
(2014) 06 KL CK 0104

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 21191 of 2005

Prasad

APPELLANT

Vs

The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) ACJ 360 : AIR 2014 Ker 166 : (2015) 2 AnWR 842 : (2014) 3 ILR 251 : (2014) 3 KHC 10 : (2014) 3 KLJ 245 : (2014) 3 KLT 50

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : S. Krishna Prasad, Advocate for the Appellant; K.K.M. Sherif and A.A. Ziyad Rahman, Advocate for the Respondent

Judgement

Anil K. Narendran, J.—The petitioner has filed this Writ Petition seeking a writ of mandamus commanding the New India Assurance Company Ltd., 1st respondent herein, to renew Mediclaim Policy bearing No. 761102480400120 issued to him, which was refused to be renewed from 28.5.2005 onwards and also seeking a writ of certiorari to quash Exhibit P3 communication issued by the 1st respondent intimating its decision not to renew the Mediclaim Policy. The petitioner is a retired bank employee who opted for voluntary retirement. He had taken a Mediclaim Policy from the 1st respondent, which was valid for the period from 29.5.2002 to 28.5.2003. According to the petitioner, the 1st respondent, which is a Government Company, is having monopoly in medical insurance business to the exclusion of others. The 2nd respondent is the Third Party Administrator (TPA) of the 1st respondent, as licensed by the Insurance Regulatory and Development Authority (IRDA) for assistance and claim administration. Subsequently, the said Mediclaim policy was renewed from time to time, till 28.5.2005. Exhibit P1 is the Mediclaim policy issued by the 1st respondent, for the period from 29.5.2004 to 28.5.2005.

2. During the validity of the first policy the petitioner had undergone treatment

at Santigiri Medical College and Hospital, Olassery, Palakkad, from 5.5.2003 to 14.5.2003. But the claim made by the petitioner for Rs. 10,468/- was repudiated by the 1st respondent stating that medical expenses incurred during the first year of the policy is inadmissible. Subsequently, the said policy was renewed from 29.5.2003 to 28.5.2004. During the validity of that policy, the petitioner had undergone treatment for facial paralysis, neck stiffness, joint pain and inflammation, at Oushadhi Panchakarma Hospital and Research Institute, Thrissur, from 9.3.2004 to 18.3.2004. But, his claim for Rs. 17,679/- was also repudiated by the 1st respondent, on 2.4.2004. Aggrieved by such rejection, the petitioner preferred Exhibit P2 complaint before the Consumer Disputes Redressal Forum, Palakkad. The petitioner was again admitted at Oushadhi Panchakarma Hospital and Research Institute, Thrissur, in February, 2005, due to "Vathavikaram", and he had undergone treatment spending Rs. 12,862/-. Initially, the respondents were not willing to settle this claim. Later, the said amount was paid by way of cheque drawn on HDFC Bank. It was thereafter, the petitioner received Exhibit P3 letter from the 1st respondent, intimating that, they will not renew Exhibit P1 Mediclaim policy, which will expire on 28.5.2005.

3. It is stated in Exhibit P3 that, in violation of the undertaking given by the petitioner, repeated claims were made for treatment expenses for diseases contracted during the first year of policy, for the existing disease excluded from coverage at the time of renewal of policy, etc., and that the petitioner had preferred a complaint before the Consumer Disputes Redressal Forum, Palakkad. After the receipt of Exhibit P3, the petitioner sent a demand draft for Rs. 5,000/- to the 1st respondent towards premium for renewal of Exhibit P1 policy. But the 1st respondent refused to accept the same. In such circumstances, the petitioner preferred Exhibit P4 complaint before the Insurance Ombudsman. But the same was rejected vide Exhibit P5 communication stating that, renewal of policy is by mutual consent and not within the purview of the Redressal of Public Grievances Rules, 1998. It was in such circumstances, the petitioner has approached this Court in this Writ Petition, seeking various reliefs.

4. The 1st respondent has filed a counter affidavit, contending that, it is not enjoying any monopoly in the field of insurance and that several companies, both public and private sector, are providing insurance service to public. The petitioner had approached the 1st respondent for taking Mediclaim policy after his retirement, at the age of 58 years. He was not covered by any Mediclaim policy earlier. Therefore, the petitioner was not eligible for the Mediclaim Policy. However, after considering the special request from the petitioner, he was issued policy for limited purpose. The said policy was issued on the basis of the undertaking given by the petitioner, on 28.5.2002, to the effect that he shall not be entitled for treatment expenses for diseases during the first period of policy as the policy was mainly intended to cover accidents. Despite this specific undertaking, he submitted a claim during the first period of policy for treatment expenses for "Apabhahugam". Since the said claim was contrary to his undertaking, the 1st respondent repudiated the same. Subsequently, at the

request of the petitioner, the Mediclaim policy was renewed with effect from 28.5.2003 and such renewal was with a specific exclusion clause to the effect that, it is not intended to cover treatment expenses for "Apabhahugam" on both shoulders. However, on 22.3.2004, the petitioner submitted another claim for treatment expenses for the said disease, for the period from 9.3.2004 to 18.3.2004.

5. Since the disease "Apabhahugam" was specifically excluded from the coverage, the 1st respondent repudiated the claim and the petitioner filed Exhibit P2 complaint before the Consumer Disputes Redressal Forum, Palakkad, claiming compensation of Rs. 49,727/- along with interest, which ended in dismissal by Exhibit R1(a) order. In the meanwhile, the petitioner again approached the 1st respondent for renewal and that request was rejected by the 1st respondent, on account of continuous breach of policy conditions as well as the undertaking given by the petitioner, and Exhibit P3 communication was issued to him. According to the 1st respondent, the decision to decline renewal of the policy was taken due to continuous violation of the conditions of policy from the side of the petitioner himself. Exhibit P5 order passed by the Insurance Ombudsman is the correct position of law. The 1st respondent is not bound to continue any policy after its expiration and it is purely the discretion of the company whether to continue or not with the policy. Therefore, according to the 1st respondent, it is perfectly justified in refusing to renew the policy and there is no arbitrariness in taking such a decision. Hence no interference is called for under Art. 226 of the Constitution of India.

6. Since service of notice to the 2nd respondent could not be completed, the petitioner filed I.A. No. 12817/2011 to delete the said respondent from the party array and the said application was allowed on 10.8.2011, at the risk of the petitioner.

7. Heard arguments of the learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent.

8. The learned counsel for the petitioner would contend that the decision taken by the 1st respondent not to renew the Mediclaim policy is per se arbitrary and patently illegal. Per contra, the learned Standing Counsel for the 1st respondent would contend that the non-renewal of Mediclaim Policy was due to continuous violation of the conditions of policy from the side of the petitioner and also for the reason that during the validity of the said policy the petitioner made bogus claims/complaints claiming amounts which he is not legally entitled to in terms of the policy.

9. I have considered the rival submissions made at the Bar. Exhibit P1 policy produced along with the Writ Petition is a Hospitalisation and Domiciliary Hospital Benefit Policy issued to the petitioner for the period from 29.5.2004 to 28.5.2005. The specific case of the 1st respondent is that, when the petitioner had approached them for taking the first Mediclaim policy, he was aged 58 years

and was not covered by any Medclaim policies earlier. Though, the petitioner was not eligible for any Medclaim policy, considering the special request made by him, they have issued Medclaim policy for limited purpose, which was issued on the basis of an undertaking given by the petitioner, on 28.3.2002, to the effect that he shall not be entitled for the treatment expenses for diseases during the first period of policy, as the policy was mainly intended to cover accidents. The said undertaking given by the petitioner is not on record in this Writ Petition. But, as can be seen from Exhibit R1(a) order passed by the Consumer Forum, which order has attained finality, the complaint made by the petitioner before the Consumer Forum was rejected mainly relying on the said undertaking given by the petitioner, which was marked in that proceedings as Exhibit B1. The document referred to as Exhibit B2 in Exhibit R1(a) order of the Consumer Forum is a copy of the Medclaim policy with conditions and it was relying on Exhibits B1 and B2, the Consumer Forum came to the conclusion that, the petitioner virtually agreed that the policy is valid only for accidents and therefore the treatment for diseases is not covered by the first Medclaim policy issued to the petitioner. Subsequently, at the request of the petitioner, the Medclaim policy was renewed with effect from 28.5.2003 and such renewal was with a specific exclusion clause to the effect that, it is not intended to cover treatment expenses for "Apabhahugam" on both shoulders. However, on 22.3.2004, the petitioner submitted another claim for treatment expenses for the said disease which claim was repudiated by the 1st respondent and their action in that regard was upheld by the Consumer Forum in Exhibit R1(a) order. Therefore, as borne out from the pleadings and the documents on record, the petitioner made claims before the 1st respondent, contrary to the undertaking given at the time of issuance of the first Medclaim policy and also contrary to the exclusion clause based on which the policy was renewed by the 1st respondent.

10. Now, the issue to be considered is as to whether the stand taken by the 1st respondent in Exhibit P3 not to renew the Medclaim policy issued to the petitioner is justifiable or not. As seen from Exhibit P3, the 1st respondent has decided not to renew the policy already issued to the petitioner, mainly due to the claims made by him contrary to the undertaking given at the time of issuance of the first policy and also contrary to the exclusion clause on which the policy was later renewed. In addition to this, he had approached the Consumer Forum against the repudiation of claim by the 1st respondent. As evident from Exhibit P1 policy, it can be renewed by mutual consent. General insurance contracts are based on the principles of "utmost good faith", which means that both parties should disclose all the material facts and be faithful to each other. There should be "consensus ad idem", which means agreement of mind, i.e., the insurer issues and the insured accepts the policy on the same terms and conditions as commonly understood by each other. But, merely for the reason that, during the validity of the policy, the insured had made claims contrary to the terms of the policy or had approached a court of law for redressal of his grievances, it cannot be contended that it will amount to violation of the above

two conditions, disentitling the insured for renewal of the policy.

11. In *Biman Krishna Bose Vs. United India Insurance Co. Ltd.*, the Apex Court held as follows:

Even in the area of contractual relations, the State and its instrumentalities are enjoined with the obligation to act with fairness and in doing so, can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions or decisions. In the present case, what we find is that arbitrariness is writ large in the actions of the respondent company when it refused to renew the mediclaim policy of the insured on the ground of his past conduct, i.e., having gone into litigation for payment of his claim against the respondent company. We are, therefore, in agreement with the view taken by the High Court that the order of the respondent company refusing to renew the mediclaim policy of the appellant was unfair and arbitrary. (para. 4)

In *Biman Krishna Bose's* case (*supra*), the Insurance Company had refused to renew the Mediclaim policy of the insured on the ground of his having gone into litigation for payment of his claim against the said insurance company. This, the Apex Court found to be highly arbitrary and unfair, holding that, it was an entirely extraneous consideration and had nothing to do with matters relevant for or having a reasonable nexus with the renewal of policy. It is in this context, the Apex Court upheld the view of the High Court that the order of the insurance company therein refusing to renew the Mediclaim policy of the appellant therein was unfair and arbitrary.

12. In *United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others*, , the Apex Court held as follows:

When the terms and conditions of contract of insurance are fixed, the protective umbrella over the interest of the policy holders became fully open. The insurance companies cannot either in their prospectus or in the terms of policy lay down any condition which would be derogatory to the terms and conditions approved by the Regulatory Authority. If the contract of insurance itself provides for renewal of an insurance policy the same may not mean that the assured has a legal right of automatic renewal, but the Courts are required to strike a balance.

13. As rightly contended by the learned Standing Counsel for the 1st respondent, after the privatisation of insurance sector in India in the year 2000, the 1st respondent and other public sector insurance companies are not enjoying any monopoly or exclusive privilege of carrying on General Insurance Business. But, even after privatisation of insurance sector, the 1st respondent and other public sector companies have the trappings of "State" being "other authority" under Art. 12 of the Constitution of India. Such companies thus being "State" under Art. 12 of the Constitution of India are expected to act fairly and reasonably.

14. In the case on hand, as evident from Exhibit P3, the 1st respondent decided

not to renew the Medici claim policy issued to the petitioner on the ground of his past conducts. The past conducts attributed are that, he made claims contrary to the undertaking given or the exclusion clause and that, he had approached the Consumer Forum against the repudiation of claim by the 1st respondent. The 1st respondent has no case that, the petitioner had made any bogus claim without actually undergoing treatment. In such circumstances, the petitioner cannot be found fault with in lodging claims before the 1st respondent. If an insured lodges a claim with the company and the company does not honour the claim, the insured is left with no alternative but to knock at the doors of a court of law. Merely because the insured had approached the Consumer Forum for redressal of his grievance, such an act cannot be attributed as a bad record disentitling him to get the policy renewed.

15. In the case on hand, the 1st respondent has absolutely no case that, there was any non-disclosure of material facts by the petitioner, either at the time of issuance of the first Medici claim policy or at the time of its subsequent renewal. Therefore, the decision of the Apex Court in *Satwant Kaur Sandhu Vs. New India Assurance Company Ltd.*, , relied on by the learned Standing Counsel for the insurance company, will in no way support their case. In *Satwant Kaur Sandhu's* case (supra) the Apex Court was called upon to decide the legality of repudiation of Medici claim policy made by the insurance company on the ground of non-disclosure of material facts as to the illness of the insured in the proposal form. In that case, the Apex Court held that, the insurance company was fully justified in repudiating the contract on the ground of non-disclosure of material facts as to the illness of the insured in the proposal form, though he was suffering from chronic diabetes and renal failure at the relevant time.

16. For the reasons stated above, I find no reason to uphold the stand taken by the 1st respondent in Exhibit P3 in not renewing the Medici claim policy taken by the petitioner. The only conclusion that can be drawn is that, while refusing to renew the Medici claim policy issued to the petitioner, the 1st respondent had acted arbitrarily and the reasoning given by it in Exhibit P3 are highly perverse and patently illegal. At any rate, the 1st respondent was not justified in refusing to renew the policy on the ground that the petitioner had made claims contrary to the undertaking or the exclusion clause or on the ground that he had approached a court of law for redressal of his grievance. In such circumstances, Exhibit P3 communication issued by the 1st respondent refusing to renew the Medici claim policy issued to the petitioner is quashed. Going by the principles laid down by the Apex Court in *Biman Krishna Base's* case (supra) and *Manubhai Dharmasinhbhai Gajera's* case (supra), though the petitioner is not entitled for automatic renewal of the Medici claim policy, he is entitled to be treated fairly in terms of the conditions of policy. Non-renewal of the Medici claim policy can only be for violation of any of the terms and conditions contained therein and not on the ground of making repeated claims or approaching a court of law for redressal of his grievance.

In the result, this Writ Petition is disposed of directing the 1st respondent to consider the request made by the petitioner for renewal of Exhibit P1 Medclaim policy issued to him, if he is otherwise eligible for such renewal, on the petitioner agreeing the conditions for such renewal and paying the required premium for such renewal. The 1st respondent shall take necessary steps in this regard, with notice to the petitioner, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. No order as to costs.