

(2004) 08 KL CK 0039

High Court Of Kerala

Case No: W.A. No. 915 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

John

RESPONDENT

Date of Decision: Aug. 16, 2004

Citation: (2005) 3 ACC 43 : (2005) ACJ 782 : AIR 2005 Ker 22 : (2004) 3 ILR (Ker) 566 : (2004) 3 KLT 334

Hon'ble Judges: K.S. Radhakrishnan, J; J.M. James, J

Bench: Division Bench

Advocate: N. Nandakumara Menon, for the Appellant; Jose J. Mathaikal, for the Respondent

Final Decision: Allowed

Judgement

K.S. Radhakrishnan, J.

This appeal has been preferred by the United India Insurance Company Ltd. (hereinafter called the Insurance Company) against the judgment of the learned Single Judge in O.P. 10095/02 directing them to renew a Mediclaim Insurance Policy with effect from 27.11.2001 for a period of one year at the rate of Rs. 880/- per annum. Learned Single Judge also gave a direction that any claim which might have arisen by virtue of the retrospective renewal should be processed by the Insurance Company in accordance with the terms of the policy and if the claim is found to be legitimate, the Insurance Company should disburse the medical expenses payable to the petitioner without delay.

2. Writ Petitioner and his wife had taken a Mediclaim Insurance Policy from the Insurance Company with effect from 27.11.1998 to 26.11.1999. The sum insured was Rs. 25,000/- each with a total annual premium of Rs. 880/-. The policy was renewed from 27.11.99 to 26.11.2000 and from 27.11.2000 to 26.11.2001. During the said period the petitioner and his wife had made a total claim of Rs. 44,338, but paid a total premium of Rs. 2499/-. A day before the expiry of the policy petitioner made an application on 20.11.2001 for renewal of the policy on the then existing premium of

Rs. 880/-. The Insurance Company returned the cheque and refused to renew stating as follows:

"Kindly note that as part of loss minimisation we are not inviting renewal in respect of Mediclaim Policies in which case claims have been reported repeatedly and the claim ratio is very high. Your above policy being such, we have not sent a Renewal Notice to you as we do not wish to renew the policy since we cannot afford to have policies with high claim ratio in future. Your offer for renewal of the above policy is not accepted by us and we return herewith your Cheque No. 488756dt. 20.11.01 for Rs. 880/-".

Later petitioner sent a registered letter dated 22.11.2001 to the Regional Office for renewal of the policy on the same premium. Regional office of the Insurance Company replied stating as follows:

"We have once again referred the matter to our BO, Changanassery to find out the reason behind the office invoking the provisions of (5.9) against your renewal. The preliminary enquiry reveals that you have taken a claim of Rs. 44,338/- in the last 3 years as against the premium of Rs. 2,499/-. Your policy also specifically excludes disease, which you are suffering from even before the commencement of the insurance with our Company. As you are aware, Insurance Companies are custodians of public funds for the welfare of the insuring public and few individuals exploiting the scheme under various pretext cannot be allowed in the overall interest of the insuring public".

The Branch Office of the Insurance Company later sent another letter dated 14.1.2002, The relevant portion is extracted below:

"We have further examined your case and if you are very particular we shall consider, issuing Mediclaim Policy covering yourself and your wife Smt. Gracy John for a sum insured of Rs. 25,000/- for each, as in earlier policies all pre-existing, diseases/conditions will be excluded from the scope of cover of the policy. Premium required would be Rs.4,597/-. If you are interested, the enclosed Proposal Forms may please be completed for each one of you and remit Rs. 4,597/- towards premium".

The offer made by the Insurance Company was not acceptable to the petitioner but insisted that the policy should be renewed accepting the original premium. The refusal to renew the policy, according to the petitioner, is arbitrary and illegal and due to extraneous and irrelevant reasons. Regional Office of the Insurance Company replied to the said notice stating as follows:

"As your goodself will understand, the concept of commercial insurance is collecting premium from many and pay claim to a few affecting claimant. Please note the commercial insurance companies are not for social security or for charity to transact insurance business for the welfare of the entire insuring public. Please kindly

understand that we are discharging this noble cause as commercial insurers and we also expect to be prudent administrators of common fund generated by way of premium of the insuring public. You may approach Changanassery BO and pay the requisite premium and renew your policy. We are closing the grievance registered with this office in view of the positive action taken by our Changanassery BO and please note that no further complaint will be entertained on this subject".

Petitioner is aggrieved by the various orders passed by the Branch Office as well as Regional Office and has approached this Court. Petitioner reiterated the same contentions and placed reliance on a decision of the Apex Court in Biman Krishna Bose Vs. United India Insurance Co. Ltd..

3. A counter affidavit has been filed on behalf of the Insurance Company reiterating their stand with specific reference to Clause 5.9 of the Mediclaim policy. Learned Single Judge however, took the view that the Insurance Company was not justified in refusing to renew the policy on the ground that the claim ratio is very high. Learned, Single Judge also noticed that Insurance Company has not explained on, what basis the premium of Rs. 4,597/- was fixed for renewal of the policy. Learned Single Judge though noticed that the issuance of a policy results from a contractual relationship, took the view that since the Insurance Company being in an advantageous position, it could not have insisted that the policy can be renewed only if a higher rate of premium is paid and that too on exclusion of the pre-existing diseases/conditions. Placing reliance on the decision of the Apex Court in Biman Krishna Bose's case learned Single Judge took the view that the Insurance Company cannot be given a handle to dictate terms when it comes to renewal of a policy which is, renewable at the option of the parties. Learned Judge also noticed that the Insurance Company has approached the issue from a purely business angle and then directed the Insurance Company to renew the policy on receipt of premium at the rate of Rs. 880/- per annum.

4. Counsel appearing for the Insurance Company Sri. Nandakumara Menon submitted that the learned Single Judge has committed an error in issuing a writ of mandamus directing the Insurance Company to renew the policy. The counsel submitted that the scope of Clause 5.9 was not properly appreciated and applied by the learned Judge thereby reached a wrong conclusion. Counsel appearing for the respondent petitioner Sri. Jose J. Mathaikal tried to sustain the judgment of the learned Single Judge. The issue in this case can be resolved only after ascertaining the terms and conditions of the Mediclaim Insurance Policy and the law on the point, reference may be made to some of the clauses of the policy which reads as follows:

"WHEREAS the insured designated in the Schedule hereto has by a proposal and declaration dated as stated in the Schedule which shall be the basis of this Contract and is deemed to be incorporated herein has applied to United India Insurance Company Ltd. (hereinafter called "the Company") for the insurance hereinafter set

forth in respect of person(s) named in the Schedule hereto (hereinafter called "the insured person") and has paid premium as consideration for such insurance.

5. CONDITIONS:

5.2. The premium payable under this Policy shall be paid in advance. No receipt for premium shall be valid except on the official form of the Company signed by a duly authorised official of the Company. The due payment of premium and the observance and fulfilment of the terms, provisions, conditions and endorsements of this Policy by the Insured Person in so far as they relate to anything to be done or complied with by the Insured Person shall be a condition precedent to any liability of the Company to make any payment under this Policy. No waiver of any terms, provisions, conditions and endorsement of this Policy shall be valid unless made in writing and signed by an authorised official of the company.

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5.9. The Policy may be renewed by mutual consent. The Company shall not however, be bound to give notice that it is due for renewal and the Company may at any time cancel this policy by sending the Insured 30 days notice by registered letter at the Insured's last known address and in such event the Company shall refund to the Insured a pro rata premium for unexpired period of insurance. The Company shall, however, remain liable for any claim which arose prior to the date of cancellation. The insured may at any time cancel this policy and in such event the Company shall allow refund of premium at Company's short period rate only (Table given here below) provided no claim has occurred upto the date of cancellation."

The insurance contracts also are governed by the general principles of contract under the Indian Contract Act with the distinctive features such as uberrimafides, insurable interest, indemnity, subrogation, contribution etc. One of the requirements for the formulation of a contract of insurance is the mutual agreement between the insured and the insurer. There must be an offer and acceptance. Premium is the consideration which the insured pay to the insurer agreeing to undertake the risk. A contract of insurance is one whereby one party, the insured, promises in return for a money consideration, that is the premium to, pay the other party, the assured a sum of money or providing him with corresponding benefit upon the occurrence of one of specified events. A policy may be renewed only by mutual consent. The policy taken by the petitioner Ext. Pl came to an end on 26.11.01. Policy will be alive only if it is renewed. The policy could be renewed only on the basis of Clause 5.9. Clause 5.9 specifically stipulates that the Insurance Company is not bound to give notice that it is due for renewal, which presuppose that it is the responsibility of the assured to get the policy renewed if he wants benefit of the mediclaim insurance policy. On the expiration of the period of insurance evidently the policy comes to an end and the liability of the insurers ceases except in respect of claims which have already arisen.

5. Mac Gillirray and Parkinston on Insurance Law 8th Edn. says in the case of renewal of policy by mutual consent the insurer is not obliged to give notice to the assured for renewal. Parties may, however, renew the policy by mutual consent. Expression "may" and "mutual" used in Clause 5.9 would show that it is not mandatory that the policy be renewed. Clause 5.9 stipulates that policy may be renewed if both the parties so desire. The concept of renewal of insurance by mutual consent has been dealt with by E.R.Hardy Ivamy in General Principles of Insurance Law, Third Edition, an authority on insurance law. The author refers to stipulations as to renewal. The three types of stipulations on renewal on mutual consent are as follows:

1. A stipulation may make the policy renewable if both parties so desire.
2. The stipulation may make it renewable at the option of the assured.
3. The stipulation may bind both parties to renew it unless either party notifies the other that he does not intend to renew it.

So far as the first category of cases the learned author states as follows:

"The assured, by tendering the renewal premium, in the first instance makes an offer to renew the policy, which the insurers may accept or decline at pleasure; they cannot, therefore, be compelled to accept the renewal premium when tendered.

If, on the other hand, the insurers invite the assured to renew the policy by sending him a renewal notice, the offer to renew the policy proceeds from them, and his acceptance is signified by payment of the renewal premium. In this case they are bound to accept the renewal premium when tendered. But if the insurers offer to renew the policy at an increased premium, which the assured refuses to pay, a subsequent tender of the increased premium is inoperative even though made during the days of grace.

Unless the terms of the stipulation so provide, it is unnecessary for the insurers to give notice to the assured that they do not intend to renew it. Their failure to do so does not preclude them from denying that they have renewed the policy".

The policy which is the subject matter of our case falls in the first category and the assured cannot insist that policy should be renewed on the then existing premium. If the policy is to be renewed at the option of the assured upon complying with the terms of the policy as to renewal; he is entitled to insist upon his policy being renewed, and the insurers cannot decline to renew it unless they have first given notice of their intention not to do so. Even for the second category of cases also though option has been given to the assured to get the policy renewed he has to comply with the terms and conditions stipulated by the insurer. In the case of renewal of a policy by mutual consent before the expiry of the period of original policy notice could be given by the insurer to the assured if there is stipulation to that effect in the original policy. So far as this case is concerned Clause 5.9

specifically stipulates that the Company is not bound to give notice that it is due for renewal. In such a situation the assured has to intimate his willingness to renew the policy on tendering the premium agreed to between the parties by mutual consent. The assured can make an offer to renew the policy on the then existing premium. Insurer may accept or decline as they think fit.

6. In the instant case the period of the policy expired on 26.11.2001. Clause 5.9 would indicate that the policy is not to continue in force beyond the period of insurance unless renewed by mutual consent. The renewal by mutual consent is equivalent to making a new contract. The insurer may make their consent to the renewal conditional upon an increased premium being paid or upon the terms of the contract being otherwise varied. Petitioner insisted day before the expiry of the policy that the policy be renewed on receipt of then existing premium, which was not agreeable to the Insurance Company. Petitioner vide his letter dated 20.11.2001, 22.12.2001 and 23.1.2002 insisted that the policy be renewed on receipt of the original premium which was not agreeable to the Insurance Company. The Insurance Company informed the petitioner that the policy could be renewed on payment of Rs. 4,597/- towards premium. The same was not agreeable to the petitioner but insisted that the policy be renewed on receipt of the original premium. The assured has no legal or contractual right to insist for such renewal.

7. We will now examine whether the fixation of Rs. 4597/- is excessive or arbitrary. Counsel appearing for the Insurance Company made available to us the guidelines issued by the Insurance Company to the various regions for fixation of premium. The relevant portion of the Guideline reads as follows:

"1. It is imperative that each portfolio of a client's account is self-sustaining and cross subsidisation between tariff covers and non-tariff covers is avoided. This, for the purposes of evaluation of a client's portfolio viability, tariff covers and non-tariff covers should be segmented to ensure that portfolio comprising non-tariff business does not produce loss. Where a client's account as a whole is found to be continuously profitable for at least a period of three preceding years, rates for non-tariff policies may be adjusted downward to the extent that non-tariff portfolio does not produce a negative result.

1.2. Desired claim ratio for a profitable business should not be more than 70% taking into account claims and reserves.

1.3. For the purpose of claim experience, premium and claim figures of the insured for 3 years but excluding the expiring year may be taken into account for the purpose of ascertaining the claim ratio.

2.2. NON-TARIFF PORTFOLIO:

2.1. Injured's claim experience for the last 3 years excluding the expiry year should be reckoned for any quotation of rate at the time of renewal.

2.2. The rate quoted should be suitably loaded so as to bring the claim ratio to 70% in case of adverse claim experience.

2.3. In case of group mediclaim policy, policies which are issued on floater basis be discontinued. However, if it cannot be discontinued due to market pressure, floater loading for individual member of the family should be arrived at after consultation with an actuary and should be complied with uniformly by all Companies".

On the basis of the above mentioned guidelines the premium of Rs.4597/- has been fixed. The fixation made as per the office note is extracted below:

"UNITED INDIA INSURANCE COMPANY LTD.

REGIONAL OFFICE KOCHI

OFFICE NOTE

Re: Premium Calculation-Sri. KO John and Smt. Gracy John respondents in Writ Appeal 915 of 2004

In the preceding 3 years prior to 27.11.2001 premium paid and claims made by the captioned insured are as under:

From	To	Amount of Premium Received	Claimpaid
27.11.1998	26.11.1998	833 (Rs. 440+Rs. 485 minus 10% family discount)	22460 (nearly 27)
27.11.1999	26.11.2000	833 (Rs. 440+Rs. 485 minus 10% family discount)	7838 (nearly 9 t)
27.11.2000	26.11.2001	833(Rs. 440+Rs. 485 minus 10% family discount)	14040 (nearly 16t)

The premium figures of Rs. 440 and Rs.485 for Smt Gracy John respectively, are the premium to be collected for fresh entrants into the mediclaim scheme as per schedule.

Therefore, for the next renewal, premium was enhanced to Rs.4864 as per calculation as under:

Name	Age as on 2002	Scheduled premium for fresh entrants into mediclaim scheme
KO John	69	Rs. 644
Gracy John	65	Rs. 572

216x(4)	= 4864
10% family discount	= 486
Less: 10% family discount	= 4378
Total premium	= 4378
Add: 5% Service Tax	= 219
(Total premium + Tax)	= 219".

The concept of commercial insurance and degree of commercial prudence are necessary in deciding appropriate premium to be charged for renewal of a particular mediclaim account. The basic schedule of premium to be charged from fresh entrants into the mediclaim scheme is drawn up by experts known as Actuaries based on actuarial science. Where a client's account is found to be continuously loss making, it will be necessary to adjust upward the premium charged so that a totally negative business result is not obtained. So also a client's account as a whole is found to be continuously profitable for at least a period of three preceding years, rates for non-tariff policies may be adjusted downward to the extent, that non-tariff portfolio does not produce a negative result. The guidelines for underwriting with emphasis on growth with profitability would indicate that ideally the desired claim ratio (claims paid divided by the premium received) according to the general practice obtaining in the industry is 70% taking into account claims and reserves. 20% is fixed as the management expenses. It is pointed out that in normal course the rates are quoted after ascertaining the claims experience, premium and claims figures of the insured for 3 years preceding the time of renewal. Thereafter the premium rate is so quoted as to bring the claims ratio to 70% in case of adverse claims experience. Prudent underwriting demands that due care is taken while quoting premium rates so that it has relevance to the experience under the policy.

8. Insurance Company noticed that the petitioner's policy has registered a claim to the tune of Rs. 44,338/- against premium receipt to the tune of Rs. 2499/- (total for 3 years). Further it was also noticed that there was a regularity and continuity in the form of claims. Insurance Company maintained the stand that after having paid an overall claim amount of Rs. 41,839/- more than the overall premium given by the customer, an enhancement of a premium by Rs. 3283.5 is only reasonable which means that 7.85% of the extra benefit received by the petitioner was sought as the loading premium. Insurance Company has already pointed out that the core philosophy of insurance is pooling of contributions from many to mitigate the hardship of the unfortunate few. However, this concept also demands for additional contribution from those who are regular beneficiaries of this protection and this additional contribution comes in the form of loading.

9. We are of the view the above concept is laudable and that premium fixed so far as petitioner is concerned is genuine and as per the guidelines laid down for underwriting with emphasis on growth with profitability. We are not prepared to say there is any arbitrariness in the fixation of premium so far as the petitioner is concerned. Insurance Company has acted only on the basis of the Guidelines laid down in spite of the fact that petitioner had availed of a claim of Rs. 44,338/- by paying a premium of Rs. 2499/- for three years. Learned Single Judge's finding that the Insurance Company has acted arbitrarily in fixing the premium cannot be sustained. In the facts and circumstances of the case we are not prepared to say that the fixation of premium was arbitrary or not based on any rational criterion.

10. We have already found that there was no statutory or contractual obligation on the part of the Insurance Company to renew the policy. Clause 5.9 specifically says that the policy may be renewed by mutual consent and the company is not expected to give any notice to the assured for the renewal of the policy. A writ of mandamus cannot be issued against the Insurance Company so as to renew a contract of insurance. We have also gone through the decision of the Apex Court in Biman Krishna Base's case. Insurance Company has not violated the principle laid down by the Apex Court in Biman Krishna Bbse's case. That was a case where Insurance Company refused to renew the policy since the appellant had earlier taken Company to Court for nonpayment of a claim. Under such circumstance, the Apex Court held that even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligation to act with fairness and in doing so can take into consideration only the relevant materials and arbitrariness should not appear in their actions or decisions. So far as the instant case is concerned petitioner wanted renewal of the policy on the basis of the then existing premium which was not acceptable to the Insurance Company, Petitioner did not express any willingness to give a higher premium, but insisted that it should be renewed on the basis of the then existing premium, We are not prepared to say, in such a situation the Insurance Company has acted arbitrarily or unfairly. However, the Insurance Company made an offer to renew the policy on condition that the petitioner pays an amount of Rs. 4,597/- which was not acceptable to the petitioner.

11. Learned Judge has now directed the Insurance Company to renew the policy on the then existing premium with retrospective effect. Such a direction cannot be legally sustained. We have already indicated renewal of a policy on a higher premium is equivalent to a new contract of insurance. Conditions of policy would apply only from the date when premium is paid and accepted by the Insurance Company. There is no question of retrospective renewal of the policy. Principle laid down in Biman Krishna Bose's case would apply only in a case where the insurer has acted arbitrarily or extraneous reasons. So far as the facts of this case is concerned we have already indicated that there is no illegality or unfairness on the part of the Insurance Company in refusing to renew the policy on the then existing premium.

12. Under such circumstance we are inclined to allow this appeal and set aside the judgment of the learned Single Judge. Petitioner, if so desires, may pay the premium as directed by the Insurance Company and get the mediclaim renewed. Renewal would take effect only from the date of the renewal of new policy.