

Before Rameshwar Singh Malik, J.

SURJEET KAUR—Petitioner

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No. 4916 of 2011

July 10, 2013

*Constitution of India, 1950 - Art. 226/227 - Writ Jurisdiction
- Award of Permanent Lok Adalat - Quashing of - Whether causing
miscarriage of justice - Petitioner got medical insurance cover under
Mediclaim Policy and was issued an Identity Card for the policy -
Suffered from cancer during period of validity of insurance cover
- Got treatment at PGIMS Rohtak - Claim denied by the Respondents*

on the ground that only Government hospitals in the State of Punjab, Chandigarh and Delhi are covered under the Policy whereas PGIMS Rohtak in the State of Haryana is not so covered - Held, once more than 150 private hospitals located in this part of the country are amongst the recognized hospitals for Mediclaim Policy, there can be no rationale for excluding PGIMS Rohtak, a Government hospital - No exclusion clause for PGIMS Rohtak or any other Government hospital in the State of Haryana - Award cannot be sustained - Policy holder entitled for reimbursement of medical expenses - Writ Petition allowed

Held. that it is not in dispute that the petitioner was member of respondent No.8-society. It is also not in dispute that the petitioner was mediclaim policy holder through respondent No.8-society. Validity period of the mediclaim policy is also not in dispute. There is a list of 171 hospitals located in different parts of Punjab, including seven hospitals of District Ferozepur, which were private hospitals, covered under the mediclaim insurance policy of the petitioner. All the hospitals of Punjab Health Systems Corporation, Civil Hospitals and Government Medical Colleges located in the State of Punjab, Chandigarh and New Delhi, were admittedly covered under the Networks of Hospitals. Once more than 150 private hospitals located in this part of the country were amongst the recognised hospitals, for the purpose of mediclaim policy in question, it does not appeal to reason at all, as to how and why the PGIMS, Rohtak, which was admittedly a Government Hospital, could have been excluded. Having said that, this Court feels no hesitation to conclude that the impugned award cannot be sustained.

(Para 9)

Further held, that After a careful study of different aspects of the matter discussed here-in-above, this Court is of the considered view that the only harmonious interpretation of the above said inclusive clause 2.1, read with Annexure P-2, would be that the policy holder was entitled for reimbursement of the medical expenses, for the treatment availed from any Government Hospital. Contrary interpretation will defeat the very object and purpose of this beneficial mediclaim policy. Further, it does not behoove the respondent insurance company to deny even the genuine and reasonable

claim of the petitioner, expenses for which were incurred on account of treatment for cancer and the treatment was availed only from a Government Hospital.

(Para 13)

Pankaj Katia, Advocate, *for the petitioner.*

R.C. Gupta, Advocate for the respondents No. 4 to 6.

RAMESHWAR SINGH MALIK, J.

(1) Feeling aggrieved against the award dated 28.12.2010 (Annexure P-11) passed by the Permanent Lok Adalat (Public Utility Service), Ferozpur, the petitioner-claimant has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned award.

(2) Facts first.

(3) The petitioner was a member of the Khui Khara Cooperative Agriculture Services Society Ltd.-respondent No.8. Being the member of respondent No. 8-society, petitioner got himself insured under mediclaim policy known as Bhai Ghanaya Sehat Sewa Scheme. Petitioner was issued an identity card mentioning his policy number, validity period, card number and other relevant particulars. It is further pleaded case of the petitioner that except the identity card Annexure P-1, no other document or terms and conditions of the policy were supplied to him. The validity period of the mediclaim policy was from 1.10.2008 to 30.9.2009. During the validity period of the insurance policy, petitioner felt severe pain in his abdomen in the last week of June, 2009. He consulted local doctors for about two days and then went to Pt. B.D.Sharma Post Graduate Institute of Medical Science, Rohtak ('PGIMS' for short), for further check up. Doctors at PGIMS Rohtak, conducted clinical test on the petitioner and found that he was suffering from cancer. Wasting no time, lest he may not get late, doctors of PGIMS Rohtak, started treatment of the petitioner. During this period, the petitioner had to incur heavy expenses on his treatment. Copies of numerous medical bills are appended at Annexures P-3 to P-8. When the

petitioner contacted the respondent Insurance Company seeking reimbursement of his medical expenses, under his above said mediclaim policy, request of the petitioner was not entertained. Aggrieved, the petitioner approached the Permanent Lok Adalat (Public Utility Service), Ferozpur, vide his application under Section 22 (1) (c) of the Legal Services Act (Annexure P-9). The respondent Insurance Company filed its reply vide Annexure P-10 and thereafter, the learned Permanent Lok Adalat (Public Utility Service), Ferozpur, vide impugned award dated 28.2.2010 (Annexure P-11), dismissed the application of the petitioner. Hence this writ petition.

(4) Notice of motion was issued and pursuant thereto, written statement was filed on behalf of respondents No. 4 to 6, controverting the averments taken by the petitioner.

(5) The stand taken by the above said contesting respondents in their joint written statement was that only the hospitals of Punjab Health Systems Corporation, Civil Hospitals and Government Medical Colleges located in the State of Punjab, Chandigarh and New Delhi, would be covered under the mediclaim insurance policy in question and not the PGIMS Rohtak.

(6) Learned counsel for the petitioner, while referring to the relevant part of Guide Book and Information of Network Hospitals appended at Annexure P-2, submits that facility of treatment availed from any Government Hospital would be covered under the Policy and the petitioner was entitled for reimbursement of the entire medical expenses incurred by him. He further submits that no other document or terms and conditions of the policy were ever supplied to the petitioner, except an identity card, Annexure P-1. He next contended that the petitioner, being the simpleton villager and humble agriculturist, he was not made aware at any point of time about the technicalities, which have now been sought to put into service by the respondent insurance company, so as to repudiate the genuine and reasonable claim of the petitioner. Had the petitioner received the medical treatment from any private hospital, the respondent insurance company might have been justified in denying the claim of the petitioner, as the same would have been difficult to verify. However, in the present case, the petitioner got the medical treatment only from the Government Hospital. He next contended

that since all the Government Hospitals were covered under the Guide Book and Information of Network Hospitals, Annexure P-2, the claim of the petitioner was illegally denied by the Permanent Lok Adalat. He concluded by submitting that the impugned order may be set aside and the petitioner may be held entitled for the mediclaim.

(7) On the other hand, learned counsel for respondents No. 4 to 6 strenuously argued that only the Government Hospitals of Punjab and Delhi were covered under the Policy and not Government Hospitals situated in the State of Haryana. He further submits that the Permanent Lok Adalat committed no error of law, while passing the impugned order, which deserves to be upheld. Finally, he prays for dismissal of the writ petition.

(8) Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned order dated 28.12.2010 (Annexure P-11) passed by the learned Permanent Lok Adalat, has resulted into miscarriage of justice and the present writ petition deserves to be allowed. To say so, reasons are more than, which are being recorded hereinafter.

(9) It is not in dispute that the petitioner was member of respondent No.8-society. It is also not in dispute that the petitioner was mediclaim policy holder through respondent No.8-society. Validity period of the mediclaim policy is also not in dispute. There is a list of 171 hospitals located in different parts of Punjab, including seven hospitals of District Ferozepur, which were private hospitals, covered under the mediclaim insurance policy of the petitioner. All the hospitals of Punjab Health Systems Corporation, Civil Hospitals and Government Medical Colleges located in the State of Punjab, Chandigarh and New Delhi, were admittedly covered under the Networks of Hospitals. Once more than 150 private hospitals located in this part of the country were amongst the recognised hospitals, for the purpose of mediclaim policy in question, it does not appeal to reason at all, as to how and why the PGIMS, Rohtak, which was admittedly a Government Hospital, could have been excluded. Having said that, this Court feels no hesitation to conclude that the impugned award cannot be sustained.

(10) The relevant extract of the Guide Book and Information of Network Hospitals appended at Annexure P-2, which is part of the insurance policy in question and matter of record, reads as under:-

" A beneficiary can get treatment in any Hospital or Nursing Home in Punjab, approved by the Bhai Ghanya Trust under terms and conditions of the scheme. This facility of treatment can also be availed from any Government hospital but the beneficiary shall have to pay the amount of bill first and then the same shall be got reimbursed from TPA. "

The operational terms and conditions applicable to the Government Hospitals are provided in Clause 2 of Annexure P-III of the insurance policy Annexure R-1. Relevant clauses 2 and 2.1 read as under:-

2 "OPERATIONAL TERMS and CONDITIONS APPLICABLE TO THE GOVT. HOSPITALS.

2.1 All hospitals of the Punjab Health Systems Corporation (PHSAC), Civil Hospitals and Government Medical Colleges located in the State of Punjab and Chandigarh and New Delhi shall be automatically included in the list of Provider Hospitals where the beneficiaries can avail medical services as covered under the terms and conditions of the Scheme."

(11) However, in the written statement filed by the respondent Insurance Company, before the Permanent Lok Adalat appended at Annexure P-10, averments taken in this regard in para 7 of the written statement, read as under:-

"However, it is made clear that as per policy terms and conditions, reimbursement is only allowed from Government Hospitals of Punjab and Chandigarh"

(12) A combined reading of the above said relevant terms and conditions of mediclaim policy and averments taken by the respondent insurance company, would make it clear that the attempt on the part of the respondent company was only to defeat the genuine claim of the petitioner. Further, Annexure P-2 clearly talks about any Government Hospital whereas Clause 2.1 talks about the Hospital of Punjab Health Systems Corporation,

Civil Hospitals and Government Medical Colleges located in the State of Punjab, Chandigarh and New Delhi. In the written statement filed before the Permanent Lok Adalat, the respondent insurance company has admitted only about the Government Hospitals of Punjab and Chandigarh, keeping silent about New Delhi which is a stand contrary to clause 2.1. Further, reading of clause 2.1. shows that it was an inclusive clause. However, there was no exclusive clause in the policy, which might have specifically excluded even the Government Hospitals situated within the State of Haryana.

(13) After a careful study of different aspects of the matter discussed here-in-above, this Court is of the considered view that the only harmonious interpretation of the above said inclusive clause 2.1, read with Annexure P-2, would be that the policy holder was entitled for reimbursement of the medical expenses, for the treatment availed from any Government Hospital. Contrary interpretation will defeat the very object and purpose of this beneficial mediclaim policy. Further, it does not behove the respondent insurance company to deny even the genuine and reasonable claim of the petitioner, expenses for which were incurred on account of treatment for cancer and the treatment was availed only from a Government Hospital.

(14) While passing the impugned award, reasons which weighed with the Permanent Lok Adalat particularly in para 5 of the impugned award, have been found to be wholly irrelevant. Learned counsel for the respondent insurance company failed to substantiate his arguments in this regard. The Permanent Lok Adalat has completely lost sight of Annexure P-2 and misunderstood the inclusive clause 2.1. It also misread the stand taken by the respondent insurance company in its written statement, filed before the Permanent Lok Adalat. Further, another important clause of the insurance policy under Annexure iv, i.e. Clause 1.21, which deals with salient features of the policy and benefits of the scheme, reads as under:-

"1.21 Treatment in non-network hospitals except in Govt. Hospitals is not covered. Only cashless hospitalization on Network Hospitals and reimbursement/cashless hospitalization in Government Hospitals are to be covered. Treatment at Government hospitals shall be covered at Govt. Hospital rates."

(15) If the above said Clause 1.21 is treated as an exclusion clause, then all the Government Hospitals are covered under the mediclaim policy. The Permanent Lok Adalat has misdirected itself while not appreciating this material aspect of the matter, as well. Thus, the impugned award cannot be sustained for this reason also.

(16) The argument raised by the learned counsel for the petitioner has been found forceful and convincing that the petitioner, being a simpleton villager and humble agriculturist to whom the terms and conditions of the policy were not handed over or ever explained, was not expected to know the technicalities and super technicalities of the scheme, with a view to avoid the treatment from PGIMS Rohtak. Thus, the argument deserves to be accepted.

(17) In the given fact situation of the case noted here-inabove, it is unhesitatingly held that the petitioner was a -bonafide claimant and was entitled for reimbursement of the medical expenses incurred by him on his treatment for cancer availed from PGIMS, Rohtak, being a government hospital.

(18) No other argument was raised.

(19) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned award 28.12.2010 (Annexure P-11) passed by the Permanent Lok Adalat cannot be sustained and the same is hereby ordered to be set aside.

(20) Consequently, the respondent insurance company is directed to reimburse the fixed amount of Rs. 2,00,000/- (two lacs only), as per mediclaim policy plus 50,000/- (fifty thousand only) towards compensation on account of unwarranted harassment caused to the genuine claimant, a cancer patient, within a period of two months from the date of receipt of certified copy of this order.

(21) If the above said amount of Rs. 2,50,000/- is not paid by the respondent insurance company to the petitioner within the stipulated period of two months, the petitioner shall be entitled to receive the total amount along with interest @ 9% per annum from the date of application filed before the Permanent Lok Adalat, till the actual date of payment.

(22) Resultantly, the present writ petition stands allowed, however, with no order as to costs.