminders, and the date of renewal of the same expired. It is alleged by the petitioner that it was under a bona fide belief that respondent No. 2 would renew the Policy, but to no avail. The petitioner has

alleged that he approached the respondent No. 2 and applied for Medclaim Insurance but he was shocked when respondent No. 2 issued the Medclaim Insurance Policy to the petitioner after imposing the impugned condition of excluding the Cardiac Arrest and other related diseases under the Insurance Policy. The petitioner has alleged that he expressed his protest against this by addressing a letter dated 25th February, 2003 to respondent No. 2. However, respondent No. 2 refused to accede to his request on the ground that the Policy was not renewed within time. Aggrieved, the petitioner filed the writ petition in this Court.

5. A counter-affidavit was filed in the writ petition by respondent No. 2 and we have perused the same. It is alleged in paragraph 4 of the counter-affidavit that the respondent No. 2 has acted strictly as per the terms and conditions of the Policy of Insurance and the guidelines issued from time to time for renewal of the Medclaim Insurance Policy. It is the admitted case of the petitioner that the last Policy expired on 28th December, 2002. The petitioner did not approach the respondent No. 2 for renewal of the said Policy immediately or before its expiry, and it was only on 21st February, 2003 that he approached the respondent No. 2 for renewal of the Policy. As per the guidelines and the procedure of the respondent No. 2 in view of the long break, a fresh proposal was taken from the petitioner and the same was got examined from the Panel Doctor who had remarked in the proposal form itself that 'CAD and related diseases to be excluded. Furthermore, as per the guidelines of the respondent No. 2, the proposals for this Insurance was to be treated as a new proposal and any pre-existing disease has to be excluded from the purview of the coverage. Accordingly, the respondent No. 2 issued the Policy on 21st February, 2003 for a period of one year specifically endorsing CAD and related disease etc, Hernia excluded.

6. The Policy condition 5.9 clearly stipulates that the Policy may be renewed by mutual consent. As the respondent No. 2 has acted strictly as per the guidelines and the terms of the Policy of Insurance it cannot be said that its action is arbitrary, unjustified or discriminatory. There is no proposal for sending a renewal notice as is claimed by the petitioner. Even otherwise, the petitioner was aware about the fact that the diseases relating to the heart would be excluded from the Policy as can be seen from his letter dated 21st February, 2003. Hence, he cannot be given any relief.

7. In paragraph 6 of the counter-affidavit, it is stated that the respondent No. 2 was justified in imposing the condition that as there was considerable break in the Policy, hence the Policy has to be treated as a fresh Policy and not renewal of the earlier Policy. The exclusion of diseases relating to the heart from the fresh Policy of Insurance was strictly as per the guidelines, and the action of the respondent No. 2 cannot be treated as arbitrary or discriminatory. The petitioner ought to have been vigilant and should have taken timely action for renewal of the Policy, which he did not do.

8. In paragraph 8 of the counter-affidavit, it is stated that the earlier renewals were done because the petitioner had approached the respondent No. 2 for renewal of the Policy in time. It is denied that Shri Trilochan Singh, used to get the said Policy renewed from time to time. The Policy has not to be renewed by the Development Officer on his own, but the person who intends to take the Insurance has to get approval of the respondent No. 2 for renewal of the Policy. The policy is renewed once the request is received for renewal and the premium is paid in time i.e., before the expiry of the Policy, and only then it is renewed on the same terms and conditions.

9. In paragraph 10 it is denied that for renewal of the Policy for 2003-2004, Shri Trilochan Singh negligently failed to turn up despite reminders. These allegations are absolutely baseless and are not supported by any documentary evidence. For renewal of the Policy, the premium has to be paid by the petitioner, and till the premium is paid the respondent No. 2 cannot renew the Policy. The petitioner did not act promptly and now he has tried to shift the blame for his negligence upon respondent No. 2. If he could visit the Insurance Company on 21st February, 2003 for renewal of his Policy, he could have very well approached respondent No. 2 earlier immediately or before the expiry of the earlier Policy. Hence, the action of the respondent No. 2 cannot be said to be arbitrary and illegal.

10. The learned Single Judge in the impugned judgment has observed that the delay of less than two months is not such as to deprive the petitioner of the benefit of a policy on the same terms and conditions as was given in the past. He has also observed that according to the past practice the petitioner had a reasonable expectation that the Development Officer would approach him.

11. In our opinion, these observations of the learned Single Judge cannot be sustained. The matter is contractual and we fully agree with the appellant that the writ petitioner should have been vigilant and should have approached the Insurance Company on or before the expiry of the term of the Policy. There is no legal obligation on the appellant to renew the Policy on the same terms, particularly if the party approaches the Insurance Company after the expiry of the period of the Policy.

12. If the view taken by the learned Single Judge is upheld then that would mean that a party can approach the Insurance Company even after ten years of the expiry of a Policy and claim that it should be renewed on the same terms and conditions on which the Policy had been granted earlier. We cannot accept such a contention because otherwise if a person gets some disease/injury after expiry of the Policy, he can still insist that the Policy should be renewed on the same terms.

13. A party cannot be compelled to enter into a contract against its wish.

14. Clause 5.9 of the Insurance Policy states:

the policy may be renewed by mutual consent.

15. Thus, the above clause itself shows that the Company need not renew the

Policy which has expired on the same terms as prevailing earlier. The use of the expression mutual consent means that there has to be a bilateral agreement for the renewal of the Policy, and this bilateral agreement can change the conditions prevailing earlier.

16. For the reasons given above, this writ appeal is allowed. The impugned judgment of the learned Single Judge is set aside and the writ petition is dismissed.