

(2004) 08 DEL CK 0137

In the Delhi High Court

Case No : Writ Petition (C) 5927 of 2003

Talvinder Choudhary

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) ACJ 584 : (2005) 127 CompCas 239 : (2004) 76 DRJ 680 :
(2004) 138 PLR 36 : (2004) 4 RCR(Civil) 834

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Vineet Chadha, for the Appellant; B.K. Berera and Kishore Rawat
and L.K. Tyagi, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The refusal of respondent No. 2, Oriental Insurance Company Limited, to renew the Medical Claim Insurance Policy of the petitioner on the same terms and conditions as in the past has given rise to the present petition.

2. The petitioner took a Medical Claim Insurance Policy with respondent No. 2 in the year 1997 and the policy was renewed from year to year till 2002. There is only one claim made in the year 1998 which had been paid. The last renewal of the policy expired on 28.12.2002 and it is the contention of the petitioner that the Development Officer of respondent No. 2, Mr. Trilochan Singh, who used to take the renewal premium every year, failed to turn up to take payment of the premium. The petitioner on 21.02 2003 then personally went to the office of respondent No. 2 and applied for Medical Claim Insurance Policy. However, though the policy was issued, there was an exclusion clause provided for Cardiac Arrest Disease and related diseases. Thus, the treatment relating to cardiac arrest was excluded apparently on the basis of the fact that in the year 1998, the petitioner had suffered a similar problem when payments had to be made under the policy. The petitioner vide letter dated 25.02.2003 called upon respondent

No. 2 to remove the said condition. The petitioner in the said letter stated that there was no delay in the past by the petitioner over five years and that it was Mr. Trilochan Singh, who did not come to collect payment of the premium as in the past despite repeated reminders, but was insisting that he wanted the insurance to be done from a private company. It may be noticed that even on 21.02.2003 when the petitioner went to the office of respondent No. 2, a complaint had been made by the petitioner in writing about Mr. Trilochan Singh. The request of the petitioner was, however, declined by the letter dated 28.05.2003 stating that the petitioner ought to have visited the office of respondent No. 2 well within the stipulated time for renewal of Medical Claim Insurance Policy.

3. In the counter affidavit, the respondents have sought to take the defense that the grant of relief to the petitioner would amount to a specific performance of an agreement, which cannot be done in the proceedings under Article 226 of the Constitution of India. In so far as the merits are concerned, it is stated that the petitioner approached respondent No. 2 after almost two months delay and in view thereof, fresh proposal was taken from the petitioner and was got examined from a panel doctor. It was in view thereof that the exclusion clause was included. It is stated that had the petitioner renewed the policy in time as in the past, the occasion to insert exclusion clause would not have arisen and the policy would have been renewed as per the past practice. Emphasis has also been laid on the fact that the policy condition No. 5.9 clearly stipulates that the policy may be renewed by mutual consent and there is no requirement to give notice to a policy-holder for renewal. The factor of Mr. Trilochan Singh being the Development Officer in respondent No. 2 company is not denied, though it is denied that he used to go to get the policy renewed from time to time.

4. Learned counsel for the petitioner strongly relied upon judgment of the Supreme Court in *Biman Krishna Bose Vs. United India Insurance Co. Ltd.*, . A reading of the said judgment shows that a number of aspects raised in the present matter are, in fact, no more rest integral in view of the said judgment of the Supreme Court. This judgment has also been considered by a learned Single Judge of this Court in *Ashok Kumar Dhingra and Others Vs. The Oriental Insurance Company Limited and Others*, . The issue of maintainability of writ petition was discussed in *Ashok Kumar Dhingra's case (supra)* and it was noticed that in *Biman Krishna Bose's case (supra)*, the exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in a similar matter was, in fact, not disapproved and the Supreme Court went on to grant relief. I am inclined to take the same view and, thus, the present petition ought not to be thrown out merely on the ground of maintainability.

5. The Supreme Court in *Biman Krishna Bose's case (supra)* was of the view that where renewal of the policy is denied on extraneous considerations which are arbitrary, an insurer cannot be denied even the retrospective benefit of the same, who would have been insured for treatment of the disease during the

relevant period of time. It was felt that this would give a handle to the insurance companies to refuse the renewal of policies and would have disastrous effect. The Supreme Court was, thus, of the considered view that once it was found that the act of the insurance company was arbitrary in refusing to renew the policy, the policy is required to be renewed with effect from the date when it fell due for its renewal. It may be noticed that in the said case, the renewal had been denied on the ground that the petitioner therein had litigated in various courts with the insurance company about certain claims. This was found to be arbitrary since the petitioner had admittedly succeeded in the claims.

6. In Ashok Kumar Dhingra's case (supra), a further issue was raised about the loading of additional premium on account of past medical history and such loading was found to be in accordance with law and not arbitrary.

7. In the present case, there is no dispute about the fact that a renewal has been made. There is no loading also of any additional premium on the petitioner in view of any past history. This is possibly so since over a period of five years of premium being paid in time, there was only one claim which had been lodged by the petitioner in the year 1998.

8. The limited question, which arises for consideration, is whether the exclusion clause should be included in the new policy merely on account of the fact that there has been some delay in the petitioner renewing Medical Claim Insurance Policy.

9. In order to appreciate the aforesaid, it is also necessary to see the reason why there was such a delay. The petitioner claims that one Mr. Trilochan Singh used to approach him and take payment of the premium every year and the petitioner had contact Mr. Trilochan Singh on a number of occasions, but he had failed to collect payment of the premium. There is no doubt that the obligation of making the payment of premium was on the petitioner. However, it is a matter of common knowledge that there is practice of the Development Officers reminding insurers and collecting premiums. The existence of Mr. Trilochan Singh as a Development Officer with respondent No. 2 is not denied. The Development Officer advances business of the insurance company. The allegation of the petitioner that there had been past practice of Mr. Trilochan Singh approaching him to collect the premium cannot, thus, be ignored.

10. The policy expired on 28.12.2002. The petitioner approached respondent No. 2 company on 21.02.2003. Thus, there was a delay of less than about two months. The petitioner is not saying that he should be covered for the period of lapse. It is also not the case of respondent No. 2 that during this period of said two months, the petitioner had suffered some medical problem or contracted a new problem which could give rise to apprehension in the mind of the Officers of respondent No. 2 that it was an endeavor to cover some new disease. Even after the problem of 1998 for a period of four years, the petitioner has not made any claim.

11. Respondent No. 2 company also does not dispute that as per its policy, if the petitioner had approached within time, the policy would have been renewed on the same terms and conditions. The problem has arisen only on account of the fact that the case of the petitioner has been treated as one of a fresh policy in view of there being a delay of about two months.

12. In my considered view, in the given facts of the case, there is no rationale for the same. 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. It is not an effort on the part of the petitioner to cover up any new medical problem. It has to be appreciated that the practice of having Development Officers is with the object not only of encouraging the business of the insurance company, but also to meet certain social obligations since elderly people at times may find it problematic to visit office of the insurance company personally and follow up the matter. The Development Officer is like an interface. Mr. Trilochan Singh was dealing with the policy of the petitioner in the past. Even though as per the terms and conditions of the policy, there was no obligation to intimate the petitioner about expiry of the policy, such past practice would show that the petitioner would have a reasonable expectation that the Development Officer would approach him. In fact, in the present case, the petitioner has stated that he reminded the Development Officer to collect the premium, but to no avail since admittedly the Development Officer was interested in developing business for some private company. I find it difficult to draw a conclusion from submission of the medical reports of the petitioner or otherwise that the petitioner tried to approach private companies and having not been successful in the sea sought renewal of his Medical Claim Insurance Policy. This is an allegation in the counter affidavit.

13. The issue is not also one of covering the interregnum period or any part of the claim of the petitioner. The limited issue is one of treating the policy issued in the year 2003 to the petitioner as one in continuity of the earlier policies and, thus, applying the same terms and conditions without the exclusion clause in respect of "Cardiac Arrest Disease".

14. I am of the considered view that the petitioner is entitled to have a Medical Claim Insurance Policy on the same terms and conditions as in the past five years and the exclusion clause should not be made applicable to the petitioner in the given facts and circumstances of the case.

15. A writ of mandamus is, thus, issued quashing the condition imposed in the Medical Claim Insurance Policy of the petitioner excluding the Cardiac Arrest Disease and related diseases and consequently, the petitioner would be entitled to renewal of the policy on the same terms and conditions subject to the petitioner meeting with the obligation of making payment of the premium in future. This would, however, be subject to any guidelines of the insurance company in future for renewal of any medical claim policies.

16. Rule is made absolute leaving the parties to bear their own costs.