

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 213/2023

ZO ('Ilmentatriċi')

Vs

HSBC Life Assurance (Malta) Limited

Reg. C 18814

('Provditur tas-Servizz' jew 'HLAM')

Seduta tat-23 t'Awwissu 2024

L-Arbitru

Dan huwa ilment mressaq mill-Ilmentatriċi dwar allegat nuqqas min-naħa tal-Provditur tas-Servizz li jhallas *claim* ta' €11,647 (ekwivalenti għal Lm5,000) li huma dovuti lilha skont polza fuq il-ħajja tal-Ilmentatriċi li kienet ħarġet għal 18-il sena mill-14 ta' Mejju 2004, li kellha wkoll suppliment dwar ħlas ta' Lm5,000 jekk ikollha xi mard kritiku inkluż:

*'Cancer defined as any malignant tumor which is characterised by an uncontrollable development and spreading of the malignant cells and the infiltration of tissue, Hodgkin's disease, except the first stage, leukaemia and malignant melanomas are included. Non-invasive cancer in-situ, tumours in the presence of HIV and any skin cancer other than invasive malignant melanoma, are excluded.'*¹

L-Ilment²

¹ Paġna (p.) 94

² P. 1 – 7 u dokumenti annessi p. 8 - 82

L-Ilmentatriċi qalet li:

'In May 2021 I experienced a bloody discharge from my left breast. I then underwent several medical consultations and examinations, initially inconclusive, but after a final MRI in January 2023, I was diagnosed with a Grade 3 Carcinoma. This was excised on the 23rd of February 2023. Thereafter I also had to undergo a second procedure for re-excision on the left breast inferior cavity on the 19th of April 2023.

At the start of this medical saga in March 2022, and before the lapse of the Life Policy, I verbally informed a desk officer at the HSBC branch in Swieqi that I was undergoing some tests due to the symptoms I was experiencing. I also handed copies of the appointment letters I had for a Mammogram on the 24th of April 2021 and another one on the 18th of May 2022 which requested further evaluation via ultrasound and a biopsy. All results were forwarded with the sequence of handwritten letters I sent to HSBC Life Assurance (Malta) Ltd.

Subsequently, after May 2022, HSBC bank called me asking for a medical report with the final diagnosis. At that point, I did not have a final diagnosis. I received this after the first surgical procedure on the 23rd of February 2023 and further elaborated on the 15th of April 2023 after the second procedure. 3 weeks later, in June 2023, I was prescribed 5 x 25 mins Radiotherapy sessions.

My life policy had a benefit of €11,647 (Lm5,000) in case I was diagnosed with Cancer. Notwithstanding the above timeline of medical consultations and interventions, in the early cycle of events, exacerbated by the COVID-19 restrictions, HSBC has refused to make a payout. This was after I sent the attached letter with the relevant documents relating to the surgical procedure on the 23rd of February and the 13th of April 2023. HSBC has sent their refusal of my claim in writing as the 9 months had lapsed after the policy lapsed.

I find this most unfair and unjust and somewhat heavy-handed on the part of HSBC as it was made aware that I was undergoing tests for breast cancer and the fact that the final diagnosis, surgery and radiotherapy came after the policy lapsed, is a matter that requires further consideration by HSBC,

especially since the initial phase of tests was severely impacted and delayed by COVID-19 restrictions.³

Bħala rimedju, talbet li l-Arbitru jordna lil HLAM jonoraw il-claim ta' €11,647 flimkien mal-imghax dovut.

Ir-Risposta⁴ tal-Provditur tas-Servizz

Fir-risposta, HLAM qalu:

“Respectfully submits:

That the Complaint is unfounded and ought to be rejected because of the following reasons:

- 1) Ms ZO had taken out a “Lifestyle Personal Protector Plan (Policy)”, Policy Number 200-007270 on the 14 May 2004. The policy was taken for a duration of 18 years, with a living assurance of five thousand Malta Liri (LM5,000) equivalent to eleven thousand, six hundred and forty-six euro and eighty-seven cents (Eur 11,646.87). The duration of the eighteen-year period expired on the 14 May 2022, as clearly stated on the Schedule of the relative Policy (Doc A).*
- 2) The Insurance Proposal issued on the 14 May 2004 provided under “Supplementary Appendix for Living Assurance Benefit” that the Sum Assured is payable in the event that the Insured suffers one or more of the diseases mentioned therein, including Cancer. Cancer is described as “any malignant tumor which is characterized by an uncontrollable development and spreading of the malignant cells and the infiltration of tissue ... non-invasive cancer in situ ... are excluded.” (Doc B).*
- 3) The Complainant first made contact with HSBC Life on the **16 March 2022**. Ms ZO was declaring that she had been feeling and seeing some abnormal signs and symptoms around her general health and had also undergone some investigative and genetic testing. She did not submit any results and/or histology reports to substantiate a valid claim with evidence of malignancy.*

³ P. 3

⁴ P. 89 - 91 u dokumenti annessi p. 92 - 105

- 4) *On the **17 March 2022** HSBC Life contacted Ms ZO by phone to understand what her exact query was all about. She confirmed that at that point she had done a mammogram of her breasts, this resulted in the negative. She did not provide HSBC Life with any resultant reports. She also confirmed that at that point, she did not undergo any surgeries and had no biopsy results denoting the diagnosis of cancer. During that call, HSBC Life representative explained to Complainant that policy was imminently going to expire and that therefore if she were to undergo further medical tests, she should proceed to submit the findings of those tests to HSBC Life as soon as possible and before the lapse of the policy. An internal record found summarizing this discussion is hereby being attached (Doc C).*
- 5) *The policy expired on **14 May 2022**, and till that date HSBC Life received no other reports, documentation or information from claimant other than those mentioned earlier.*
- 6) *As per Supplementary Appendix for Living Assurance Benefit under Article 8) This Living Assurance Benefit expires “on the anniversary of the Insurance preceding the sixty fifth (65) birthday of the Insured”. Ms ZO reached the age of 65 on the **15 May 2022**.*
- 7) *On a letter received by HSBC Life on the **19 May 2022**, (Doc D) complainant is stating that “whilst I hope that things are not that serious ... she advised that she had further appointments regarding her breasts and uterus. HSBC Life then got back to her telephonically and advised her that she is no longer on cover. This can be collaborated by Customer who is stating in her complaint that after May 2022 HSBC Life called her to ask her for a final report with final diagnosis. At this point the Complainant had no final diagnosis.*
- 8) *On the **28 April 2023**, HSBC Life received another letter with detailed information with no new evidence. (Doc E) i.e., almost a year after policy expired.*
- 9) *On the **24 May 2023**, – i.e., more than twelve months after expiry of policy, HSBC Life received another letter (Doc F) from Ms ZO claiming that she has just been diagnosed with breast cancer in the left breast. With her letter Ms ZO had submitted a number of documents all dated after the expiry date of the policy with only a particular one dated 23 February 2023 evidencing*

positive diagnosis of cancer. Once again, Ms ZO was informed, in writing that her claim could not be upheld as it was assessed to be Out-of-date.

*10) Therefore, from the medical reports received from Complainant on **24 May 2023**, HSBC Life established that positive diagnosis of malignancy in respect to Complainant was only made after termination of insurance policy. Upon termination of policy, cover for protection under such policy simultaneously terminates. This means that cover would not extend to apply to claims in respect to insurable events taking place after lapse of policy. For these reasons, on the 8 June 2023 and further on the 11 July 2023 (Doc G and H) HSBC Life informed Complainant that her claim was not valid and could not thus be entertained.*

That in view of the above, it is submitted that there could be no remedy to the Complaint as it is unjustified in fact and at law.

HSBC Life respectfully reserves the right to produce further oral and documentary proof and to make additional submissions both oral and also in writing during the sittings before His Honour, The Arbiter, to substantiate its position as above indicated.

For the above reasons, HSBC Life humbly submits that all Complainants' demands are to be rejected with costs to be borne by said Complainant."⁵

Seduti

Saru żewġ seduti fil-15 t'April 2024⁶ u fis-17 ta' Ġunju 2024⁷ fejn il-partijiet sostnew il-pożizzjoni tagħhom kif kienu fissru fl-Ilment u fir-Risposta.

L-Ilmentatriċi pprezentat dokument bi kronoloġija dettaljata⁸ tal-fażijiet kollha bejn is-16 ta' Marzu 2021, meta għall-ewwel darba l-Ilmentatriċi għarrfet lil HLAM dwar l-ewwel sintomi li maż-żmien ġew *diagnosed* bħala kanċer, u t-22 ta' Diċembru 2022, meta għall-ewwel darba kellha '*histology*' li indika li seta' kellha kanċer u wara sal-15 ta' Marzu 2023 meta giet ċertifikata li kellha *Grade 3*

⁵ P. 89 - 91

⁶ P. 106 - 110

⁷ P. 111 - 113

⁸ P. 118 - 121 u dokumenti annessi p. 122 – p. 145

invasive breast carcinoma. Wara dan beda żmien il-kura li għall-fini ta' dan l-llment ma għandux relevanza.

L-llmentatriċi ssostni li ż-żmien twil sa ma saret dijanjożi ċara ma kienx htija tagħha u, b'hekk, ma setgħetx tagħmel *claim* qabel skadjet il-polza. Iżda, skont Artiklu 7 tal-polza hija tikkwalifika bħala:

'faced practical difficulties for the timely notification and that he/she proceeded with the notification as soon as these difficulties were overcome'.⁹

Għall-Provditur tas-Servizz xehed Edward Micallef – *Head Underwriting and Claims* ta' HLAM u qal:

'Ngħid li s-Sinjura ZO kellha polza tal-assikurazzjoni fuq il-ħajja, waħda minn dawk il-poloż li titħallas fl-eventwalità ta' mewt. Imma kellha wkoll Rider Benefit ieħor li jissejjaħ il-Critical Illness li hu benefiċċju li jħallas f'każ ta' mard kritiku dak li jissejjaħ Life Threatening Cancer – kien wieħed mill-kundizzjonijiet ukoll fost kundizzjonijiet oħrajn.

Ngħid li din il-polza bdiet minn Mejju 2004 sa Mejju 2022. Kienet għal tmintax-il sena.

Ngħid li s-Sinjura ZO baġħtilna notament li kienet qed tikklejmja fuq il-Critical Illness Benefits f'Marzu 2022. Hija baġħtet xi ittri wkoll, fosthom, ittra li kienet tgħid li għamlet xi testijiet f'2020 ġeneriċi biex tara jekk kinitx positive għal ċertu genes u dawn il-genes ħarġu positive li juru li kellha predisposition għal ċertu mard ta' cancer aktar min-normal. Però, ma kien hemm l-ebda evidenza li s-Sinjura kienet diagnosed bil-cancer sa dak iż-żmien.

Ngħid li l-evidenza hija a histological report fejn il-laboratorju jikkonferma li l-individwu jkollu cancer ta' ċertu grad li jaqa' taħt il-kappa ta' Life Threatening Cancer.

HSBC Life ċempilna lis-Sinjura u staqsejniha x'inhu eżatt il-każ tagħha fejn qaltilna li kienet qed tara xi sintomi u kienet qed tagħmel xi testijiet. Għamilniha aware li l-polza kien fadlilha xahrejn minn dak iż-żmien u sakemm f'dawk ix-xahrejn jirriżulta li jkollha xi report pożittiv għall-cancer, tibgħatulna u aħna nkunu nistgħu nassessjawh. Ovvjament, il-polza wara li tiskadi ma tibqax valida.

⁹ P. 34

Qiegħed nippreżenta kopja ta' nota li kelli fil-file dwar dan li għadni kif għidt.

Ngħid li l-prassi tal-insurance hija sempliċi. Inti għandek perjodu li fih tkun kopert; jibda u jispiċċa, minn data sa data. Jekk f'dak l-interim, il-persuna nxurjata jkollha xi event li jiġġustifika t-Terms and Conditions tal-polza, allura, l-assessment tagħna jkun jista' jsir u normalment tiġi approved. Jekk il-polza tiskadi, l-kopertura ma tibqax valida.

Ngħid li HSBC Life agixxiet kif suppost. Ngħid li kont kellimt lis-Sinjura ZO u għidtilha li d-dokumentazzjoni li rċevejna f'Marzu ma kinitx dokumentazzjoni li turi li kien hemm cancer.

Kont għidtilha, 'Jekk ser tagħmel aktar testijiet, u għad baqalek xahrejn hawnhekk, minn Marzu sa Mejju, jekk jirriżulta li jkollok testijiet li sfortunatament juru li tkun positive għall-cancer, agħtihomlna għax hemmhekk ser ikollok bażi ta' claim.'

Sfortunatament, il-polza skadiet u aħna ma rċevejniex evidenza li turi li fil-perjodu ta' kopertura s-Sinjura ZO kienet ġiet diagnosed with a positive diagnosis of cancer.¹⁰

Sottomissjonijiet finali

Fis-sottomissjonijiet finali tagħhom, il-partijiet żammew il-pożizzjoni kif spjegati fl-Ilment, fir-Risposta u fix-xhieda waqt is-seduti.

HLAM sostna wkoll illi anke kieku l-polza kienet għadha valida sa Diċembru 2022, xorta id-dijanjożi li saret fit-22 ta' Diċembru 2022 ma kinitx koperta għax kienet speċifikament eskluża. Kienet biss id-dijanjożi li saret fit-23 ta' Frar 2023 li kkonfermat każ ta' kanċer kopert bil-polza konċernata, iżda sadanittant l-polza kienet ilha li skadiet 9 xhur qabel.¹¹

HLAM qalu wkoll li fis-26 ta' Mejju 2022, meta l-polza kienet skadiet 12-il jum qabel, l-Ilmentatriċi avżat li l-mediċi sabu 'benign lump' li żgur ma kinitx xi haġa koperta bil-polza li kienet għadha kif skadiet.¹²

¹⁰ P. 111 - 112

¹¹ P. 158

¹² P. 157

Analizi u Konsiderazzjoni

Dan huwa każ rigward polza t'assikurazzjoni li tkopri s-saħħa (*health cover policy*) li kienet inkorporata bħala benefiċċju addizzjonali għewwa polza għat-tul (18-il sena) li tkopri l-ħajja u, għalhekk, ma kienx hemm il-bżonn li l-polza tiġi rrinovata kull sena kif normalment isir f'każ ta' polza t'assigurazzjoni tas-saħħa li tkun għal rasha (*stand alone*).

Il-każ huwa dwar jekk l-assikuratur huwiex obligat iħallas *claim* dwar kundizzjoni ta' kanċer li xjentifikament huwa sostanzjalment ippruvat li kienet diġà teżisti meta l-polza kienet kurrenti iżda li għet *diagnosed* diversi xhur wara li l-polza kienet diġà skadiet u, għalhekk, il-*claim* saret sew wara ż-żmien kurrenti tal-polza.

Għalhekk dan mhux każ li l-Ilmentatriċi naqset milli tinforma lill-Provditur tas-Servizz dwar l-eżistenza ta' xi kundizzjoni medika (*pre-existing condition*) qabel ma kkuntrattjat il-polza.

Dan huwa każ fejn l-Arbitru jrid jiġġudika jekk il-polza in kwistjoni kinetx tat-tip '*claims based policy*' jew '*occurrence based policy*'.

'*Claims based policy*' tkopri biss *claims* li jsiru kif provdut fil-polza fil-perjodu meta l-polza kienet kurrenti. Min-naħa l-oħra, '*occurrence based policy*' tkopri affarijiet li għaw waqt li l-polza kienet kurrenti anke jekk il-*claim* tkun saret wara li l-polza tkun skadiet.

Il-Provditur tas-Servizz qed jargumenta li din il-polza hija '*claims based*' waqt li l-Ilmentatriċi qed targumenta li l-polza hija '*occurrence based*'.

Il-kundizzjonijiet tal-polza li kienu japplikaw għall-*claim* in kwistjoni huma dawk li jidhru f'*SUPPLEMENTARY APPENDIX FOR LIVING ASSURANCE BENEFIT*¹³ li għaliha l-Ilmentatriċi kienet tħallas *premium* supplimentari ta' Lm71.76 fis-sena u s-somma assikurata kienet ta' Lm5,000.¹⁴

Skont Artiklu 8 ta' dan is-suppliment, il-polza kienet tiskadi meta l-assikurata tagħlaq 65 sena, i.e., 14 ta' Mejju 2022. U, skont artiklu 7:

¹³ P. 32 - 34

¹⁴ P. 22

“OBLIGATIONS IN CASE OF A CLAIM FOR COMPENSATION

The Insured is obliged to submit a written notification together with the necessary evidence proving the concurrent existence of the conditions for his/her right for compensation to the Head Office of the Company. This must take place at the latest within fourteen (14) days from the date the disease was diagnosed, unless the Insured or the beneficiary, as the case may be, proves that he/she faced practical difficulties for the timely notification and that he/she proceeded with the notification as soon as these difficulties were overcome ... Failure of the Insured to abide timely by his/her obligations provided in this paragraph may result in the loss of his/her right to the relevant benefit.”

L-Ilmentatriċi qed issostni li *proviso*

“unless the Insured or the beneficiary ... proves that she faced practical difficulties for the timely notification and that she proceeded with the notification as soon as these difficulties were overcome”,

trendi l-polza bħala *occurrence based* għadarba ma setgħetx tagħmel *claim* għax ma kellhiex dijanjosi, u għamlitha wara li l-*policy* kienet ilha li għalqet tal-anqas 7 xhur wara li kellha l-ewwel indikazzjoni f’Dicembru 2022,¹⁵ u 9 xhur wara dijanjosi ċara tat-23 ta’ Frar 2023.¹⁶

L-Arbitru hu tal-fehma li din il-polza hija b’mod ċar tat-tip *claims based*, jiġifieri li *claim* trid issir b’mod validu fi żmien qabel tiskadi l-polza. Il-konċessjoni li l-*claim* tista’ ssir wara l-iskadenza jekk għal raġunijiet prattiċi ma tkunx tista’ ssir qabel ma tiskadi (izda sa 14-il-ġurnata wara li l-problemi prattiċi jiġu solvuti) ma jfissirx li tista’ tintbagħat *claim* wara l-iskadenza għax sa l-iskadenza ma jkunx hemm dijanjosi skont il-kundizzjoni tal-polza.

L-Arbitru hu tal-fehma li dak li l-polza qed tkopri huwa każ fejn qabel ma tiskadi l-polza jkun hemm dijanjosi skont il-kundizzjoni tal-polza izda l-*claim* ma tkunx tista’ tintbagħat qabel l-iskadenza għal raġunijiet prattiċi (eż., jekk persuna jkollha dijanjosi ta’ kanċer qabel ma l-polza tiskadi izda ma tkunx tista’ tibgħat *claim* fil-ħin għax tkun qed tiegħu l-kura).

¹⁵ P. 50; 121

¹⁶ P. 51 – 52; 121

F'dan il-każ, il-*claim* ma setgħetx issir qabel ma skadiet il-polza mhux għal diffikultajiet prattiċi kif intenzjonat fil-polza, iżda għax sa l-iskadenza ma kienx hemm il-kundizzjonijiet neċessarji ta' dijanjosi biex issir *claim* valida.

Deċiżjoni

Skont Artiklu 19(3)(b) tal-KAP. 555 tal-Liġijiet ta' Malta, l-Arbitru jrid jiddeċiedi u jagħti għidizzju fuq ilment b'referenza għal dak li, fil-fehma tiegħu, ikun ġust, ekwu u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.

Għar-raġunijiet spjegati hawn fuq, l-Arbitru qed jiċċad dan l-Ilment u jordna li kull parti għor l-ispejjeż tagħha tal-każ.

Rakkomandazzjoni

L-Arbitru jifhem iċ-ċirkostanzi sfortunati li għaddiet minnhom l-Ilmentatriċi u għalhekk qed jirrakkomanda lill-Provditur tas-Servizz, mingħajr obbligu li jaddotta r-rakkomandazzjoni, li jikkunsidra xi forma ta' *ex-gratia payment* lill-Ilmentatriċi.

Alfred Mifsud

Arbiter for Financial Services

Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru

Dritt ta' Appell

Id-Deċiżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deċiżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deċiżjoni skont l-artikolu 26(4) tal-Att, mid-

data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il gurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.