Supreme Court of India
Biman Krishna Bose vs United India Insurance Co.Ltd. & ... on 2 August, 2001
Author: V Khare
Bench: V.N. Khare, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 2296 of 2000

PETITIONER:
BIMAN KRISHNA BOSE

Vs.

RESPONDENT:
UNITED INDIA INSURANCE CO.LTD. & ANR.

DATE OF JUDGMENT: 02/08/2001

BENCH:
V.N. Khare & Shivaraj V. Patil

JUDGMENT:

V.N. KHARE, J.:

The appellant herein and his wife Smt. Alka Bose, took out a mediclaim insurance policy from the respondent United India Insurance Company (hereinafter referred to as insurance company) on December 14, 1990. In July 1991, Smt. Alka Bose fell ill and as per advice of the doctor she was admitted to a hospital on August 14, 1991. She paid Rs.8,243/- towards the charges for her treatment to the hospital. On August 30, 1991 the appellant lodged a claim for Rs.8,243/- with the insurance company along with necessary papers. Despite repeated requests the claim was not honored, with the result the appellant approached the District Consumer Grievance Redressal Forum (District Forum Calcutta) but the said complaint was rejected. On appeal before the State Commission, the order of the District Forum was set aside and direction was issued to the respondent insurance company to pay to the appellant a sum of Rs.8,243/-. The insurance company thereafter went in revision before the National Consumer Redressal Commission which allowed the revision and set aside the order of the State Commission. Aggrieved, the appellant filed an appeal before this Court. On May 10, 1995 this Court allowed the appeal with costs which was quantified at Rs.20,000/-. Despite the order of this Court, the payment was not made with the result the appellant had to take further proceedings. While the said litigation was going on, appellants policy fell due for renewal. Under such circumstances, the appellant on 24.1.1996, sent a letter along with a cheque of Rs.1,796/- to the respondent insurance company requesting for renewal of his existing mediclaim policy. On 7.3.1996, the insurance company declined to renew the mediclaim policy as per the advice of the competent authority of the company. Under the aforesaid circumstances, the

appellant filed a writ petition under Article 226 of the Constitution before the Calcutta High Court challenging the order passed by the respondent insurance company refusing to renew the mediclaim policy. The said writ petition was allowed and the order refusing to renew the policy was set aside and a direction was issued to the insurance company to renew the mediclaim policy earlier taken out by the appellant. Aggrieved, the respondent insurance company filed an appeal against the judgment of learned Single Judge. The Division Bench of the Calcutta High Court while agreeing with the view taken by the learned Single Judge substantially dismissed the appeal. Yet, the High Court directed the appellant to take fresh mediclaim policy, as the renewal of mediclaim policy cannot be granted with retrospective effect, as the period for which renewal was required has already expired. It is against the said part of the order the appellant has preferred this appeal.

The appellant, Biman Krishna Bose, has appeared in person. He argued that the High Court even after setting aside the order refusing to renew the policy, was not justified in directing the appellant to take fresh mediclaim policy. According to the appellant, by the said order of the High Court he has been placed at a great disadvantageous position. The appellant referred to the exclusion clause of the policy taken out by him. Relevant clauses 2.1 and 2.1.14 of the mediclaim policy run as under:

2.1 The Company shall not be liable to make any payment under this policy in respect of any expenses whatsoever incurred by any Insured Person in connect with or in respect of: -

2.1.14 All diseases/injuries which are pre-

existing when the cover incepts for the first time.

On the strength of the exclusion clause, the appellant urged that in case the appellant is required to take fresh mediclaim policy, all the diseases which have surfaced during the period the policy was not renewed shall be treated as pre-existing diseases and the same would neither be covered by the fresh policy nor he will be paid the money which he has incurred for treatment of the said diseases during the relevant time and, therefore, the order of the High Court be set aside. We find substance in the argument.

Under Section 9 of the General Insurance Business (Nationalisation) Act, 1972 (hereinafter referred to as the Act), General Insurance Corporation of India (in short GIC) was set up as a government company for the purpose of superintendence, control and carrying out the business of general insurance in the country. Under Section 24 of the Act, the acquiring companies were given the exclusive privilege to carry on general insurance business in India. Under Section 3 (a) of the Act, an acquiring company has been defined to mean any Indian Insurance Company in which any other company has been merged in pursuance to the amalgamation scheme formulated under the Act. The respondent insurance company is one of such acquiring company. A perusal of the provisions of the Act makes it evident that it is only the acquiring companies which have exclusive privilege of carrying on the general insurance business in India, under the supervision and control of General Insurance Corporation of India. Excepting the acquiring companies no other company in private sector has a right and privilege to carry on general insurance business in India and to that extent the acquiring companies have a monopoly over such business. In such a situation, acquiring companies

have the trappings of the State being other authorities under Article 12 of the Constitution of India. The acquiring companies thus being the State under Article 12 of the Constitution are expected to act fairly and reasonably. In the present case, what we find is that the respondent insurance company refused to renew the insurance policy of the appellant on the ground of his past conduct. The past conduct attributed is that the appellant had gone in litigation for payment of his claim lodged by him with the respondent insurance company. If an insured lodges a claim with the company and the company does not honor the claim, the insured is left with no alternative but to knock the doors of court of law. Merely because the appellant had approached the Consumer Forum and this Court for redressal of his grievance, can such an act be attributed as bad record as to dis-entitle the appellant to get his policy renewed. The answer is no. Where an insurance company under the provisions of the Act having assumed monopoly in the business of general insurance in the country and thus acquired the trappings of the State being other authorities under Article 12 of the Constitution, it requires to satisfy the requirement of reasonableness and fairness while dealing with the customers. Even, in an area of contractual relations, the State and its instrumentalities are enjoined with the obligations 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 to 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.

Coming to the next question whether the appellants policy was required to be renewed with effect from the date when it fell due for renewal. The view taken by the High Court is that an insurance policy cannot be renewed for the period which has already expired. It is not disputed that original mediclaim policy taken out by the appellant provided for its renewal. It is also not disputed that the appellant applied for renewal of the insurance policy well in time and sent a cheque towards its premium. The respondent company has not challenged the order of the High Court setting aside the order refusing to renew the mediclaim policy of the insured. Under such facts and circumstances of the case, whether the appellant can be directed to take a fresh mediclaim policy on the premise that no renewal of the policy can be ordered for the expired period.

A renewal of an insurance policy means repetition of the original policy. When renewed, the policy is extended and the renewed policy in the 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 mediclaim policy of an insured on extraneous and irrelevant consideration, any disease which an insured had contacted during the period when the policy was not renewed, such decease 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 mediclaim 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 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.

Learned counsel appearing for the insurance company argued that since the appellant has not deposited the premium for subsequent years, the policy cannot be renewed with retrospective effect. It is not disputed that the appellant sent a cheque for Rs.1,796/- towards premium but the same was returned to the appellant. Thereafter, the parties had been litigating and respondent insurance company stopped having any correspondence with the appellant. Therefore, there arose no occasion for the appellant to deposit the premium. We accordingly reject the argument of the learned counsel for the respondent.

For the aforesaid reasons, we are of the view that the High Court committed error in directing the appellant to take fresh medicalim policy even after setting aside the order of refusal to renew the mediclaim policy by the insurance company. The order passed by the High Court to that extent is not sustainable in law. We, therefore, set aside the order of the High Court to the extent it directed the appellant to take a fresh mediclaim policy. We, further direct that if the appellant applies for renewal of his mediclaim policy for the expired period and pays the premium, the respondent company shall renew the said mediclaim policy forthwith.

The appeal is allowed with costs, which we quantify at Rs. 5,000/-.

J.

(V.N. Khare) J.

(Shivaraj V. Patil) New Delhi, August 2, 2001.