
(2004) 05 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 3206 of 2003

Pramod Singh

APPELLANT

Vs

Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 06-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 BLJR 1344 : (2004) 3 PLJR 293

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Uma Shankar Prasad, Uma Shankar and Satya Nand Sharma, for the Appellant; Ashok Priyadarshi, for the Respondent

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner is aggrieved by the denial of payment of Mediclaim pursuant to Mediclaim Insurance Policy bearing No. 48 of the year 2003 for the period 14.5.2002 to 13.5.2003 issued by the Respondent-Oriental Insurance Company Ltd. vide Annexure-1.

2. In short, the relevant facts are that on 14.5.2002 petitioner took a Mediclaim policy from Branch office of the Respondent-Company situated at Sudama Palace, Kankarbagh, Patna, for the sum of Rs. two lacs insured for self and Rs. fifty thousand for his wife, namely, Smt. Manju Singh after deposit of Rs. 4915/- towards premium service charge and stamp duty. The Insurance Company issued certificate to the petitioner, a photostat copy whereof has been annexed as Annexure-1. The petitioner, who is a practising Advocate, claims that he was quite alright and physically fit to undertake his daily professional work and, in fact, attended the Court till 22nd May, 2002. However, he desired to get himself thoroughly examined by the expert Doctors at Delhi as he was being treated for simple Hypothyroid since. January, 2002 by Dr. A.K. Singh, M.B.B.S. (Gold Medalist) M.D., Nalanda Medical College, Patna, who referred him for check up to AIIMS, New Delhi on 22.5.2002. The photostat copy of the prescription of Dr. Singh has been annexed as Annexure-2. The petitioner consulted eminent

doctors at Delhi and he was advised for Angiography, which was conducted in Escorts Heart Institute and Research Centre, New Delhi on 5.6.2002. Thereafter, the petitioner was advised for undergoing bypass surgery and he was hospitalised on 28.6.2002. Surgery was performed on 2.7.2002 and he was discharged on 9.7.2002. Thereafter, he applied for Mediclaim on 31.10.2002, which was received in the office of the Respondent on 15.11.2002. The petitioner has asserted that he was found fit and there was no question of pre-existing heart disease as per advice of Dr. Singh. It is stated by the petitioner that AGM of the Company (Respondent No. 3) came to him with letter dated 18.12.2002 (Annexure-4) and obtained authority letter so as to verify the bills submitted by him. The petitioner authorised the Company for verification of the Bills and since thereafter his wife visited the local office of the Respondents about half a dozen time and all the time she was assured for favourable action. It is alleged that at times they gave indication for giving some percentage of the claim amount so as to facilitate the payment Which was seriously objected to by the petitioner. As a result he received a letter dated 14.2.2003 issued by Respondent No. 3 refusing to entertain the claim of the petitioner on the ground that he had taken Mediclaim policy for the first time on 14.5.2002 (vide Annexure-5) whereas he was suffering from "angina on exertion" since December, 2001, which he did not reveal in the proposal form. The said letter further mentioned that "Exclusion No. 4.1 of our Mediclaim policy excludes all diseases/injuries which are pre-existing when the cover incepts for the first time". Petitioner has asserted that he was confident that there was no question of pre-existing heart disease as per the advice of Dr. A.K. Singh.

3. A counter affidavit has been filed on behalf of the Respondent-Company and its officials (Respondent Nos. 1 to 3) in which it is not disputed that the petitioner went through bypass surgery at Escorts Heart Institute, New Delhi. However, the Respondents raised technical objections that Clause 4.2 makes it clear that a new policy comes into effect after 30 days of the taking of the policy; and, that as per the requirements the policy was issued on his self declaration that he was not suffering from any ailment, and, further, that a notice of a claim is to be given within 7 days of the Hospitalisation and Domiciliary Hospitalisation which the petitioner did not give. It is further stated that as per law the case was referred to Dr. Vinod Gandotra, New Delhi for survey and investigation, who in his report reported that it is not tenable under the purview of the policy on the ground of (a) pre-existing disease (b) concealment of the facts. According to the Respondents, they have acted according to the report of the Surveyor, which is binding on them under the law and if the petitioner is aggrieved by the decision of the Respondents based on survey report, he should have moved the Insurance Regulatory Authority, whose decision is final and binding on the Respondents.

4. In the rejoinder filed on behalf of the petitioner to the said counter affidavit, it is stated that Respondent No. 3 himself sitting in his chamber had filled up the proposal form in presence of the petitioner and his wife, who had jointly taken the policy. According to him, on queries, petitioner had disclosed about the

factum of ailment as diagnosed in Annexure-2 which was ignored by Respondent No. 3. The petitioner, further, stated that he was medically found fit and only then the said policy was given to him and no material information was concealed by the petitioner. It is alleged that Surveyor is a nominee of the Respondent-Company and his report is highly objectionable for want of (a) pre-existing disease and (b) concealment of facts in view of Annexure-2 to the writ petition. He has denied the knowledge about pre-existing ailment or concealment of facts by him. In paragraph 9 of the rejoinder, it is stated that the petitioner has procured a copy of the form for Mediclaim policy of Respondent Company, which requires certificate of consulting medical practitioner with his Registration number and address and this belies the stand taken by the Respondents in paragraph 9 of the counter affidavit that there is no provision under this policy of General Insurance to get the insured examined by the Doctor of the Company. It is further stated that while doing the medical policy, the Insurance Company obtained a Medical fitness certificate from their doctor. In support thereof petitioner annexed the proposal form.

5. Learned counsel for the Respondent-Company has raised preliminary objection that writ for such claim is not maintainable and in support thereof has relied upon the decision of the Apex Court in the case of Life Insurance Corporation of India and Ors. v. Smt. Asha Goel and Anr., reported in AIR 2001 SCW 161. I do not find any substance in the said preliminary objection. It is true that the Supreme Court in the said case held that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance, but in that very decision the Apex Court has directed that where an insurer has repudiated the claim, in case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. In that very decision, the Apex Court further directed that "It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the Civil Court it will cause serious prejudice to the claimant/ other beneficiaries of the policy. "According to the Supreme Court, in a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court find the dispute to be bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then according to the Apex Court writ petition is not an appropriate remedy" In fact, in the said case the Apex Court held that repudiation of claim by the insurer merely on grounds that

deceased had withheld correct information at time of insurance with the Corporation is not proper, and that it should not be dealt with in a mechanical and routine manner but should be one of extreme care and caution.

6. In the present case, the Respondent-Company has repudiated the claim solely on the basis of the report of the Surveyor, contained in Annexure-B, which accepts about conducting of Angiography on 5.6.2002 on the petitioner and his admission in the Hospital on 6.6.2002. It is also admitted that the petitioner had no history of Diabetes Mellitus, Dyspnoea on Exertion, Palpitation and Syncope. However, after thorough examination and investigations including coronary Angiography he was diagnosed a case of coronary Artery Disease Angina on Exertion, Triple Vessel Disease, Hypothyroidism, Hypertension and for the same he was managed surgically on 2.7.2002 under General Anesthesia and afterwards with the supporting Life Saving Medicines. Finally he was discharged from the hospital on 9.7.2002 in satisfactory condition. The Surveyor has also attached photostat copy of the Hospital Records, which also does not show that it is a case from where it can even be inferred that the petitioner had knowledge about the disease pre-existing. I failed to appreciate as to how the Surveyor in his report has mentioned that complaints of Angina on exertion was there for the last 4-5 months or that history of chest heaviness in Mild Exertion for the first time was detected in December, 2001 when he was diagnosed a case of Angina on exertion Class-II. In support of that nothing has been brought on record justifying the said finding of the Surveyor. On the contrary, the Doctor in the prescription dated 3.2.2002, contained in Annexure-2 had diagnosed that the petitioner was suffering from Hypothyroidism and he continued with the same view till 22.5.2002 when he referred the petitioner to AIIMS, Delhi for Check up, This Court, thus, finds that rejection of the claim on the ground that the petitioner was suffering from Angina on Exertion since December, 2001, which he did not reveal in the proposal form and that it being disease pre-existing in excluded under Clause 4.1 of the Exclusions clause is not at all tenable and the writ petition in the facts and circumstances of the present case is maintainable.

7. Mr. Ashok Priyadarshi, learned counsel appearing for the Insurance-Company contended that Clause 4 of the policy deals with "Exclusions" under which the Company shall not be liable to make any payment under the policy in respect of any expenses whatsoever incurred by any Insured Person and Clause 4.2 makes it clear that a new policy comes into effect after 30 days of taking of the policy, which means that for the first year the policy is effective for 11 months from the date of its issue and on subsequent renewal it is effective for 12 months from the date of the renewal in certain cases. He further contended that in respect of any disease other than those stated in Clause 4.3 contracted by the insured person during the first 30 days from the commencement date of the policy, the Company shall not be liable to make any payment under the policy in respect of any expenses whatsoever incurred by any Insured Person as per the provision, contained in Clause 4.2 and in the present case since admittedly the date of commencement of the policy is 14.5.2002 and after thorough examination and

investigations including Coronary Angiography done on 5.6.2002 the petitioner was diagnosed a case of Coronary Artery Disease that is within 30 days of the date of Policy, the claim is excluded under the aforementioned Clause 4.2.

8. Learned counsel for the petitioner, however, submitted that the action of the Respondents rejecting the claim of the petitioner is perverse, unreasonable and against the principles of equity as it is based on the applicability of Exclusions clause, which was not made known to the petitioner before taking the policy in question. He further contended that the pre-existing disease has to be taken in the context of the present case, which can be inferred from the diagnosis of the standing Physician, who never diagnosed about any such disease. As such, according to him, the petitioner cannot be held liable for concealing his ailment in the proposal form.

9. However, he has not been able to meet the submission that as per the Exclusions clause mentioned in 4.2 of the Policy the claim is not admissible in connection with or in respect of any disease other than those stated in Clause 4.3 during the first 30 days from the commencement date of the policy. Admittedly, in the present case, the claim has been raised in connection with or in respect of a disease other than those stated in Clause 4.3 detected within 30 days from the commencement date of the policy, and, as such, this Court finds it difficult to give any relief to the petitioner on the basis of the above pleadings.

10. However, in the present case, the petitioner is a practising Advocate and there is a provision in the Bar Council for insurance of lawyers under Group Insurance Policy. Clause 4.2 provides that the said condition shall not apply in case of the Insured person having been covered under this policy or Group Insurance Policy with any of the Indian Insurance Companies for a continuous period of preceding 12 months without any break.

11. This Court, thus, considers it expedient to dispose of the writ petition with a direction that the petitioner may approach the Respondent-Insurance Company with details about the same, whereupon the Insurance Company shall re-consider the claim without being prejudiced by its earlier impugned decision within two weeks of the production of the papers by the petitioner in support thereof.