(2012) 10 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

Valsa Jose — RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : 2012 4 CPJ 839

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Appeal dismissed

Judgement

1. THIS First Appeal has been filed by Bajaj Allianz General Insurance Co. Ltd. (herein after referred to as the ''Appellant'') being aggrieved by the order of the State Consumer Disputes Redressal Commission, Karnataka (herein after referred to as the ''State Commission'') in Complaint No.15/2006 decided in favour of Smt. Valsa Jose, Respondent herein and original complainant before the State Commission.

2. IN her complaint before the State Commission, Respondent/Complainant had contended that she had gone to the USA in connection with a delivery of one of her daughters who resides there and had taken an Overseas Travel Insurance Policy which included medical coverage from the Appellant/Insurance Company commencing from 13.11.2003 to 11.3.2004 for a sum of US D.50,000. Respondent reached USA on 14.11.2003 and on 29.1.2004, she developed complaints of shortness of breath, chest heaviness and burning sensationbecause of which she was taken to the emergency room at Woodwinds Hospital, USA and later shifted te St. Joseph''s Hospital, USA where the doctors performed an Angiogram and Angioplasty of her right Coronary Artery. The entire medical expenditure that she incurred was US D 36,538.47. Respondent submitted all relevant documents pertaining to her medical treatment and surgery including through electronic mail to Appellant/Insurance Company who instead of settling the same asked her to file the claim directly with the Claims Department. Respondent, therefore, submitted a claim form along with the documents but despite this, the Appellant/Insurance Company unilaterally rejected her claim.

Respondent sent a legal notice for settlement of claim including compensation. However, the Appellant/Insurance Company in response stated that her claim was justifiably rejected on grounds of suppression of material facts pertaining to her past illness. Being aggrieved by this repudiation, Respondent filed a complaint before the State Commission on grounds of deficiency in service and requested that the Appellant/Insurance Company be directed to pay the Respondent, Rs. 17,17,308 towards medical expenditure incurred by her and Rs.15 lakh as compensation towards mental agony and harassment with interest @ 18% per annum from the date of complaint till payment.

3. APPELLANT /Insurance Company on being served while admitting that the Respondent had taken an Overseas Travel Insurance Policy from it before travelling to the US stated that the claim was rightly repudiated because the Respondent had suppressed that she was suffering from hypertension and heart ailment prior to the policy period and for which she had undertaken treatment. The State Commission after hearing both parties and on the basis of evidence produced before it allowed the complaint on the grounds that in the absence of an affidavit of Dr. Sanjay Mehrotra, who purportedly treated Respondent for hypertension, there was no credible evidence to prove that the Respondent had been treated for hypertension and cardiac problems. The other medical record regarding the treatment of the Respondent pertained to medical treatment for menopausal related symptoms for which she had consulted one Dr.Shaibya Saldanha who was an Obstetrician and Gynaecologist and this had no nexus with the cardiac medicalproblems for which Respondent underwent Angiography and related procedures in the USA. The State Commission, therefore, directed the Appellant/Insurance Company to pay jointly and severally Rs.17,17,308 with interest @ 9% per annum from the date of complaint till realization and Rs.5,000 as litigation costs.

4. BEING aggrieved by this order, the present First Appeal has been filed by the Appellant/Insurance Company. Counsel for both parties were present. Counsel for Appellant in his oral submissions contended that there was credible evidence on record that the Respondent had a past medical history of hypertension for 4 years and this fact was admitted by her at St. Joseph''s Hospital, USA where she underwent Angiography and Angioplasty. Counsel for Appellant specifically brought to our notice the Consultation Report of the said hospital wherein as per the past medical history, the following observation has been made by that hospital: "Significant for hypertension for 4 years. She has no diabetes, known hyperlipidemia or tobacco abuse. She has a history of taking alcohol and amlodipine, a combination pill not available in the US for her hypertension. Her past medical history if significant for a cholesterol in the past which was reportedly normal. She had 2 children that are raised and she came to the birth of her grandchild in January. She has been in the US since mid November and planned to go back to India in mid March."

Counsel for Appellant contended that obviously this information was given by the

Respondent herself but in the insurance proposal form she did not mention any of these facts. Since an insurance policy is a contract based on the principle of ubberimafides i.e. ''utmost good faith'' between the parties, any breach of the terms and conditions of the same on the part of the insured would justify repudiation of the claim by the Insurance Company as in the instant case. Counsel for Respondent who was present reiterated that the State Commission had in a well -reasoned order rightly allowed the complaint.

5. WE have considered the submissions of learned Counsel and have gone through the evidence on record. The fact that Respondent took an Overseas Travel Insurance Policy from the Appellant/Insurance Company for a sum of US D 50,000 and during the validity of the said insurance cover, she underwent an Angiography and Angioplasty in USA are not in dispute. It is also a fact that the claim filed by the Respondent was rejected by the Appellant/Insurance Company on the grounds that she suppressed material fact that she had hypertension and since there is anexusbetween hypertension and her cardiac problems, Appellant/ Insurance Company justified its repudiation. Counsel for Appellant stated that the State Commission erred in concluding that there was no credible evidence including the affidavit of any doctor that the patient was treated for hypertension or any cardiac problem while this fact was clearly admitted by the Respondent herself while narrating medical history at St. Joseph''s Hospital, USA where she underwent the cardiac surgery. We are unable to agree with the Counsel for Appellant that there was suppression of material facts as no credible evidence has been filed by the Appellant/Insurance Company on whom there was onus to do so to prove that the Respondent had undergone treatment for any hypertension related cardiac problems or for severe hypertension prior to 13.11.2003. The only document produced is a note addressed to the Claims Manager of the Appellant/Insurance Company from one Dr. Shaibya Saldanha who is an Obstetrician and Gynaecologist which states that the Respondent was referred to her for menopausal related problems and at that time she was taking medication for hypothyroidism and hypertension as prescribed by Dr. Sanjay Mehrotra. No affidavit or credible evidence to support this has been filed by the Dr. Sanjay Mehrotra. Hon''ble Supreme Court in Mithoo Lal Nayak v. LIC of India, 1962 AIR(SC) 814, as also in Satwant Kaur Sandhu v. New India Assurance Co. Ltd., 2009 8 SCC 316, has held that the test to determine as to what is a ''material fact'' is whether that fact has any bearing on the risk undertaken by the insurer. If the fact has any bearing, it is a material fact and if not, it is not material. In the instant case, the Discharge Summary from St. Joseph''s Hospital, USA relied upon by the Appellant, merely states that Respondent had been taking medicine for hypertension and for cholesterol which was reportedly normal. We are of the view that the fact that the patient was taking medicine for hypertension for some time does not amount to suppression of material fact because as is well known hypertension is usually a lifestyle disease and easily controlled with conservative medication, as in the instant case. There is no evidence that it was so acute or high that it was responsible for Respondent''s

subsequent Angioplasty or any other past major illnesses. A similar view has been taken by us in F.A.No.292/2007, Smt. Kamna Bajpai v. LIC of India, decided on 31.8.2012.

6. KEEPING in view the above facts, we agree with the order of the State Commission that the Appellant/Insurance Company was not justified in repudiating the insurance claim of the Respondent on the grounds of suppression of material facts. We, therefore, uphold the order of the State Commission. The First Appeal is dismissed. Appellant/Insurance Company is directed to pay jointly and severally to the Respondent, Rs. 17,17,308 with interest @ 9% per annum from the date of complaint till realization and Rs. 5,000 as litigation costs.

