(2023) 12 CAL CK 0035

In the Calcutta High Court

Case No : W.P.A No. 21134 Of 2018

Vivek Sharma	APPELLANT
Vs	
United India Insurance Company Limited	RESPONDENT

Date of Decision : 11-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 12 CAL CK 0035

Hon'ble Judges : Partha Sarathi Sen, J

Bench : Single Bench

Advocate : Rupayan Deb, Priya Nandy, Guddu Singh

Judgement

Partha Sarathi Sen, J

1. By filing the instant writ petition under article 226 of the Constitution of India the writ petitioner has prayed for a direction upon the respondent/insurance company to cancel and/ or rescind and/or revoke its letter dated 13.07.2015 whereby and whereunder the respondent/insurance company has repudiated the claim of the writ petitioner towards cost incurred by the writ petitioner for his 'Laparoscopic Mini Gastric Bypass done under GA'.

2. From the materials as placed before this Court the following facts are undisputed namely:-

i. The writ petitioner took a mediclaim policy from the respondent/insurance company in the year 2006.

ii. The said policy was renewed as year to year basis.

iii. Lastly such policy under the nomenclature 'Family Medicare Policy, 2014' was taken for the period 20.08.2014 to 19.08.2015.

iv. The writ petitioner was advised to undergo the aforementioned surgery on 12.03.2015.

v. After such surgery the writ petitioner was discharged on 20.03.2015 from hospital.

vi. The writ petitioner thereafter lodged his claim through TPA Genins India Pvt. Ltd.

vii. Such claim was however repudiated by issuing letter dated 13.07.2015 which is impugned before this Court.

3. In support of the instant writ petition Mr. Deb, learned advocate for the writ petitioner at the very outset draws attention of this Court to the photocopy of the aforementioned policy which commenced on 20.08.2014 and the validity of which expired on 19.08.2015. Attention of this Court is also drawn to several clauses of the said policy including its exclusion clauses. It is contended by Mr. Deb that considering the fact that the said mediclaim policy commenced on 2006 till 19.08.2015 by way of time to time renewal on payment of yearly premium the respondent/insurance company is not supposed to repudiate the genuine claim of the writ petitioner.

4. It is further argued by Mr. Deb, that the disease for which the aforementioned surgery has been done upon the writ petitioner cannot be considered to be a pre-existing disease for repudiating the rightful claim of the writ petitioner.

5. In course of his argument Mr. Deb places his reliance upon the following reported decisions namely:-

i. Texco Marketing Private Limited vs. Tata AIG General Insurance Company Ltd. and Ors. reported in (2023) 1 SCC 428;

ii. Glynn and Ors. vs. Margetson and Co. and Ors. reported in [1893 AC 351 (HL)];

iii. George Mitchell (Chesterhall) Ltd. vs. Finney Lock Seeds Ltd. reported in 1979 G. No. 1137.

6. Placing reliance upon the aforesaid three reported decisions it is argued by Mr. Deb that the respondent/insurance company while processing the rightful claim of the writ petitioner has failed to visualize the main intent and object of the said policy and thus wrongly repudiated the claim of the writ petitioner. It is further argued by Mr. Deb that considering the fact that the insurance policy is in the nature of ‘adhesion contract’, there cannot be any option on the part of the writ petitioner being the insured to negotiate with the respondent/insurer over the terms of the said policy contract except to sign on the dotted lines and thus the respondent/insurance company ought not to get the benefit of such adhesion contract to the detriment of the writ petitioner. It is further argued by Mr. Deb that the action on the part of the respondent/insurance company cannot be called as an act based on good faith and founded on common law of principles of fairness.

7. It is thus argued by Mr. Deb, learned advocate for the writ petitioner that it is

a fit case for allowing the instant writ petition directing the respondent/insurance company to release payment as claimed by the writ petitioner on account of the aforementioned surgery.

8. Per contra, Mr. Singh, learned advocate for the insurance company also placed his reliance upon the reported decision of Texco Marketing Pvt. Ltd. (supra). In course of his submission Mr. Singh, learned advocate for the insurance company draws attention of this Court to the photocopy of the mediclaim policy for the period 20.08.2014 to 19.08.2015 as has been annexed with the mark 'R1' to the affidavit in opposition as filed by the respondent/insurance company. Drawing attention to clause 4.1 of the said policy, it is argued by Mr. Singh that from the very inception of the aforementioned policy it is within the knowledge of the writ petitioner that 'obesity treatment' falls under the exclusion clauses as incorporated in the said policy document and therefore it cannot be said that the action of the respondent/insurance company while dealing with the claim of the writ petitioner/ insured is unjust and/or unjustified.

9. This court has minutely perused the materials as placed before this Court. This court has given its anxious consideration over the submissions of the learned advocate for the contending parties. On perusal of the aforementioned mediclaim policy for the period 20.08.2014 to 19.08.2015 it reveals to this court that 'obesity treatment' has been placed under the exclusion clauses along with other diseases. The question thus arises for consideration of this Court is as to whether the respondent/insurance company is at all justified in repudiating the claim of the writ petitioner/insured on the strength of placing such disease under the clause of exclusions. In the reported decision of Texco Marketing Pvt. Ltd. The Hon'ble Apex Court of our country has duly considered the legality and justifiability of placing of the exclusion clause in a policy document.

"Exclusion clause

12. An exclusion clause in a contract of insurance has to be interpreted differently. Not only the onus but also the burden lies with the insurer when reliance is made on such a clause. This is for the reason that insurance contracts are special contracts insurer, but is meant to be pressed into service on a contingency, being a contract of speculation. An insurance contract by its very nature mandates disclosure of all material facts by both the parties.

An exclusion clause has to be understood on the touchstone of the doctrine of reading down in the light of the underlying object and intendment of the contract. It can never be understood to mean to be in conflict with the main purpose for which the contract is entered. A party, who relies upon it, shall not be the one who committed an act of fraud, coercion or misrepresentation, particularly when the contract along with the exclusion clause is introduced by it. Such a clause has to be understood on the prism of the main contract. The main contract once signed would eclipse the offending exclusion clause when it would otherwise be impossible to execute it. A clause or a term is a limb, which has got no existence outside, as such, it exists and vanishes along with the contract, having no independent life of its own. It has got no ability to destroy its own creator i.e. the main contract. When it is destructive to the main contract, right at its inception, it has to be severed, being a conscious exclusion, though brought either inadvertently or consciously by the party who introduced it. The doctrine of waiver, acquiescence, approbate and reprobate, and estoppel would certainly come into operation as considered by this Court in 'Union of India Vs. Murugesan' as reported in (2022) 2 SCC 25"

10. If the proposition of law as enunciated by the Hon'ble Supreme Court as quoted above is applied to the facts and circumstances of this case, it appears to this Court that clause 4, more specifically clause 4.1 of the exclusion clauses of the said policy is no way destructive to the main contract of policy. In further considered view of this court the said exclusion clause is not of such nature which destroys the main contract i.e. the policy itself. It is also not the case of the writ petitioner that from the commencement of the policy i.e. since 2006 the respondent/insurance company did not disclose such exclusion clauses in his policy document and thus not acted in good faith and without jurisdiction. Admittedly, as observed by the Hon'ble Supreme Court that the policy in question is in the nature of Adhesion contract by and between the writ petitioner and the respondent company but it does not mean that while entering into contract or that at the time of subsequent renewal of the contract of such policy the writ petitioner was made to understand that such exclusion clauses are mere formality which need not be given much importance.

11. In further considered view of this Court the three reported decision as cited from the side of the writ petitioner has got no applicability in this writ petition since these two judgements have been passed in complete different perspective and is thus distinguishable from the facts and circumstances as involved in the instant writ petition.

12. This court thus finds no illegality and/or irregularity in the action of the insurance company.

13. This court thus finds no merit in the instant writ petition and thus the same is dismissed on contest but considering the facts and circumstances of the present case without any order as to cost.

14. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

