(2014) 05 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Bajaj Allianz Life Insurance Co. Ltd. APPELLANT

Vs

RAJ KUMAR RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Citation : 2014 3 CPJ 221

Hon'ble Judges : S.M.Kantikar J.

Final Decision : Petition dismissed

Judgement

1. THE present Revision Petition has been preferred against the impugned order dated 14.11.2013 in Appeal No. 1495/2009 passed by the State Consumer Disputes Redressal Commission (in short, ''State Commission'') allowing the Respondent''s appeal. The Appeal was filed in the State Commission against the judgment dated 13.10.2009 in Consumer Complaint No. 81/2008 passed by the District Consumer Disputes Redressal Forum, Baran (in short, ''District Forum'') whereby the District Forum dismissed the complaint. The brief facts of the case: Mr. Kalyan Singh, the deceased husband of the Complainant, took a Bajaj Allianz Unit Gain Plus Gold Life Insurance Policy from Bajaj Allianz Life Insurance Co. Ltd., the OP -1 (hereinafter referred to as "the Insurance Company"). Premium of Rs. 25,000 was paid. The policy was in force from 28.12.2007. The husband of the Complainant, died on 24.4.2008. A claim was submitted before the Insurance Company, which was repudiated on the ground that the insured obtained the policy after concealment of material facts about his previous illness. Hence, alleging deficiency in service, a complaint was filed before the District Forum.

2. THE District Forum dismissed the complaint. However, keeping in view the facts and circumstances of the case, allowed the refund of Rs. 25,000 deposited by deceased policyholder, with the OP. Against the order of District Forum, the complainant filed the first Appeal No. 1495/2009 before the State Commission, Jaipur. The State Commission allowed the appeal and directed the Insurance Company to pay to the Complainant Rs. 2,50,000 with interest @ 9% per annum, plus compensation of Rs. 25,000 towards mental agony and costs.

3. AGGRIEVED by the impugned order of the State Commission, the OP preferred this revision.

4. WE have heard the Counsel for the petitioner at the admission stage. He has invited our attention to the proposal form, various medical records of the deceased. We have perused the evidence which was recorded by the District Forum. Two doctors, W -1 Dr. Laxmi Nath Meena and W -2 Dr. Sharad Paruthi were examined before the District Forum. Both the doctors admitted that the certificates dated 6.8.2008 and 25.7.2008 (Ex. -A1) were issued by them, however, Dr. L.N. Meena also admitted that it was not within his knowledge, as to, on what basis the certificates were issued. Dr. Meena further accepted that Kalyan Singh was admitted in the hospital on 4.3.2008, but on the basis of the report of the Central Laboratory, Kota, it could not be said with certainty that the patient was suffering from Blood Cancer. Another witness, W -2, Dr. Sharad Paruthi deposed that he issued the discharge ticket dated 7.3.2008, which revealed that the patient was suffering from Anaemia, some problem relating to kidney and he was found positive for Typhoid. He further stated the patient was treated for Typhoid and Malaria. The Blood Cancer could not be diagnosed at the time of discharge on 7.3.2008. He stated that the record of the Monilek Hospital also did not disclose as to how long the patient was suffering from Multiple Myeloma and that he was not sure whether the patient himself knew that he was suffering from Multiple Myeloma. It was diagnosed on the basis of previous record, when the patient was again admitted in the Hospital on 24.4.2008 and that there was no record in the file of the patient prior to 7.3.2008.

5. THEREFORE , we are of considered view that, there is no proof of any previous illness or ailment of the deceased/insured, prior to 7.3.2008, when the insured was first discharged from the Government Hospital, Baran. He was treated only for Typhoid and Malaria during hospitalisation. The renal insufficiency and Multiple Myeloma was undiagnosed till the deceased was admitted in Monilek Hospital on 8.4.2008 and discharged on 19.4.2008. Hence, it cannot be presumed that the insured/deceased Kalyan Singh was aware of his aforesaid ailments and he concealed the previous illness, at the time of submission of proposal form, on 27.12.2007.

6. USUALLY , the authorised doctor of the Insurance Company examines the insured, assesses the fitness and after complete satisfaction, then only the policy will be issued. Therefore, we feel the OP was wrong in repudiating the claim of complainant. Further, we have perused the medical records of Monilek Hospital, the pathology test reports during the period of admission of Kalyan Singh (8.4.2008 to 19.4.2008). The patient was treated for fever -Typhoid. Thereafter, Dr. Vijay Kaul, the Pathologists, issued the Histopathology report of Bone marrow biopsy dated 16.4.2008, which confirms the diagnosis of Plasma Cell Myeloma. Hence, the patient was unaware of his disease, at the time of filling of proposal form. We have referred to several medical text books on Hematopathology, Surgical Pathology and Mayo -Clinic Medical Articles, which clearly mention that,

Multiple myeloma often doesn''t have symptoms at first. This can make it difficult to diagnose in the early stages. Signs and symptoms of multiple myeloma can vary from person to person. Early in the disease, the condition may not cause any symptoms (smoldering multiple myeloma). As the disease progresses, the signs and symptoms appear. The OP has made unflappable efforts and just relied upon the certificate issued by Dr. Sharath Parthy of Government Hospital, Bara, which is not much convincing. However, even, if we presume that the patient was suffering from Multiple Myeloma/Blood Cancer for the past 2 to 3 years, the OP should have produced some cogent evidence to prove that the Complainant had taken treatment from some other Cancer Hospital. Therefore, on the basis of forgoing discussion, we do not find any reason to interfere with the well reasoned order of the State Commission. The revision petition is devoid of merit, and is, therefore, dismissed. Parties are directed to bear their own costs.

