Ashwini V

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2839 OF 2021

RITA KIRIT JOSHI,
3, Mihir, Patel Estate, Opp. Unichem Laboratories, Jogeshwari (West), Mumbai 400 102. ...PETITIONER

~ VERSUS ~

1. **NEW INDIA ASSURANCE COMPANY,**
Having its Head Office at 87, M.G. Road, Mumbai 400 001 & Also Registered Office at Dadar Divisional Office – II 14200, 'B' Ratan Central, 1st Floor, Plot – CS 777/778, Dr Babasaheb Ambedkar Road, Parel (East), Mumbai 400 012.
Email : nia.14200@newindia.co.in

2. **M.D. INDIA HEALTH INSURANCE,**
TPA Pvt Ltd, Mumbai Branch, Mezzanine Floor, Ballard House, Adi Marzban Path, Ballard Estate, CTS No. 1185, Fort, Mumbai 400 001 & at S.No. 46/1, E – Space, A-2 Building, 3rd Floor, Pune – Nagar

Road, Vadgaonsheri, Pune 411 014.

3. **THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA,**
Mumbai Regional Office, Royal Insurance Bldg., 12, J. Tata Road, Ground Floor, Mumbai 400 020. **...RESPONDENTS**

APPEARANCES

FOR THE PETITIONER	**Mr Ashok Shetty**, *with Swapnil P Kamble.*
FOR RESPONDENT NO.1	**Mr DS Joshi.**
FOR RESPONDENT NO. 3	**Ms Komal B Shah**, *i/b Bhave & Co.*

CORAM : G.S.Patel &
Neela Gokhale, JJ.

RESERVED ON : 10th February 2023

PRONOUNCED ON : 1st March 2023

JUDGMENT (*Per Neela Gokhale J*):-

1. **Rule**. Rule made returnable forthwith. Heard the Writ Petition finally on merits with the consent of the Learned counsel appearing for the Petitioner and the Respondent Nos. 1 and 3. Though served, Respondent No. 2 is absent.

2. The present petition under Article 226 of the Constitution of India seeks a declaration that under Clause No. 3.11 of a particular

insurance policy, the Petitioner is entitled to a recovery of all the expenses she incurred for the treatment of her new-born twin babies. She seeks a mandamus to the Respondent No. 1 insurance company to disburse the amounts of her claim. The prayers in the amended writ petition read thus:

> "A. That this Hon'ble Court be pleased to issue a writ of Mandamus or Certiorari or any other appropriate writ, order or direction in the nature of a writ of Mandamus or Certiorari or any appropriate writ, order or direction under Articles 226 r/w Articles 14 & 21 of the Constitution of India, to hold and declare that under Clause 3.11 of the Mediclaim policies bearing Nos.: 14220034179500003932 & 142200341778000676, the Petitioner would be entitled to all the expenses incurred by her for the treatment of her new born twin babies in terms of her claims amounting to Rs. 11,05,593/-; AND may further be pleased to quash and set aside the impugned communication dated Nil (which is at EXHIBIT - "H" to the petition) and the rejection / non acceptance of her claims under her Mediclaim Policies; AND further direct the Respondent No. 1 to reimburse the total expenses/claims submitted by the Petitioner for treatment of her twin babies under the Mediclaim policies bearing Nos.: 14220034179500003932 & 14220034177800 00676 amounting to Rs.11,05,593/- along with interest @ 18% from the date of refusal i.e. December–2018 till the date of actual payment to the Petitioner."

3. FACTUAL MATRIX

A) In 2007, the Petitioner took Mediclaim Policies Nos. 14220034179500003932 and 14220034177800003932

for Rs. 20 Lakhs from the Respondent No. 1 in the year 2007. These policies were renewed periodically. The Petitioner regularly paid the premia.

B) On 3rd September 2018, the Petitioner delivered twin baby boys at 30 weeks' gestation in an Emergency Lower Segment Caesarean Section (LSCS). Since the babies were premature, they had to be admitted to the Neo Natal Intensive Care Unit (NICU) at Surya Hospital for life-saving treatment. After their discharge from the hospital, the Petitioner submitted a claim to the 1st Respondent under the insurance policies claiming the expenses she had incurred at the NICU for the twins. For Twin Baby 1, the claim was Rs. 5,55,378/-. For Twin Baby 2, it was Rs. 5,52,565/-. The aggregate claim was Rs. 11,05,953/-.

C) Vide its undated letter, a copy of which is at Exhibit "H" to the Petition, the Respondent No.1 repudiated the Petitioner's claim, citing Clause 3.11 of the policy document. As regards Twin Baby 1, the 1st Respondent said that *firstly*, any 'expenses incurred towards post-natal care, pre-term or pre-mature care or any such expense incurred in connection with delivery of such New Born Baby would not be covered, and, *secondly,* a

Congenital Eternal Anomaly of the New Born Baby was also not covered under the policy. As regards Twin Baby 2, there was no immediate communication. However, it was later conveyed that the claim for Twin Baby 2 also stood repudiated on identical grounds.

D) Thereafter, the Petitioner and her father-in-law repeatedly made enquiries with the Respondent No.1. They requested the Respondent No.1 to reconsider its interpretation of Clause 3.11 of the policy. However, the Company refused to alter its decision and the Petitioner was told that since it was a term of the policy, nothing could be done in the matter, which should be considered as closed. The Petitioner was suffering from post-partum depression, not unusual after delivery. and was also on a break from her profession as a legal practitioner. She has also suffered great financial difficulties on account of the expenses of medical treatment, especially since the Respondent No.1 company refused to settle her legitimate claims. The very purpose for which she had taken out the said insurance policy was defeated by the repudiation of her claims by the insurer.

E) The submission by Mr Shetty on behalf of the Petitioner is that having regularly paid the premium on the policy and having renewed it from time to time, the impugned repudiation, especially on such flimsy, restrictive, unilateral, untenable, incorrect and facially arbitrary exclusions by the Respondent No.1 company violates the fundamental rights under Articles 14 and 21 of the Constitution of India, not only of the Petitioner but also of her new born babies. Hence this Writ Petition.

F) The Respondent No.1 appeared in the proceedings and filed its reply. Both parties filed various affidavits from time to time and also relied on various documents. The Petitioner filed affidavits dated 16th March 2021, 10th January 2022, 29th January 2022, 25th April 2022 and additional documents dated 5th January 2023. Per contra, the Respondent No.1 filed affidavits dated 10th March 2021, 7th January 2022, 27th January 2022, additional documents dated 18th January 2022, and, finally, an additional affidavit dated 20th July 2022.

G) Thereafter the rival parties made detailed submissions. Vide order dated 10th February 2023, the parties were given liberty to file brief written submissions by 17th

February 2023. Accordingly, the Petitioner and the Respondent No.1 have filed their respective written submissions.

4. SUBMISSIONS OF THE PETITIONER:

A) Appearing for the Petitioner, Mr Ashok Shetty contended that any clause in a Mediclaim policy has to withstand the test of reasonableness, fairness, non-arbitrariness and non-discrimination. It is a contract of the utmost good faith, a contract *uberrimae fidei*. Therefore, *ex hypothesi*, it cannot contain restrictive or unconscionable clauses that are opposed to public policy.

B) On facts, he pointed out that the exclusion clause did not exist when the Petitioner purchased the insurance policies. Even upon renewal, the Petitioner was not informed about the same.

C) He submitted that Clause 3.11 was hit by the *Contra Proferentum rule*: being ambiguous, it had to be interpreted in favour of the insured.

D) Mr Shetty also laid emphasis on the IRDAI guidelines which are binding on the Respondent No.1. These have

defined 'New Born Baby' to mean a baby born during the policy period and up to 90 days in age. He drew our attention to Clauses 3(2) and 4(1), and to Chapter III, Regulations 11(c) and 13 of the IRDAI Notification, and to the Master Circular dated 29th July 2016, also issued by IRDAI, followed by its clarification circulars dated 22nd July 2020 and 12th October 2022.

E) He submitted that the Circular dated 12th October 2022 clearly mentions that all insurance products which cover newborn/unborn must comply with the above referred provisions without any deviation and provide coverage from day one without imposing any waiting periods/sub-limits or any other restrictive conditions.

F) Mr Shetty relied upon the fact that corporate group insurance policies have no clause similar or akin to Clause 3.11, but the insured still get benefits for premature new-born babies, a fact not disputed by the Respondent. Thus, he contended, there is clear discrimination and manifest arbitrariness within the meaning of Article 14 of the Constitution of India. There was no rational classification, nor intelligible differentia between new-born and premature babies.

G) He also submitted that the repudiation of the claim and the policy was also contrary to IRDAI guidelines, which have the force of law.

H) Resultantly, there was also a violation of Article 21 of the Constitution of India.

I) The Petitioner also relied upon various judgments of the apex courts in support of her case.

J) The Petitioner thus contended that the repudiation of the claim by the Respondent No.1 Company is unlawful and arbitrary and sought relief as prayed in the petition.

5. SUBMISSIONS OF THE RESPONDENT:

A) Shri Joshi on behalf of Respondent No.1 submitted that the dispute raised in the Writ Petition regarding repudiation of claim of the petitioner lodged under Mediclaim Policy is purely contractual in nature and the Respondent No.1, though a public sector insurance company cannot be regarded as 'State' within the meaning of Article 12 of the Constitution of India since the dispute does not relate to statutory or governmental function carried out by the Respondent No.1. It was thus argued that the Petitioner has equally efficacious

and alternate remedy in contractual law and hence the writ petition is not maintainable.

B) The second ground justifying the repudiation raised by the Respondent No.1 was that the bare reading of Clause 3.11 clearly indicated that no claim was admissible for post-natal care and as per the policy terms and conditions, pre and post-natal expenses are not payable. It was further canvassed that the terms of the insurance policy are required to be read as it is without any addition or subtraction from them.

C) The Respondent No.1 filed an additional affidavit dated 27th January 2022 in pursuance of Order dated 18th January 2022, permitting the Respondent No.1 to place on record an affidavit annexing opinion of three medical practitioners. All the three doctors consulted by the Respondent No.1 have opined that the complications in the new-born babies were developed due to their premature birth and the said complications would usually not occur in baby born full term. The Respondent No.1 in its written submissions have also relied upon expert opinion of Dr Salama Rayani Khan, a Medico Legal Expert. She has opined that the sentence in clause 3.11 of the policy regarding coverage

and exclusion have to be read together for interpretation and cannot read in isolation. She has also opined that had this case not been a case of pre-term birth and instead a normal or caesarean delivery at full-term, the rest of the complications mentioned in the discharge summary would not have occurred and hence the claim does not come within the purview of the policy terms and conditions.

D) It was also contended on behalf of the Respondent No.1 that the New India Mediclaim 2012 policy terms were revised by the Respondent No. 1 in the year 2017 and all the existing policy holders were intimated of the same by separate letters through RPAD. However, the letter purported to have been issued to the petitioner is not placed on record. We were told that this was because, considering the high volume of issuance of such letters, it was practically difficult for the Insurance Company to retain office copies of the same. The Respondent No.1 sought to rely upon one such letter issued by it to another policy holder, which has no connection with the present Petitioner.

E) In a separate affidavit, it has been stated by the Respondent that coverage for new born babies was

introduced for the first time in the year in which the twins of the Petitioner were born and the benefit was extended to all policy holders in the said year, without payment of additional premium and for subsequent years, the coverage was extendable subject to payment of additional premium by including names of new born babies in the policy.

F) The Respondent No.1, vide its written submissions has also contested the value of the policy. It is its submission that the original policy covered the risk to the limited extent of Rs. One Lakh only. The Respondent No.1 has contested the claim of the Petitioner regarding the benefits available under the original policy stating that the top-up policy was issued by collecting premium only for the Petitioner and her husband whereas the new coverage was introduced for new-born babies without additional premium in the original policy. It is the contention of the Respondent No.1 that the policy terms attached with the top-up policy does not include the coverage for the new-born babies.

G) Thus, the Respondent No.1 company defended the repudiation of the claim and reiterated that the terms

and conditions being contractual, the writ petition was not maintainable and hence this Court, in the exercise of its extra ordinary writ jurisdiction, may not interfere with the same.

6. ANALYSIS

A) Maintainability of the petition

(i) Turning first to the issue of maintainability, the submission on behalf of the Respondent No.1 that the writ court will *normally* not entertain contractual disputes is doubtless correct. However, the question in the present matter is not one of the jurisdiction of the Court, but of whether the discretionary power under Article 226 of the Constitution ought to be exercised in the particular case.

(ii) The question was considered in some detail in *Life Insurance Corporation of India & Ors v Asha Goel & Anr*[1]. This Court had allowed a writ petition against the appellant. The insurance company contended that the writ court ought not to have entertained a contractual dispute. The Supreme Court held as follows:

---

1 (2001) 2 SCC 160.

"10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetters on the exercise of the extra ordinary jurisdiction. It is left to the discretion of the High Court. Therefore, ***it cannot be laid down as a general proposition of law that in no case the High court can entertain a writ petition under Article 225 of the Constitution to enforce a claim under a life insurance policy.*** *It is neither possible not proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition.* ***The determination of the question depends on consideration of several factors like, whether a writ petition is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues, the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case*****…..** *The courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceedings*

under Article 226 of the Constitution, is not the appropriate forum…

11. *The position that emerges from the discussion in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under the contract if insurance.* ***Where an insurer has repudiated the claim, in case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insures is refused relief merely on the ground that the claim related to contractual rights and obligations and he/she is driven to a long-drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact-situation of the case should be carefully weighed and appropriate decision should be taken.*** *In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a*

> *bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution.* ***Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised, then a writ petition is not an appropriate remedy."***

(Emphasis supplied)

(iii) In *Biman Krishna Bose v United India Insurance Co. Ltd,*[2] the Supreme Court held that insurance companies acquiring the trappings of the "State" as other authorities under Article 12 of the Constitution, and ought to act reasonably and fairly while dealing with customers. This judgment makes it clear that the actions of insurance companies can be tested in writ proceedings, and set aside, if found to be arbitrary.

(iv) In the present matter, the relief sought by the petitioner does not merely arise out of the contract of insurance. It is more a question of an interpretation of Clause 3.11 of the policy. The facts in the present case are not in serious dispute. The issuance of the policy, renewal of

---

2 (2001) 6 SCC 477.

the policy, regular payment of premiums or disclosure of relevant details by the insured are all not contentious.

(v) The nature of the dispute in the present case only raises an interpretation of the relevant clause. Neither a fact-finding exercise nor an inquiry are required to determine the factual matrix in the present case. Moreover, the Petitioner is not merely trying to enforce her contractual rights but has sought a direction to the Insurance company to act in aid of the terms and conditions of its policy.

(vi) Thus, applying the principles laid down in the above cited judgments, we are of the view that the writ petition cannot be dismissed on the grounds of maintainability. The petition has been filed to challenge the decision of a 'State' instrumentality as arbitrary, and the Petition can be decided in accordance with the principles which govern exercise of jurisdiction under Article 226 of the Constitution. We hold that the Petition is maintainable.

B) *<u>On Merits:</u>*

(i) The principal bone of contention between the rival parties is the interpretation of Clause 3.11 of the policy. Clause 3.11 reads as thus:

> "3.11 **DAY ONE BABY COVER**
>
> A New Born Baby is covered for any Illness or Injury from the date of birth till the expiry of this Policy, within the terms of this Policy. Any expense incurred towards post natal care, pre-term or pre-mature care or any such expense incurred in connection with delivery of such New Born Baby would not be covered.
>
> Congenital External Anomaly of the New Born Baby is covered only after 36 months Waiting Period. Waiting Period for Congenital Internal Disease would not apply to a New Born Baby during the year of Birth and also subsequent renewals, if Premium is paid for such New Born Baby and the renewals are effected before or within thirty days of expiry of the Policy.
>
> Any Illness or Disease will be covered within the Sum Insured of the mother till the expiry of the Policy and No coverage for the New Born Baby would be available during subsequent renewals unless the child is declared for insurance and covered as an Insured Person.
>
> Note: New Born Baby means a baby born during the Policy Period to a female Insured Person, who has twenty-four months of Continuous Coverage with us."

(ii) It is relevant to note at this juncture that coverage for new born babies was introduced for the first time in the year in which the twins of the Petitioner were born and the benefit was extended to all policy holders in the said year, without payment of additional premium. For subsequent years, the coverage was extendable subject to payment of additional premium by including names of new born babies in the policy. Thus, it is undisputed that the new-born twins were also covered under the said policy, being born in the same year. For this reason, the contention of the Respondent No.1 that the top-up policy includes the names of the Petitioner and her spouse only and does not include the coverage for new-born baby is not relevant.

(iii) A bare reading of the entire policy document clearly reveals that the term 'new-born' has not been defined in the original policy document. However, clause 3.11 admittedly covers a new-born baby for ***any illness or injury.***

(iv) An argument is sought to be made between 'expenses relating to illness or injury to the new-

born' as distinct from 'expenses relating to post-natal care, pre-term or premature'. This is a distinction without a difference. None can explain what the distinction is. Post-natal care postulates a new-born. One born before term is a 'pre-term' or 'premature' baby. 'Care' includes tending to illness or injury. Thus, the only logical reading is that expenses relating to illness or injury is the same as expenses relating to post-natal care, pre-term or premature babies. The submissions needs noted only to be stated to be rejected.

(v) Further, the words 'illness' and 'injury' are not exhaustive. The injury can be on account of the baby being born premature or pre-term. It is impossible to accept such a distinction in order to justify the repudiation. The further distinction between a 'new-born' and a 'premature baby' or a baby born 'pre-term' is also baseless as a new-born baby can be one which is born 'full term' or 'pre-term'. A full-term baby does not become more 'newer' any more than a 'pre-term' baby becomes an 'earlier born' or, to make it even more pointed, 'old

born'. The approach is unreasonable, unjust and contrary to the fundamental utmost good-faith ethic of an insurance policy. These submissions are the sheerest casuistry. They cannot be allowed to succeed.

(vi) The Petitioner has also placed on record a circular dated 22nd July 2020, issued by the regulator of the Respondent No.1 and other insurance companies namely the Insurance Regulatory and Development Authority of India, the Respondent No.3 herein. The said circular is the master Circular on Standardization of health Insurance Products. Clause 29 of the said circular defines the term 'new-born baby' to mean 'baby born during the policy period and is aged up to 90 days.' Thus the new-born twin babies of the petitioner are clearly included in the definition of the said clause.

(vii) The Petitioner has further placed on record another circular dated 12th October 2022 issued by the IRDAI, containing instructions to CEO's/CMD's of All Insurance Companies

(except ECGC and AIC). The said circular further issues a clarification to all concerned and which settles the issue once and for all. The instructions contained in the said circular read as thus:

"To

CEOS/CMDs of All Insurance Companies (except ECGC and AIC)

Re: Insurance cover for new-borns/infants under health insurance policies :

1. Reference is invited to the Clause (1) of Chapter -II on 'exclusions not allowed under health insurance policies' issued vide Master circular on Standardisation in Health insurance Business dated 22nd July 2022 wherein it has been mandated that internal congenital diseases, genetic diseases or disorders are not allowed to be incorporated as exclusions in the terms and conditions of the policy contract. The intent of the above provision is to cover newborns with internal congenital birth defects from day one (1).

2. However, it is observed that many health insurance products that are marketed by insurers are not providing cover to newborns/infants with internal congenital birth defects from day one(1) thus going

against the true spirit of the above referred clause.

3. In view of the above, it is reiterated that all insurance products that cover newborns/unborns shall comply with the above referred provisions without any deviation and provide, coverage from day one (1) without imposing any waiting periods/sub-limits or any other restrictive conditions.

4. These instructions shall come into force with immediate effect.

(YEGNA PRIYA BHARATH)

CHIEF GENERAL MANAGER"

(viii) The aforesaid instructions to insurers are specifically intended to cover new-borns/infants with internal congenital birth defects from day one. The further directions clearly mandate all insurers to comply with the said directions without any deviations and provide coverage from day one without imposing any waiting periods/sub-limits or any other restrictive conditions. The regulator therefore has sought to remind the insurers the true spirit of the clause.

(ix) It has been argued that the instructions in the circular dated 12th October 2022 come into force prospectively. This argument must also be rejected. The IRDAI has been prompted to issue the directions in the circular for the sole reason that it was observed by the regulatory authority that various insurers were repudiating the claims on the pretext of the so called 'exclusions' in the policy document and hence the regulatory authority was compelled to issue the said directions. Thus, it stands to reason that the directions have been issued to rectify the arbitrary refusal of claims. Hence, the same obviously applies to past refusals on the grounds as mentioned in the circular.

(x) The peripheral reliance by the Respondent No.1 on the opinion of the three medical practitioners is not relevant in the present context, since we have already held that 'new-born baby' includes a pre-term/premature born baby. For this reason also, the opinion of Dr Salama Rayani Khan, the Medico Legal Expert is not relevant. Since the illness/injury to the

new born, arising on account of the timing of their birth is irrelevant.

7. For the reasons stated hereinabove, we are of the view that the impugned communication, dated Nil, issued by the Respondent, conveying the rejection of the claim of the Petitioner is contrary to law, unreasonable and arbitrary, and liable to be set aside.

8. The writ petition is therefore allowed. Accordingly, Rule is made absolute in terms of prayer clause A. The impugned communication is set aside. The Respondent is directed to honour the Petitioner's claims arising out of the Insurance Policy Nos. 14220034179500003932 & 14220034177800003932 to the extent of the collective claim/s of Rs.11,05,593/- and pay the said amount to her along with simple interest at 9 per cent per annum, from the date of claim till the said amount is actually paid to her.

9. Lastly, we must note that it has taken the Petitioner, a young mother and a professional, considerable trials and tribulations and the roller coaster litigation process to bring the matter to its logical conclusion. The aim of reposing faith in the insurance company, is pre-eminently to guard/provide against dangers which beset human life and dealings, by agreeing to pay the consideration in the form of premiums, as per the terms of the policy. The Petitioner mother had not even had the time to revel in the birth of her twin babies and nurse them to health, when she faced the rude shock of rejection of her legitimate claim/s by the Insurance company. The Insurance

Company, on the other hand appears to have stuck to its dogged determination in refusing to honour the claim and even refusing to act in aid of the directions issued by its own Regulating authority.

10. The Respondent No. 1 cannot be permitted to play fast and loose with the faith reposed by the insured, and that too, supported by regular renewals and payments of premium, by attempting to interpret clauses in its policies, contrary to their true spirit and only with a view to avoid honouring claims. Hence, we deem it fit and proper, in the interests of justice, to direct the Respondent No.1 to pay an amount of Rs. 5 Lakhs as costs of litigation, prompted in addition by its defiance in obeying the directives of its own Regulator.

11. All amounts are to be paid out in full within four weeks from today.

12. The Petition is disposed of in these terms.

13. All concerned will act on production of an authenticated copy.

(Neela Gokhale, J) **(G. S. Patel, J)**