2024:DHC:3626

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 3rd MAY, 2024

IN THE MATTER OF:

\+ W.P.(C) 11799/2023, CM APPLs. 46061/2023, 59128/2023, 59129/2023, 8203/2024, 11271/2024, 11272/2024

GARIMA SINGH ..... Petitioner

Through: Dr. Amit George, Mr. Abraham Mathews and Mr. Adhishwar Suri, Advocates.

versus

NEW INDIA ASSURANCE CO LTD & ORS. ..... Respondents

Through: Mr. J.P.N. Shahi, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Petitioner has filed the present Writ Petition with the following prayers:

> "*a. Issue a Writ of Mandamus directing the Respondent No. 1 to comply with the Ombudsman award dated 13.01.2023 by paying the amounts due under the claim, as submitted by the Petitioner with regard to cancer treatment;*
>
> *b. Issue a Writ of Mandamus directing the Respondent No. 1 to settle the claims raised by the Petitioner periodically for continuing medical expenses.*
>
> *c. Issue a Writ of mandamus to the Respondent No. 2 to evolve a mechanism to punish insurance companies*

that do not strictly comply with awards of the insurance ombudsman;

d. Issue a Writ of Mandamus to modify the "Guidelines on Standardisation of Policy Exclusions in Health Insurance Contracts" [Circular No. IRDAI/HLT/REG/CIR/177/09/2019] to the extent that it permits the insurance companies to impose sub-limits with regard to cancer treatments;

e. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present application."

2. It is stated that the Petitioner purchased a medi-claim Policy from Respondent No.1 herein with a cover of Rs.15 Lakhs and over time, since the Petitioner did not make any claim the policy amount was increased to Rs.22.5 lakhs. It is stated that in 2015, the Petitioner purchased a top up policy of Rs.22 lakhs, thereby, increasing the total cover under the Policy to Rs.44.5 lakhs. It is stated that in 2021 the Petitioner was diagnosed with Stage-IV breast cancer, which, at present, has spread from the primary organ, i.e. breast, to lymph nodes and to both the lungs of the Petitioner. It is stated that the Petitioner is undergoing Chemo-immunotherapy for the treatment of the disease. It is stated that the Petitioner made a claim under the Insurance Policy and the same was denied by the Insurer on the ground that the claim made by the Petitioner exceeds the terms of the Policy inasmuch as a claim for treatment for giving Monoclonal Antibody injections, cannot exceed Rs.2 Lakhs.

3. Aggrieved by the said decision of the Insurer, the Petitioner filed a complaint to the Insurance Ombudsman claiming an amount of Rs.11 Lakhs

for the cost of treatment undergone by the Petitioner. The Insurance Ombudsman *vide* Order dated 13.01.2023, after considering the case, directed the Insurer to settle the claims of the Petitioner as a precious life is being saved by such medical treatment as needed and as advised by the Doctor. The Award passed by the Insurance Ombudsman reads as under:

> "*Considering the overall material facets and circumstances in the instant case, the insurance company is directed to settle the claims of the complainant, as submitted, as a precious human life is being saved by such medical treatment as needed and as advised by the doctor, as per terms and conditions of the policy.*
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> *Accordingly, the complaint is disposed off.*"

4. Since the award was not being complied with, the Petitioner has approached this Court by filing the present Writ Petition.

5. Counter affidavit has been filed by the Insurer wherein it is stated that as of now more than Rs.37 lakhs have been paid to the Petitioner. It is also stated in the counter affidavit that the award only directs the Insurance Company to pay the amounts as per the terms and conditions of the Policy and the terms and conditions of the Policy specifically stipulates that for immunotherapy - Monoclonal Antibody to be given as injection, the maximum amount that can be paid is only Rs.2 lakhs.

6. Learned Counsel for the Petitioner states that it is the obligation of the Insurance Company to accept the award. He states that the Insurance Company has not challenged the award and, therefore, they are bound to comply with the award in letter and spirit. Learned Counsel for the Petitioner also states that the Petitioner is undergoing Chemo-

immunotherapy and the sub limit which is stipulated in the Insurance Policy is only for immunotherapy and had it been the case of the Insurance Company that Chemo-immunotherapy is also covered under the sub limit, the same would have been mentioned in the Insurance Policy. He also states that even if there is an ambiguity, the principle of *contra proferentem* would be applicable and the benefit of the claim would go in favour of the Petitioner.

7. *Per contra*, learned Counsel appearing for the Respondent states that the award of claim has already been paid by the Insurance Company and the claim which is now raised by the Petitioner cannot be accepted inasmuch as what the Petitioner is actually taking is Monoclonal Antibody as injections and the same falls within Clause 3.10.5 of the Policy document which prescribes a limit of Rs.2 lakhs, which the Insurance Company has paid to the Petitioner and, therefore, the Insurance Company has complied with the award passed by the Ombudsman.

8. Heard the learned Counsels for the parties and perused the material on record.

9. The facts are undisputed. The Petitioner has made a claim under the Insurance Policy taken by the Petitioner. The insurance coverage of the Petitioner is of 44.5 lakhs. The Petitioner is a cancer patient and the cancer is at an advanced stage. The Petitioner is undergoing Chemo-immunotherapy treatment.

10. At this juncture, it is apt to quote Clause 3.10 and more particularly Clause 3.10.5 and the same reads as under:

> "*3.10 COVERAGE FOR MODERN TREATMENTS OR PROCEDURES: The following procedures will be*

covered (wherever medically indicated) either as in patient or as part of day care treatment in a Hospital up to the limit specified against each procedure during the policy period.

S. No.	*Treatment or Procedure*	*Limit (Per Policy Period)*
……	……	……
3.10.5	*Immunotherapy-Monoclonal Antibody to be given as injection.*	*Upto 25% of Sum Insured subject to Maximum Rs 2 Lakh.*
…..	…..	……

11. The Petitioner is undergoing Chemo-immunotherapy treatment and not Immunotherapy. The literature submitted by the Petitioner shows that Chemo-Immunotherapy is an emergent treatment option for cancer patients and is different from Immunotherapy as it is a combination of Chemotherapy and Immunotherapy. It is, therefore, clear that Chemo-Immunotherapy and Immunotherapy are two different types of treatments.

12. A perusal of Clause 3.10.5 shows that only in case of claims of Immunotherapy - Monoclonal Antibody to be given as injection, the maximum limit of Rs.2 lakhs would be applicable.

13. As rightly stated by the learned Counsel for the Petitioner, the principle of *contra proferentem* would be attracted in this case because there is an ambiguity in the Policy Document as it prescribes limit only for Immunotherapy Monoclonal Antibody to be given as injection and not for Chemo-immunotherapy.

14. The Apex Court in Sushilaben Indravadan Gandhi (supra), while

explaining the concept of *contra proferentem* has held as under:

> "*37. Even otherwise, it is well-settled that exemption of liability clauses in insurance contracts are to be construed in the case of ambiguity contra proferentem. Thus, in General Assurance Society Ltd. v. Chandumull Jain [General Assurance Society Ltd. v. Chandumull Jain, (1966) 3 SCR 500 : AIR 1966 SC 1644] , this Court held : (SCR p. 509 : AIR pp. 1648-49, para 11)*
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> > *"11. A contract of insurance is a species of commercial transactions and there is a well-established commercial practice to send cover notes even prior to the completion of a proper proposal or while the proposal is being considered or a policy is in preparation for delivery…. 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."*
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> *38. This judgment in Chandumull Jain [General Assurance Society Ltd. v. Chandumull Jain, (1966) 3 SCR 500 : AIR 1966 SC 1644] has been cited with approval in United India Insurance Co. Ltd. v. Pushpalaya Printers [United India Insurance Co. Ltd. v. Pushpalaya Printers, (2004) 3 SCC 694] as follows : (SCC pp. 698-99, para 6)*
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> > *"6. 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 evident from the terms of the insurance policy that the property was insured as against destruction or damage to whole or part. The appellant Company agreed to pay towards destruction or damage to the property insured to the extent of its liability on account of various happenings. In the present case both the parties relied on Clause 5 of the insurance policy. Clause 5 is also subject to exclusions contained in the insurance policy. That a damage caused to the building or machinery on account of driving of vehicle on the road close to the building is not excluded. Clause 5 speaks of "impact" by any rail/road vehicle or animal. If the appellant Company wanted to exclude any damage or destruction caused on account of driving of vehicle on the road close to the building, it could have expressly excluded it. The insured possibly did not understand and expect that the destruction and damage to the building and machinery is confined only to a direct collision by vehicle moving on the road with the building or machinery. In the ordinary course, the question of a vehicle directly dashing into the building or the machinery inside the building does not arise. Further, "impact" by road vehicle found in the company of other words in the same Clause 5 normally indicates that damage caused to the building on account of vibration by driving of vehicle close to the road is also included. In order to interpret this clause, it is also necessary to gather the intention of the parties from the words used in the policy. If the word "impact" is interpreted narrowly, the question of impact by any rail would not arise as the question of a rail forcibly coming to the contact of a building or machinery would not arise. In the absence of specific exclusion and the word "impact" having

more meanings in the context, it cannot be confined to forcible contact alone when it includes the meanings "to drive close", "effective action of one thing upon another" and "the effect of such action", it is reasonable and fair to hold in the context that the word "impact" contained in Clause 5 of the insurance policy covers the case of the respondent to say that damage caused to the building and machinery on account of the bulldozer moving closely on the road was on account of its "impact". 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. Although there is no ambiguity in the expression "impact", even otherwise applying the rule of contra proferentem, the use of the word "impact" in Clause 5 in the instant policy must be construed against the appellant. 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. A Constitution Bench of this Court in General Assurance Society Ltd. v. Chandumull Jain [General Assurance Society Ltd. v. Chandumull Jain, (1966) 3 SCR 500 : AIR 1966 SC 1644] has expressed that : (SCR p. 509 : AIR p. 1649, para 11)

> *'11. ... in a contract of insurance there is 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.' "

39. Likewise, in Export Credit Guarantee Corpn. of India Ltd. v. Garg Sons International [Export Credit Guarantee Corpn. of India Ltd. v. Garg Sons International, (2014) 1 SCC 686 : (2014) 1 SCC (Civ) 648] , this Court held : (SCC pp. 690-91, para 11)

> *"11. The insured cannot claim anything more than what is covered by the insurance policy. 'The terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely.' The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the insurance company must also be read strictly. The contract must be read as a whole and every attempt should be made to harmonise the terms thereof, keeping in mind that the rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon. (Vide Oriental Insurance Co. Ltd. v. Sony Cheriyan [Oriental Insurance Co. Ltd. v. Sony Cheriyan, (1999) 6 SCC 451] , Polymat (India) (P) Ltd. v. National Insurance Co. Ltd. [Polymat (India) (P) Ltd. v. National Insurance Co. Ltd., (2005) 9 SCC 174] , Sumitomo Heavy Industries Ltd. v. ONGC [Sumitomo Heavy Industries Ltd. v. ONGC, (2010) 11 SCC 296 : (2010) 4 SCC (Civ) 459] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] .)"*

40. Likewise, in BHS Industries v. Export Credit

Guarantee Corpn. Ltd. [BHS Industries v. Export Credit Guarantee Corpn. Ltd., (2015) 9 SCC 414 : (2015) 4 SCC (Civ) 570] , this Court held : (SCC pp. 428 & 430, paras 31 & 35)

> *"31. As has been held in Chandumull Jain [General Assurance Society Ltd. v. Chandumull Jain, (1966) 3 SCR 500 : AIR 1966 SC 1644] by the Constitution Bench that in a contract of insurance, there is a requirement of good faith on the part of the insured and in case of ambiguity, it has to be construed against the company. As per other authorities, the insurance policy has to be strictly construed and it has to be read as a whole and nothing should be added or subtracted. That apart, as has been held in Polymat (India) (P) Ltd. [Polymat (India) (P) Ltd. v. National Insurance Co. Ltd., (2005) 9 SCC 174] , it is the duty of the Court to interpret the document as is understood between the parties and regard being had to the reference to the stipulations contained in it.*
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> ***
>
> *35. The terms of the policy are to be strictly construed. There can be no cavil about the proposition of law that in case of ambiguity, the construction has to be made in favour of the insured."*

41. In United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd. [United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd., (2016) 3 SCC 49 : (2016) 2 SCC (Civ) 14] , this Court quoted Halsbury's Laws of England as follows : (SCC p. 59, para 37)

> *"37. In Halsbury's Laws of England (5th Edn.,*

Vol. 60, Para 105) principle of contra proferentem rule is stated thus:

'Contra proferentem rule.—Where there is ambiguity in the policy the court will apply the contra proferentem rule. Where a policy is produced by the insurers, it is their business to see that precision and clarity are attained and, if they fail to do so, the ambiguity will be resolved by adopting the construction favourable to the insured. Similarly, as regards language which emanates from the insured, such as the language used in answer to questions in the proposal or in a slip, a construction favourable to the insurers will prevail if the insured has created any ambiguity. This rule, however, only becomes operative where the words are truly ambiguous; it is a rule for resolving ambiguity and it cannot be invoked with a view to creating a doubt. Therefore, where the words used are free from ambiguity in the sense that, fairly and reasonably construed, they admit of only one meaning, the rule has no application.' "

42. In Industrial Promotion & Investment Corpn. of Orissa Ltd. v. New India Assurance Co. Ltd. [Industrial Promotion & Investment Corpn. of Orissa Ltd. v. New India Assurance Co. Ltd., (2016) 15 SCC 315 : (2017) 3 SCC (Civ) 477] , this Court referred to the contra proferentem rule as follows : (SCC pp. 320-21, paras 10-11)

> *"10. We proceed to deal with the submission made by the counsel for the appellant regarding the rule of contra proferentem. The Common Law rule of construction "verba chartarum fortius accipiuntur contra proferentem" means that ambiguity in the wording of the policy is to be resolved against the party who prepared it. MacGillivray on Insurance Law [Legh-Jones,*

Longmore et al (Eds.), MacGillivray on Insurance Law (9th Edn., Sweet and Maxwell, London 1997) p. 280.] deals with the rule of contra proferentem as follows:

> *'The contra proferentem rule of construction arises only where there is a wording employed by those drafting the clause which leaves the court unable to decide by ordinary principles of interpretation which of two meanings is the right one. 'One must not use the rule to create the ambiguity — one must find the ambiguity first'. The words should receive their ordinary and natural meaning unless that is displaced by a real ambiguity either appearing on the face of the policy or, possibly, by extrinsic evidence of surrounding circumstances.' (footnotes omitted)*

11. Colinvaux's Law of Insurance [Robert and Merkin (Eds.), Colinvaux's Law of Insurance (6th Edn., 1990) p. 42.] propounds the contra proferentem rule as under:

> *'Quite apart from contradictory clauses in policies, ambiguities are common in them and it is often very uncertain what the parties to them mean. In such cases the rule is that the policy, being drafted in language chosen by the insurers, must be taken most strongly against them. It is construed contra proferentem, against those who offer it. In a doubtful case the turn of the scale ought to be given against the speaker, because he has not clearly and fully expressed himself. Nothing is easier than for the insurers to express themselves in plain terms. The*

> *assured cannot put his own meaning upon a policy, but, where it is ambiguous, it is to be construed in the sense in which he might reasonably have understood it. If the insurers wish to escape liability under given circumstances, they must use words admitting of no possible doubt.*
>
> *But a clause is only to be contra proferentes in cases of real ambiguity. One must not use the rule to create an ambiguity. One must find the ambiguity first. Even where a clause by itself is ambiguous if, by looking at the whole policy, its meaning becomes clear, there is no room for the application of the doctrine. So also where if one meaning is given to a clause, the rest of the policy becomes clear, the policy should be construed accordingly.' ""*

15. This Court is of the opinion that there is no ambiguity in the Policy and the sub-limit of Rs. 2 lakhs will not be applicable to Chemo-immunotherapy which is a new form of treatment and is a combination of chemotherapy and immunotherapy without the sub limit being applicable. Even assuming without admitting, there is an ambiguity, the principle of *contra proferentem* would be applicable to this case and the Petitioner would be entitled to the entire amount as claimed by the Petitioner. The contention of the learned Counsel for the Respondent that the claim of award has already been paid to the Petitioner cannot be accepted. The fact that the Insurance Company has already paid Rs.37 lakhs to the Petitioner is not relevant to the present claim and the insurance company has to pay the amount as claimed by the Petitioner. The Award passed by the Ombudsman

has to be complied with in letter and spirit.

16. Accordingly, the Writ Petition is allowed with a direction to the Insurance Company to clear the claim of the Petitioner within four weeks from today.

17. In view of the fact that the Petitioner, who is a cancer patient, has been harassed without any reason and has been deprived of the amount putting her to mental agony, this Court is inclined to impose costs of Rs.50,000/- on Respondent No.1/Insurance Company to be paid to the Petitioner within four weeks from today.

18. With these observations and directions, the Writ Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

MAY 3, 2024
Rahul