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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 25th January, 2023

+ **W.P.(C) 9310/2020**

NEERAJ MEHTA & ANR. Petitioners

Through: Mr. Shyam D. Nandan, Advocate.
(M:9654848621)

versus

TATA AIG GENERAL INSURANCE COMPANY
LTD & ORS. Respondents

Through: Mr Subhash Tanwar CGSC, Mr
Ashish Choudhary Advocate for UOI.
(M: 9810207782)
Mr. Abhishek Nanda, Advocate for
R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The challenges posed by nature for persons with disabilities, ought to be mitigated by society as a whole which has to lend a helping hand and accommodate their needs.
3. The Petitioner, in the present case has approached this Court challenging the denial of a health insurance policy for his minor son who was suffering Bi-Lateral Hearing Loss, which is a hearing disability.
4. The minor son of the Petitioners was prescribed Cochlear Implant and the Petitioners got the same implant done for their minor son on 22nd July, 2020, on their own expense.
5. Since the Petitioners had a family insurance policy which included their elder daughter at that stage, renewal was sought by them, vide

application dated 15th June 2020, with the inclusion of their minor son as a co-insured after disclosing the said pre-existing condition. The Respondent No.1-Tata AIG General Insurance Company Ltd., however, vide communication dated 19th June, 2020 refused to issue a policy on the ground that such a disability would not be covered by their underwriting policy.

6. The case of the Petitioner is that this would be completely discriminatory of disabled persons including disabled children. Ld. Counsel for the Petitioner relies upon the '*Guidelines on standardization of exclusions in health insurance contracts*' issued by the IRDAI dated 27th September, 2019 to argue that the insurance company can have certain exclusions. However, the same would have to be only on the condition that there could be no insurance given even after levying further loading charges on the policy.

7. None appears for the insurance company. On behalf of the IRDAI it is submitted by their Counsel that the policy does permit exclusion in Chapter II of the Guidelines on Standardisation of Exclusions in Health Insurance Contracts.

8. This Court recently had the occasion to consider insurance policies for persons with disabilities in *W.P.(C) 6074/2019* titled *Saurabh Shukla v. Max Bupa Health Insurance Co. Ltd. and Ors.*, wherein the Petitioner was suffering from Tetraplegia and was refused a health insurance policy. After considering the legal position in respect of rights of persons with disabilities and certain decisions, This Court had directed as under:

"21. The IRDAI is the sector regulator in the insurance industry in India. Regulation 8 which deals with underwriting reads as under:

"8. Underwriting

b. The underwriting policy shall also cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to sub-standard lives. It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorisation.

c. Any proposal for health insurance may be accepted as proposed or on modified terms or denied wholly based on the Board approved underwriting policy. A denial of a proposal shall be communicated to the prospect in writing, by recording the reasons for denial. Provided, the denial of the coverage shall be the last resort that an insurer may consider.”

22. *A perusal of the IRDAI regulations above regulation would show that, unfortunately, the terminology sub-standard lives is used in respect of persons with disabilities which is not an acceptable terminology. Even otherwise, Regulation 8(b) and Regulation 8(c) read with the circular dated 2nd June, 2022 clearly provides that insurance companies have to give insurance coverage to the following three categories three categories of persons:*

- i. Persons with disabilities*
- ii. Persons with HIV*
- iii. Persons affected with mental illness.*

23. *The IRDAI being the regulator of the sector has important functions to perform under the IRDAI Act of 1999. The IRDAI ought to ensure that its circulars and other policies are duly given effect to by the insurance companies. In the present case, it has been observed the Court of the Chief Commissioner of Disabilities brought the facts of this case to the knowledge of the IRDAI. However, this action also did*

not yield any positive response from the IRDAI with respect to the case of the Petitioner. The stand of IRDAI before this Court both in the Counter affidavit, Circular and in the oral submissions does not match with the inaction when the issue was brought to its notice. The IRDAI ought to have stepped up and ensured that the insurance companies offer adequate products for persons with disabilities. Refusal to issue a health insurance policy to the Petitioner ought to have been a warning bell to the IRDAI. Unfortunately, despite the above settled legal position and the IRDAI's position on record, there is a disconnect in implementation.

Conclusion and Directions

24. *In the background of this case, the manner in which both the insurance companies have simply rejected the proposal of the Petitioner that too with cryptic rejection letters is disconcerting. The Petitioner is a person who is working as an investment professional who can afford an insurance policy by paying a reasonable premium. Irrespective of the economic standing of a person with disability, insurance coverage cannot be rejected or refused.*

25. *Under these circumstances, this Court is of the opinion that there is no doubt that persons with disabilities would be entitled to health insurance coverage and products would have to be designed to enable them to obtain health insurance coverage.*

26. *In view of the above discussion the following directions are issued:*

- i. The IRDAI, shall call a meeting of all insurance companies to ensure that the products are designed for persons with disabilities and other persons in terms of the circular dated 2nd June, 2020. The process of designing such products shall be supervised by the IRDAI and it shall be ensured that the said products are*

introduced on an early date, preferably within two months.

ii. The Petitioner is permitted to approach Max Bupa Health Insurance Co. Ltd. & Oriental Insurance Co. Ltd., once again. The two insurance providers shall consider the case of the Petitioner for issuance of a health insurance policy and the question of extending insurance to the Petitioner shall be reviewed. A proposal shall be placed on record by the next date of hearing.

iii. Immediate steps shall be taken by the IRDAI to modify the terminology 'sub-standard lives' in their Regulations so as to ensure that such unacceptable terminology is not used in its Regulations or other documents while referring to persons with disabilities."

9. As per the above directions which were issued, the IRDAI was to call a meeting of all the insurance companies to ensure that products are designed for persons with disabilities in terms of the circular dated 2nd June, 2020.

10. In the present case, the counter affidavit of Tata AIG General Insurance Company Ltd. shows that there is a categorical stand of the company that the company is in a position to issue a policy but by permanently excluding the pre-existing condition of the minor child. The relevant extract of the counter affidavit reads as under:

"13. I State that without prejudice to the above objections, the Petitioners renewal policy incepted on 09 July 2020 wherein as per the existing product of Tata AIG Medicare (UIN: TATHLIP18004V011819) there was no provision for permanent exclusion of diseases. However, as per the IRDAI guidelines Ref:

*IRDA/HLT/REG/CIR/177/09/2019 dated 27 September 2019 Chapter IV (effective date for compliance of existing health insurance products was before 01 October 2020), Respondent No. 1 product Tata AIG MediCare was filed for modification. After modifying the product to make it compliant,(Revised UIN:TATHLIP21224V022021) **Respondent No. 1 had provisioned for permanent exclusion of specific diseases.** Chapter IV allows insurers to offer coverage to persons to be insured by levying permanent exclusions for specific diseases as listed in that chapter. Condition 14 pertains to loss of hearing and effective 01st October 2020, **Respondent No. 1 has modified their underwriting guidelines wherein this medical condition when disclosed by a person at the time of underwriting, Respondent No. 1 would offer health insurance coverage by permanently excluding this specific disease.** When the Petitioners applied for mid-term addition in July 2020, Respondent No. 1 had rightfully rejected this risk, whereas now **it is in a position to issue the policy by permanently excluding the Pre-existing condition of the minor child.**”*

11. This would in effect mean that the child of the Petitioner would be unable to obtain a health insurance policy at all in respect of his Bi-Lateral Hearing Loss and any health issues arising out of the same from the Respondent no.1.

12. *Prima Facie*, in the opinion of this Court, this would be contrary to the provisions in favour of Persons with Disabilities under the Rights of Persons with Disabilities Act, 2016. Moreover, considering TATA AIG General Insurance Company Ltd. is part of a responsible and respected Corporate group, it is expected that persons with disabilities would be treated compassionately. The society in general also has a duty towards

persons with disabilities and there is a need to consider and provide for specific products covering disabilities, for such persons.

13. Considering the directions given in *Saurabh Shukla (supra)* as also considering the facts of the present case, it is directed as under:

- i. The IRDAI in its meeting of insurance companies, as directed in *Saurabh Shukla (supra)* if not already held shall also consider the facts of the present case and consider the manner in which products can be designed for persons with hearing disabilities and persons with implants. The IRDAI while submitting its position to the Court shall consider the existing Policies and Guidelines as may be applicable to persons with disabilities.
- ii. The present case shall also be escalated to the higher management of Tata AIG General Insurance Company Ltd. including, if required, to the Board of Directors to also consider this matter as to how persons with disabilities ought to be accommodated by insurance companies.
- iii. A status report in this regard, with the minutes of the meetings and proposals for equitable treatment of persons with disabilities shall be filed, both by Tata AIG and IRDAI, on record by the next date of hearing.

14. In the facts of this case, issue notice to Respondent No.3- Office of the Insurance Ombudsman and Respondent No.4- Ministry of Social Justice and Empowerment.

15. Mr Ashish Choudhary, Id. Counsel accepts notice on behalf of Mr Subhash Tanwar, Id. CGSC. Let the CGSC obtain instructions from the

Ministry of Social Justice and Empowerment, as also any other concerned Ministry, which shall also file its stand on the issues raised above, by means of an affidavit.

16. Let the said affidavit be filed within six weeks.

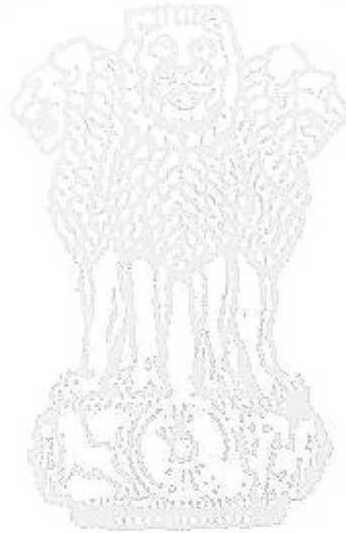
17. List along with *W.P.(C) 6074/2019* on 17th March 2023.

PRAITHIBA M. SINGH
JUDGE

JANUARY 25, 2023

dj/am

HIGH COURT OF DELHI



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