

Neutral Citation No. - 2023:AHC-LKO:81721-DB

[Reserved]

[A.F.R.]

Court No. - 3

Case :- WRIT - C No. - 9686 of 2007

Petitioner :- Anuj Kudesia

Respondent :- Life Insurance Corp And 5 Ors.

Counsel for Petitioner :- Anil Kumar Tiwari, Apoorva Tewari, Prashant Puri

Counsel for Respondent :- P.K. Khare, Mahendra Pratap Singh, Mohd. Altaf Mansoor

Hon'ble Vivek Chaudhary, J.

Hon'ble Manish Kumar, J.

1. Heard Sri Apoorva Tewari, learned counsel for the petitioner, Sri Mahendra Pratap Singh, learned counsel for respondents nos. 1 to 4 and Sri Tarun Chaudhary, Advocate, holding brief of Sri Mohd. Altaf Mansoor, learned counsel for respondents nos. 5 and 6.
2. Present petition has been filed challenging the order dated 27.07.2006 passed by respondent No. 4 and order dated 17.08.2006 passed by respondent No. 3, whereby petitioner's claims for the insured amount and disability benefits have been rejected.
3. Brief facts of the case are that the petitioner, a practising advocate, purchased four insurance policies with same terms and conditions on various dates for an assured sum totalling Rs. 4,10,000 from opposite party No. 1, Life Insurance Corporation of India (for brevity hereinafter referred to as 'Corporation'). Clause 10.2 (a) of the terms of which stipulates waiver of future premiums and payment of monthly installments as disability benefits to the assured, in addition to the assured sum, in case, the insured person is involved in an accident and suffers from a permanent disability as defined under clause 10.4 of the terms and conditions of the policy. On 14.06.2006,

petitioner unfortunately met with an accident while driving his car resulting in amputation of his right arm from above his elbow. On 07.07.2006, Chief Medical Officer, Lucknow certified that the petitioner is suffering from 80% disability as defined under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Thereafter petitioner moved claim applications under clause 10.2(a) for disability benefits before the respective Branch Managers of the Corporation. By the impugned orders, petitioner's claim for disability benefits have been rejected. Petitioner is challenging the said orders in the present writ petition.

4. Sri Apoorva Tewari, learned counsel for the petitioner challenges the impugned orders on the ground that the amputation of the right hand of the petitioner from above the elbow is a permanent disability affecting earnings of the petitioner and therefore the petitioner is entitled to permanent disability claims as per clause 10.2 and defined under clause 10.4 of the terms of the insurance policies. The disabilities enumerated in second part of clause 10.4 as well as in the impugned orders are only examples and not an exhaustive list of disabilities for entitlement to disability benefits. He further submits that his case is covered under the first part of clause 10.4 of the policy. He submits Clause 10.4 entitles disability benefits to such policyholders who as a result of an accident suffer from a total and permanent disability and are unable to sufficiently perform their occupation or earn wages, compensation and profit. Petitioner being a practising advocate suffered a financially disadvantageous position due to his physical disability and has to make an extraordinary effort to attend Court proceedings and is unable to sufficiently perform his profession as earlier, hampering his professional commitment to his clients thereby affecting his earnings. Without his right hand, he is unable to hold and carry his files, handle books and briefs effectively and even requires constant help on dias of Court. He also needs to

[3]

keep a typist to prepare his petitions and other applications. Thus, in totality he is unable to conduct himself as sufficiently as his able-bodied peers on the dias while arguing a case. In support of his submission learned counsel relies upon the judgment of Supreme Court in the case of *Abhimanyu Pratap Singh vs. Namita Sekhon and Another; (2022) 8 SCC 489*. Counsel for the petitioner further submits that the clause relating to disability benefits is beneficial and therefore should be given a liberal and purposive interpretation. In support of his submission counsel for the petitioner places reliance upon a Division Bench Judgment of this Court in the case of *Udai Shankar Singh vs. Branch Manager, LIC ; 1998 (2) AWC 1419* and a reported judgment of the Calcutta High Court in the case of *Prabir Kumar Nath vs. LIC and others; AIR 2003 CAI 318*.

5. Sri Mahendra Pratap Singh, learned counsel for respondents nos. 1 to 4 supports the impugned orders and submits that disability claims of the petitioner are rightfully rejected as clause 10.4 of the terms and conditions of the insurance policies requires permanent disability resulting in irrecoverable loss of entire sight of both eyes or amputation of both hands at or above the wrists, or amputation of both feet at or above ankles, or amputation of one hand at or above the wrist and one foot at or above the ankle for entitlement to disability benefits. Since only the right hand of the petitioner is amputated after his unfortunate accident therefore he is not entitled to any disability benefits. Sri Tarun Chaudhary, Advocate, holding brief of Sri Mohd. Altaf Mansoor, learned counsel for respondents nos. 5 and 6 also supports the impugned orders and submits that there is no illegality in the same.
6. The entire controversy with regard to the entitlement of the petitioner for disability benefits rests upon the interpretation of clause 10.2(a) read with clause 10.4 of the terms and conditions of the insurance

policies. For reference clause 10.2(a) and clause 10.4 are reproduced below:

“10.2 Accident Benefit: *If at any time when the policy is in force for the full Sum Assured the life Assured, before the expiry of the period for which the premium is payable or before the Policy anniversary on which the age nearer the birthday of the Life Assured is 70, whichever is earlier, is involved in an accident resulting in either permanent disability as hereinafter defined or death and the same is proved to the satisfaction of the Corporation, the Corporation agree in the case of:*

(a) Disability to the Life Assured: *(i) To pay in monthly instalment spread over 10 years an additional sum equal to the Sum Assured under this Policy. If the Policy becomes a claim before the expiry of the said period of 10 years, the disability benefit instalments which have not fallen due will be paid along with the claim, (ii) to waive the payment of future premiums.*

The maximum aggregate limit of assurance under all the policies issued under Jeevan Sanchay Plan on the same life to which benefits (i) and (ii) above apply shall not in any event exceeds Rs. 5,00,000 if there be more policies than one and if the total assurance under Jeevan Sanchay Plan exceeds Rs. 5,00,000 the benefits shall apply to the first Rs. 5,00,000 sum assured in order of the date of the Policies issued.

The waiver of premiums shall extinguish all options under this Policy except as to such assurance, if any as exceeds the maximum aggregate limit of Rs 5,00,000 and which may have been kept in force by continued payment of premiums.”

“10.4 The disability above referred to must be a disability which is the result of an accident and must be total and permanent and such that there is neither then nor at any time there after any work, occupation or profession that the Life Assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit. Accidental injuries which independently of all other causes and within 180 days from the happening of such accident, result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists, or in the amputation of both feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above the ankle shall also be deemed to constitute such disability.” (emphasis supplied)

7. The sole ground for rejecting the disability claims of the petitioner is the interpretation given by respondents to clause 10.4, which as per respondents requires total disability to be necessarily resulting in the irrecoverable loss of entire sight of both eyes or amputation of both hands at or above the wrists, or amputation of both feet at or above ankles, or amputation of one hand at or above the wrist and one foot at or above the ankle, while, only one limb of the petitioner is amputated. A perusal of clause 10.4 of the policy shows that it has two parts. The first part explains total and permanent disability to mean such disabilities due to which the assured individual is unable to sufficiently perform his work, occupation, or profession and earn any wages, compensation, or profit as a result of an accident. Whereas the second part of clause 10.4 beginning with the words "*Accidental injuries which independently of all other causes*" enumerates a number of disabilities and ends with words "*shall also be deemed to constitute such disability*".
8. First part of clause 10.4 defines the total and permanent disability in terms of adverse impact on the earning of the assured due to a disability resulting from an accident. However, use of words "independently of all other causes" and "shall also be deemed to constitute" in second part of the said clause shows that the disabilities enumerated in the second part of clause 10.4 runs independently of all other causes contained in the terms and conditions of the policy and rather expands the scope of types of disabilities covered under policy including the first part. Therefore, the first part of Clause 10.4 is entirely separate from second part. The first part only talks about such total and permanent disabilities because of which "*neither then nor any time thereafter any work, occupation or profession that the life assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit.*" Thereafter, second part also includes such "*accidental injuries independent of all other causes* (including

above first part), *which result in irrecoverable loss.....shall also be deemed to constitute such disabilities.*" Therefore loss of both eyes, both hands, etc. included in the second part are not relevant for interpretation of the first part. In the present case, petitioner who is a practicing lawyer has his right hand amputated from above elbow which has seriously impacted his performance as a lawyer. He is, not at all, at par with any other lawyer as he is unable to handle his briefs, books, computer and any other necessary accessories/instruments for performing his duties as a lawyer properly. He finds huge challenge in addressing Court while performing at the dias due to his inability to handle his briefs, books, gadgets, etc. properly. Now after coming into force of e-court system, it has also become difficult for him to handle laptop or any other instruments at dias. The same has put him to great disadvantage viz-a-viz any other lawyer. The same also impacts any client's confidence in engaging him as lawyer, thus, his earning is definitely impacted in the above circumstances. Supreme Court has also held in the case of *Abhimanyu Pratap Singh (supra)* that physical challenge impacts earning capacity of an advocate since the profession is very demanding. Relevant paragraphs of the said judgment reads:

"21. Looking to the nature of injuries and the permanent disablement which the claimant has suffered i.e. lower limb is completely paralysed while his upper limb is partially paralysed having 100% permanent disability resulting in bodily movements being hampered. The capacity of the claimant being an advocate cannot be equated with other practising advocate having no deformity, in the same profession. The claimant is required to make extraordinary efforts to attend the proceedings in the court and to come up to the expectations of the client."

9. Learned counsel for the Corporation tried to argue that term used in the clause is "any wages, compensation or profit" and submits that since petitioner is able to earn some of his wages/compensation therefore, he cannot claim disability benefits. However, in the opinion

of this Court it would be too far-fetched an argument to make that petitioner should become a person earning only from hand to mouth to get the benefit of insurance policy. The term "any wages, compensation or profit" means ability to earn proper wages, compensation or profit as an able bodied person would do. A serious impact in the earnings would make a person entitled to the disability benefits as provided under insurance policies. The New Lexicon Webster's Dictionary defines "any" as an adjective meaning "one", "one or more", "some". Supreme Court in the case of **LDA v. M.K. Gupta, (1994) 1 SCC 243** has pondered upon the meaning of word 'any' and held that its meaning would depend upon the context in which it has been used. Relevant parts of paragraph 4 of the aforesaid judgment reads as follows-

"The word 'any' dictionaryly means 'one or some or all'. In Black's Law Dictionary it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute"."

10. Supreme Court has long held in a catena of judgments that construction of clauses of an insurance policy depends upon the reasons for entering thereinto and the risks which are being covered in the policy. Suffice would be to refer to the following judgments:

In the case of **Sangrur Sales Corpn. v. United India Insurance Co. Ltd., (2020) 16 SCC 292**, The Supreme Court emphasized that the construction which covers the risk should be adopted while interpreting an insurance policy, relevant paragraph of the said judgment reads:

"8. It is well settled that in the event that two constructions are possible or in the event of an ambiguity, that construction which is beneficial to the insured should be accepted consistent with the purpose for which the policy was taken, namely, to cover the risk on the happening of a certain event. (See in this context, the decision of this Court

in United India Insurance Co. Ltd. v. Pushpalaya Printers [United India Insurance Co. Ltd. v. Pushpalaya Printers, (2004) 3 SCC 694].)”

In the case of ***Peacock Plywood (P) Ltd. v. Oriental Insurance Co. Ltd., (2006) 12 SCC 673***, Supreme Court held that State-run insurance corporations are expected to act fairly and reasonably and in case of any ambiguity, the interpretation which is in favour of the insured should be adopted. Relevant paragraph of the said judgment reads:

“57. If the ship was stranded at Singapore and goods were offloaded from it, the appellant must be held to have discharged its burden. Findings of fact were arrived at by the learned Single Judge on the basis of the pleadings of the parties. If a clause of marine insurance policy covers a broad fact, in our opinion, it would be inequitable to deny the insured to raise a plea, particularly when the insurer being a State within the meaning of Article 12 of the Constitution of India is expected to act fairly and reasonably. The purport and object for which goods are insured must be given full effect. In a case of ambiguity, the construction of an insurance policy should be made in favour of the insured and not the insurer.”

A three Judges Bench of the Supreme Court in the case of ***Haris Marine Products v. Export Credit Guarantee Corporation (ECGC) Limited: 2022 SCC OnLine SC 509*** has held that interpretation which is in favour of the insured and covers the risk assured under the policy should be adopted. Relevant paragraph of the said judgment reads:

“27. While the court ultimately denied insurer's liability, it laid down the manner in which ambiguities were to be interpreted. Since then, a catena of judgments has upheld this approach. In United India Insurance Co. Ltd. v. Pushpalaya Printers¹⁹, a Division Bench of this Court was confronted with interpreting the term ‘impact’ in an insurance policy for protection against damage caused to the insured building. Interpreting the term to include damage caused by strong vibrations by heavy vehicles without ‘direct’ impact, this Court held:

“The only point that arises for consideration is whether the word “impact” contained in clause 5 of the insurance policy covers the damage caused to the building and machinery due to driving of the bulldozer on the road close to the

building... (It is also settled position in law that if there is any ambiguity or a term is capable of two possible interpretations, one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event... Where the words of a document are ambiguous, they shall be construed against the party who prepared the document. This rule applies to contracts of insurance and clause 5 of the insurance policy even after reading the entire policy in the present case should be construed against the insurer". (emphasis supplied).

A Constitution Bench of the Supreme Court in the case of ***General Assurance Society Ltd. v. Chandumull Jain; AIR 1966 SC 1644*** has held that terms of an insurance contract should be read against the insurance company in case there exists any ambiguity. Relevant portion of paragraph 11 of the said judgment reads:

“In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e. good faith on the part of the assured and the contract is likely to be construed contra proferentem that is against the company in case of ambiguity or doubt. ”

Supreme Court of Canada has in paragraphs 68 and 70 of its judgment in the case of ***Non-Marine Underwriters, Lloyds of London v. Scalera reported as [2000] 1 SCR 551*** held that the primary reason for seeking insurance coverage is to mitigate probable financial risks and therefore an insurance contract should be construed broadly and in favour of insured. Paragraph 68 and 70 of the said judgment reads:

“68 It is important to keep in mind the underlying economic rationale for insurance. C. Brown and J. Menezes, Insurance Law in Canada (2nd ed. 1991), state this point well at pp. 125-26:

Insurance is a mechanism for transferring fortuitous contingent risks. Losses that are neither fortuitous nor contingent cannot economically be transferred because the premium would have to be greater than the value of the subject matter in order to provide for marketing and adjusting costs and a profit for the insurer. It follows, therefore, that even where the literal working of a policy might appear to cover certain losses, it does not, in fact, do

[10]

so if (1) the loss is from the inherent nature of the subject matter being insured, or (2) it results from the intentional actions of the insured.

...

70 Since insurance contracts are essentially adhesionary, the standard practice is to construe ambiguities against the insurer: Brissette Estate v. Westbury Life Insurance Co., [1992] 3 S.C.R. 87, at p. 92; Wigle v. Allstate Insurance Co. of Canada (1984), 49 O.R. (2d) 101 (C.A.), per Cory J.A. A corollary of this principle is that “coverage provisions should be construed broadly and exclusion clauses narrowly”: Reid Crowther & Partners Ltd. v. Simcoe & Erie General Insurance Co., [1993] 1 S.C.R. 252, at p. 269; Indemnity Insurance Co. of North America v. Excel Cleaning Service, [1954] S.C.R. 169, at pp. 179-80, per Estey J. Therefore one must always be alert to the unequal bargaining power at work in insurance contracts, and interpret such policies accordingly.”

Supreme Court of the United Kingdom in the case of ***Woods v. Capita Insurance; [2017] UKSC 24*** has held that a commercial contract should not be strictly construed in a literal sense, contextual facts also play a vital role in the interpretation of a commercial contract. Relevant paragraph 10 and 13 of the same reads:

*“10. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. In *Prenn v Simmonds* [1971] 1 WLR 1381 (1383H-1385D) and in *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* [1976] 1 WLR 989 (997), Lord Wilberforce affirmed the potential relevance to the task of interpreting the parties' contract of the factual background known to the parties at or before the date of the contract, excluding evidence of the prior negotiations. When in his celebrated judgment in *Investors Compensation Scheme Ltd v West Bromwich Building Society* : [1998] 1 WLR 896 Lord Hoffmann (pp 912-913) reformulated the principles of contractual interpretation, some saw his second principle, which allowed consideration of the whole relevant factual*

[11]

background available to the parties at the time of the contract, as signalling a break with the past. But Lord Bingham in an extra-judicial writing, A new thing under the sun? The interpretation of contracts and the ICS decision Edin LR Vol 12, 374-390, persuasively demonstrated that the idea of the court putting itself in the shoes of the contracting parties had a long pedigree.

...

13. Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. The iterative process, of which Lord Mance spoke in Sigma Finance Corpn (above), assists the lawyer or judge to ascertain the objective meaning of disputed provisions.” (emphasis supplied)

11. Petitioner took insurance policy with the intention to secure himself financially in case he suffers from a physical disability and his earning takes a hit. The insurance policy itself undertakes to indemnify the petitioner in the form of disability benefits in case he suffers from total and permanent disability. Therefore any interpretation of indemnifying clauses has to be construed with regard to Insurance

[12]

Corporation's undertaking to indemnify the petitioner on occurrence of certain events. Therefore the words "any wages, compensation or profit" should be read in conjunction with the entire first part of clause 10.4 and would mean some adverse impact on earning capacity, not necessarily quantifiable, but enough to put assured in a financially disadvantageous position. The petitioner having suffered from amputation of his right arm can not perform his profession as efficiently as he was performing before his unfortunate accident. His performance is seriously impacted in handling his files, books, laptops, and other necessities required in the performance of his profession as a lawyer, not to mention the hesitancy of prospective litigators in hiring him due to his perceived disability. Comparing his current situation with his earlier situation as a person with disability it can be concluded that petitioner can not ever sufficiently do or follow his profession as an advocate, to earn his compensation, as he was doing before the accident. Therefore it can be concluded that his earning capacity has taken a sufficient hit after his accident.

12. In view thereof, the petitioner is held entitled to disability benefits. This petition is *allowed*. Impugned orders dated 27.07.2006 and 17.08.2006 are hereby quashed. Respondent Insurance Corporation is directed to pay disability benefits to the petitioner alongwith an interest of 8% p.a. from the date they are due, within 30 days of this order.

Order Date :-14.12.2023

Arti/-

[Manish Kumar,J.]

[Vivek Chaudhary,J.]