(2012) 07 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD — APPELLANT

Vs

KAMAL KUMAR — RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 822 : 2012 3 CPJ 599

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition pivots round the question "whether the repudiation of claim made by the insurance company was correctly made. " Let us turn to facts of this case. The respondent-complainant obtained ''Health Guard Policy '' for his spouse and for himself from petitioner, Bajaj Allianz General Insurance Co. Ltd. on 3.7.2006. According to the complainant, Kamal Kumar Rateria, he suffered problem in respect of prostate lesion. He was examined on 15.9.2006 and, subsequently, he was operated upon. He incurred expenses to the tune of Rs. 1,63,555 on treatment and surgery. He lodged a claim with the petitioner for reimbursement of his expenses on 11.10.2006. Claim was repudiated. He filed a complaint before the District Forum, Raigarh on 10.12.2008. The District Forum dismissed the complaint on 5.5.2009.

2. THE complainant filed an appeal before the State Commission, Chhattisgarh and his appeal was allowed on 24.7.2010. This revision petition has been preferred by the petitioner. We have heard learned Counsel for the parties. Learned Counsel for the petitioner vehemently argued that the complainant is not entitled to the above said claim. He submitted that this evidence is not covered by Section 45 of the Insurance Act and as per Health Guard Policy document issued by the Bajaj Allianz General Insurance Co. Ltd., he is further not entitled to such claim. In this context, the attention of the Court was invited towards Rule ''C '' Clauses 1, 2 and 3, which are reproduced as follows: "We will not pay for claims arising out of or howsoever connected to the following: (1) Any medical condition or complication directly or indirectly arising from it which,

existed before the commencement of the Policy Period (even if unknown to You), or for which care, treat-ment or advice was sought, recommended by or received from a Doctor. This Exclusion shall cease to apply if You have maintained a Health Guard Policy with Us for a continuous period of a full 4 years without break from the date of Your first Health Guard Policy with Us. (2) Without derogation from c1ause above, any Medical Expenses incurred during the first two consecutive annual periods during which You have the benefit of a Health Guard Policy with Us in connection with any types of gastric or duodenal ulcers, cataracts, benign prostatic hypertrophy, hernia of all types, hydrocele, all types of sinuses, fistulae, haemorrhoids, fissure in ano, dysfunctional uterine bleeding, fibromyoma endometriosis, hysterectomy, stones in the urinary and biliary systems, surgery on ears/tonsils/adenoids/paranasal sinuses. Surgery for any skin ailment. Surgery on all internal or external tumours/cysts/nodules/polyps of any kind including oreast lumps. This exclusion period shall apply for a continuous period of a full 4 years from the date of Your first Health Guard Policy with us if the above referred illness were present at the time of commencement of the policy and if You had declared such illness at the time of proposing the policy for the first time. (3) Any Medical Expenses incurred during the first four consecutive annual periods during which You have the benefit of a Health Guard Policy with Us in connection with joint replacement surgery unless such joint replacement surgery is necessitated by accidental Bodily Injury. " (Emphasis provided)

3. LEARNED Counsel for the petitioner explains that the present case is covered within Clause 2 of Rule ''C '' quoted above. However, the main question which falls for consideration is whether the above said illness was present at the time of commencement of policy as per requirement of Clause 2 above. The petitioner has not produced even an iota of evidence to prove this clause of para 2. On the contrary, the complainant has tried to prove that he was not suffering from this ailment before the commencement of the insurance policy. In this regard, the attention of the Court was invited towards medical certificate dated 26.4.2006 produced by the complainant, which goes to show that certain tests regarding lipid profile, serum appearance were conducted which showed no inkling about the above said ailment but subsequently report dated 14.8.2006 and 15.8.2008 reveal that he was suffering from prostatic cholesystitis. The State Commission rightly held: "Looking to the condition laid down in this clause, it was obligatory upon the insurance company to prove that the medical condition or complication for which the claim has been preferred were pre-existing on the date of commencement of the policy. This fact should have been proved by some positive, cogent, convincing and reliable oral or medical evidence that the disease or the complication was such which must be presumed as pre-existing prior to the date of issuance of policy, or for which a Doctor was consulted or treatment was done or at least medical care was taken. "

The revision petition is meritless and the same is dismissed. Revision Petition dismissed.

