Right to Avail Health Insurance is an Integral Part of the Right to Healthcare and the Right to Health, as Recognised in Article 21 of the Constitution of India, 1950

The Hon'ble High Court of Delhi in the matter titled as **"M/s. United India Insurance Company Limited versus Jai Parkash Tayal, RFA No. 610/2016"** has considered the issue of whether persons having genetic disorders can be discriminated against in the context of health insurance.

FACTS OF THE CASE

Mr Jai Prakash Tayal, who is the Respondent/Plaintiff in the case *(hereinafter referred to as "Plaintiff")*, took an insurance policy for himself along with his wife and daughter, from the United India Insurance Company Limited i.e., the Appellant/Defendant in the case *(hereinafter referred to as "Defendant")*. The said policy is a mediclaim policy where the sum insured is Rs. 5 lakhs per individual.

The Plaintiff submits he had first taken a mediclaim on 11th September, 2000 with the National Insurance Co. Ltd. vide policy No. 2000/8100540. The said policy was shifted to Defendant on 10th September, 2004, after which the policy was renewed continuously year to year without break till 10th September, 2012. The Plaintiff suffered from HOCM i.e., Hypertrophic Obstructive Cardiomyopathy *(hereinafter referred to as "HOCM")*. He was hospitalised on 23rd January, 2004 and 27th February, 2006 and his claims for the said periods have been honoured and payments were made by the Insurance Company.

Thereafter, the Plaintiff was again hospitalised for treatment on 27th November, 2011 and was discharged on 30th November, 2011. He made a claim for an amount of Rs. 7,78,864/- with the Defendant. The said claim was rejected vide letter dated 6th February, 2012, where the reasons for rejection were mentioned as–

> *"...We are closing your claim file, on account of the following reasons: TPA Vipun Medcorp P Ltd had repudiated your claim. Since genetic diseases are not payable as per the policy, genetic exclusion clauses." (extracted verbatim)*

It is the Plaintiff's case that the exclusion of genetic disorders was not a part of the initial policy which was availed by him but was added as part of the `Exclusions' in a later policy document, without specific notice to him and hence the said exclusions do not bind him.

However, the stand of the Defendant was that HOCM is a genetic disorder which is clearly excluded and hence the claim is not liable to be entertained. Thereafter the Plaintiff issued a legal notice to the Defendant, which was duly replied by the defendant whereby the Defendant refused to pay the claim as the genetic disorders are excluded in the policy document.

Thereafter, the Plaintiff filed a civil suit for recovery of an amount of Rs. 7,78,864/- against the Defendant. In the said civil suit for recovery, the Learned Trial Court vide judgement held that an insurance policy has to be renewed on the existing terms and conditions, and at the time of renewal, fresh clauses and exclusions cannot be added. The Learned Trial Court held that no advance notice was given to the Plaintiff and that some new clauses have been added to the policy.

The Learned Trial Court thereafter went into the question of whether the ailment of the Plaintiff was validly excluded from the mediclaim policy, and if so, had the Defendant acted contrary to law. The Learned Trial Court observed that twice in the past, for the same disease, the claims of the Plaintiff had been approved.

The Learned Trial Court thereafter held that there cannot be a discriminatory clause against those persons who suffered from genetic disorders and they are entitled to medical insurance. The Learned Trial Court decreed the suit for a sum of Rs. 5 Lakhs along with interest of 8% per annum and rejected the claim for damages of Rs. 2,78,864/-. Being aggrieved by the decree and judgement of the Learned Trial Court, the Defendant i.e., United Insurance India Company Limited filed an appeal before the Hon'ble High Court of Delhi.

The two clauses from the insurance policy which are relevant to the case at hand are–

> *"1.1 NOW THIS POLICY WITNESSES* ***that subject to the terms, conditions, exclusions and definitions contained herein or endorsed,*** *or otherwise expressed here on the Company undertakes that during the period stated in the Schedule, if any insured person(s) contracts any disease or suffers from any illness (hereinafter called INJURY) and is such disease or injury requires such insured Person upon the advice of a duly qualified Physician/Medical Specialist/Medical Practitioner (hereinafter called MEDICAL PRACTITIONER) or of a duly qualified Surgeon (hereinafter called SURGEON) to incur hospitalisation/domiciliary hospitalisation expenses or medical/surgical treatment at any Nursing Home/Hospital in India as herein defined (hereinafter called HOSPITAL) as an inpatient, the Company will pay through TPA to the Hospital/Nursing Home or the Insured Person the amount of such expenses as are reasonably and necessarily incurred in respect thereof by or on behalf of such Insured Person but not exceeding the Sum Insured in aggregate in any one period of insurance stated in the schedule hereto ....*
>
> **4. EXCLUSIONS:-** 4.1-4.16
>
> **4.17 Genetic disorders and stem cell implantation/ Surgery"** Thus, the Insurance Company would pay the sum insured in the policy "subject to" the exclusion clause. If the medical condition is covered by any of the exclusions, the claim is liable to be disallowed. "Genetic disorders" is one such exclusion.

The Hon'ble High Court of Delhi considered two questions in the present appeal which are as follows–

> (i) Whether the exclusion in relation to "genetic disorders" is valid and legal?
>
> (ii) Whether the exclusionary clause 4.17 relied upon by the Defendant for rejecting the claim of the Plaintiff applies on facts?

Judgement of Hon'ble High Court of Delhi

After hearing the submissions and taking into consideration the laws and norms in the foreign jurisdictions and the Indian Position, the Hon'ble High Court of Delhi held that

"F.1. To conclude:

> *(i) Right to avail health insurance is an integral part of the Right to Healthcare and the Right to Health, as recognised in Art. 21 of the Constitution;*
>
> *(ii) Discrimination in health insurance against individuals based on their genetic disposition or genetic heritage, in the absence of appropriate genetic testing and laying down of intelligible differentia, is Unconstitutional;*
>
> *(iii) The broad exclusion of "genetic disorders" is thus not merely a contractual issue between the insurance company and the insured but spills into the broader canvas of Right to Health. There appears to be an urgent need to frame a proper framework to prevent against genetic discrimination as also to protect collection, preservation and confidentiality of genetic data. Insurance companies are free to structure their contracts based on reasonable and intelligible factors which should not be arbitrary and in any case cannot be "exclusionary". Such contracts have to be based on empirical testing and data and cannot be simply on the basis of subjective or vague factors. It is for lawmakers to take the necessary steps in this regard.*
>
> *(iv) The Exclusionary clause of "genetic disorders", in the insurance policy, is too broad, ambiguous and discriminatory - hence violative of Art. 14 of the Constitution of India;*
>
> *(v) Insurance Regulatory Development Authority of India (IRDA) is directed to re-look at the Exclusionary clauses in insurance contracts and ensure that insurance companies do not reject claims on the basis of exclusions relating to genetic disorders."*

Thus, the Hon'ble High Court upheld the judgement of the Learned Trial Court and held that:

> *"F.2. The Trial Court has rightly held that a person, suffering from a genetic disorder, needs medical insurance as much as others. The suit is decreed for a sum of Rs. 5 lakhs along with interest @12% from the date of filing of the claim with the Appellant Insurance Company till the date of payment;*
>
> *F.3. The Plaintiff has been contesting the appeal for more than one and a half years and though the money has been released to him, he has submitted a bank guarantee to secure the said amount. The suit was filed in the year 2012. The Plaintiff is entitled to costs. Costs of Rs. 50,000/- are awarded. The bank guarantee submitted by the Plaintiff is released. All pending CMs are disposed of."*