

(2007) 11 DEL CK 0172

In the Delhi High Court

Case No : LPA 1335 of 2007 and CM No's. 16014 (Stay) and 16015 of 2007 (delay)

The New India Assurance Co. Ltd.

APPELLANT

Vs

Shri Akshoy Kumar Paul and Another

RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Citation : (2007) 99 DRJ 547 : (2008) 1 ILR Delhi 957

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : P.K. Seth, for the Appellant; Nemo, for the Respondent

Judgement

Mukundakam Sharma, C.J.—The present appeal is directed against the judgment dated 14th March, 2007 passed by the learned Single Judge in WP(C) No. 18130-31/2005 titled Shri Akshoy Kumar Paul and Anr. v. The New India Assurance Company Ltd.

2. By the impugned judgment the learned Single Judge has allowed the writ petition with a direction to New India Assurance Company Ltd., the appellant herein, to renew medi claim insurance policy in favor of the respondents for the period August, 2005 onwards, provided the respondents pay the insurance premium amount.

3. Learned Counsel for the appellant submitted that the respondents had obtained medi claim insurance policy for the first time on 11th August, 1999 without any restriction and the policy was thereafter renewed in the years 2000, 2001 and 2002. At the time of renewal also there was no restriction. In February, 2003, the respondent No. 1 suffered a heart attack and was hospitalised. Pursuant thereto payment was made for medical expenditure on treatment/hospitalisation in terms of the policy. The policy was again renewed in August, 2003 and August, 2004. However, at that time, the insurance cover did not include cardiac ailment of respondent No. 1. In 2005 at the time of further

renewal, the respondents sought renewal and agreed to pay the premium but insisted that the exclusion clause with regard to cardiac ailment of respondent No. 1 should not be incorporated. The appellant insurance company refused to renew the policy without the exclusion clause and this prompted the respondents to approach this Court by filing a writ petition, which stands allowed in terms of the impugned judgment.

4. Learned Counsel for the appellant submitted that as the policy had been renewed in August, 2003 and August, 2004 excluding cover for cardiac ailments in respect of respondent No. 1, the impugned judgment is liable to be set aside.

5. We have considered the said submission but are unable to agree with the counsel for the appellant. As already stated above, the respondents had obtained medi claim insurance policy for the first time on 11th August, 1999 without any restriction. The policy was also renewed for three consecutive years thereafter till 2003 again without any restriction. In February, 2003, the respondent No. 1 suffered a heart attack and thereafter the appellant insurance company refused to renew the old policy and put up a clause insisting that cardiac ailment of respondent No. 1 will henceforth not be covered. Such condition imposed by insurance company has already been deprecated and held to be illegal by the Supreme Court in *Biman Krishna Bose Vs. United India Insurance Co. Ltd.*, wherein it was observed as under:

5. A renewal of an insurance policy means repetition of the original policy. When renewed, the policy is extended and the renewed policy in identical terms from a different date of its expiration comes into force. In common parlance, by renewal, the old policy is revived and it is sort of a substitution of obligations under the old policy unless such policy provides otherwise. It may be that on renewal, a new contract comes into being, but the said contract is on the same terms and conditions as that of the original policy. Where an insurance company which has exclusive privilege to carry on insurance business has refused to renew the medi claim policy of an insured on extraneous and irrelevant considerations, any disease which an insured had contracted during the period when the policy was not renewed, such disease cannot be covered under a fresh insurance policy in view of the exclusion clause. The exclusion clause provides that the pre-existing diseases would not be covered under the fresh insurance policy. If we take the view that the medi claim policy cannot be renewed with retrospective effect, it would give handle to the Insurance Company to refuse the renewal of the policy on extraneous consideration thereby deprive the claim of the insured for treatment of diseases which have appeared during the relevant time and further deprive the insured for all time to come to cover those diseases under an insurance policy by virtue of the exclusion clause. This being the disastrous effect of wrongful refusal of renewal of the insurance policy, the mischief and harm done to the insured must be remedied. We are, Therefore, of the view that once it is found that the act of an 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.

6. It is clear from the above passage that renewal of an insurance policy means repetition of the original in a manner that the old policy gets revived on the same terms and conditions as were incorporated in the original policy. The Supreme Court criticised and highlighted the disastrous effect of refusal to renew an insurance policy merely because a claim has been made and insistence of the insurance company to incorporate an exclusion clause. The exclusion clause was struck down. Thus medi claim insurance on renewal cannot exclude diseases that had been contracted after insurance cover was taken for the first time. Similar view has been taken by the Delhi High Court in *Shri Mukut Lal Duggal Vs. United India Insurance Co. Ltd.*, wherein learned Single Judge of this Court extensively quoted from a Division Bench judgment of Gujarat High Court in *United India Insurance Company Ltd. Vs. Mohanlal Aggarwal*, The Division Bench has clearly held that an insurance company must renew the medi claim insurance policy and cover all diseases which had been contracted by the insured during continuation of the cover from the first date when the insurance cover was taken.

7. The distinction sought to be drawn by the appellant insurance company cannot be accepted. The judgment of the Supreme Court in *Biman Krishna Bose (supra)* is binding on the appellant and in terms of the said judgment, the appellant could not have incorporated any exclusion clause in the policy renewed in 2003 and 2004. The appellant has tried to take advantage and benefit of lack of legal knowledge and the fact that the respondents were not aware of the judgment in the case of *Biman Krishna Bose (supra)*. This is unfortunate because the appellant insurance company has social obligation and must be reasonable and fair in their dealings with customers even in the areas of contractual matters. In fact the appellant insurance company acted contrary to the ratio of the directions given by the Supreme Court in the case of *Biman Krishna Bose (supra)* as well as the judgment of the Delhi High Court in *Mukut Lal Duggal (supra)* and of the Gujarat High Court in *United India Insurance Company Ltd. and Anr. v. Mohanlal Aggarwal (supra)* in incorporating exclusion clause at the time of renewal of the medi claim policy in 2003 and 2004. The wrong act cannot be perpetuated and continued in future.

8. We, Therefore, find no merit in the present appeal. We may also note here that while passing the impugned judgment, learned Single Judge was conscious of the decision of Delhi High Court in *Ashok Kumar Dhingra and Others Vs. The Oriental Insurance Company Limited and Others*, on the question of premium and in these circumstances has directed that the insurance policy will be renewed for the period 2005 onwards without any exclusion clause for the disease contracted by the respondents after 11th August, 1999 on payment of premium as per law.

9. The appeal stands disposed of in terms of the aforesaid order. No costs.