(2015) 04 NCDRC CK 0240

In the National Consumer Disputes Redressal Commission

Case No : 2488 of 2010

DEEP SARAF — APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. & ORS. — RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 04 NCDRC CK 0240

Hon'ble Judges : K.S. Chaudhari

Advocate : Suchita Sharma, Jagriti Ahuja, Devmani Bansal, R.K. Gupta

Judgement

1. This revision petition has been filed by the petitioner against the order dated 3.3.2010 passed by the Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur (in short, ''the State Commission'') in Appeal No. 368/2009 - Deep Saraf Vs. Branch Manager, United India Insurance Co. Ltd. by which, while dismissing appeal, order of District forum dismissing complaint was upheld.

2. Brief facts of the case are that complainant/petitioner obtained joint mediclaim policy for himself, his mother Mrs. Archana Agrawal, wife Mrs. Ritu Saraf and son Aditya Saraf on 22.3.2003. Policy expired on 21.3.2005 and after a gap of 9 days after filing fresh proposal form, policy was renewed from 31.3.2005 and was continuing. Complainant''s mother Mrs. Archna Agrawal was having problem of thigh-ache in the year 2007 and after examination by doctors her hip joint was replaced on 17.7.2007 at Breach Candy Hospital at Mumbai and expenses of Rs.5,19,041/- were incurred. It was further alleged that prior intimation before operation was also given to the Insurance Company. Complainant lodged claim which was repudiated by OP/respondent on the ground that at the time of renewal of policy, Mrs. Archana Agrawal wilfully suppressed material fact. Alleging deficiency on the part of OP, complainant filed complaint before District

Forum. OP No. 1 & 2/Respondent No. 1 & 2 resisted complaint and submitted that mother of the complainant was having pain in hip joint for the last three years, as per discharge slip of Dr. Manihar of Breach Candy Hospital and she suppressed this fact while renewal of policy, so claim was rightly repudiated and prayed for dismissal of complaint. Learned District forum after hearing both the parties dismissed complaint. Appeal filed by complainant was dismissed by learned State Commission vide impugned order against which this revision petition has been filed.

3. None appeared for Respondent No. 3 even after service and he was proceeded ex-parte.

4. Heard learned Counsel for the petitioner and Respondent No. 1 & 2 and perused record.

5. Learned Counsel for the petitioner submitted that inspite of no suppression of previous disease at the time of renewal of policy, learned District forum committed error in dismissing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside and complaint be allowed. On the other hand, learned Counsel for the respondent submitted that as material fact regarding previous disease was suppressed at the time of renewal of policy, claim was rightly repudiated and order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

6. It is not disputed that complainant obtained medi-claim policy for his mother and other family members on 22.3.2003. It is also not disputed that policy lapsed on 21.3.2005 and after

gap of 9 days, it was renewed on 31.3.2005 and continued at least upto 30.3.2008. It is also not disputed that operation of complainant''s mother regarding replacement of hip joint was conducted at Breach Candy Hospital on 17.7.2007.

7. Respondent repudiated claim on the basis of suppression of pre-existing disease at the time of renewal and learned Counsel for the respondent submitted that renewal of policy amounts to fresh policy and suppression of any previous disease would amount to violation of terms of policy. He placed reliance on judgment of this Commission in III (2007) CPJ 450 (NC) - Oriental Insurance Co. Ltd. Vs. K. Anandam in which it was held that renewal of policy after gap of 9 days would amount to issuance of fresh policy. I agree with the law laid down in the aforesaid case and it can very well be held that renewal of policy on 31.3.2005 by complainant would amount to issuance of new policy and if any material fact has been suppressed in the proposal form it would amount to violation of terms and conditions of policy which would lead to repudiation of claim.

8. The core question to be decided in this case is whether there was any

suppression of material fact regarding pre-existing disease. Learned District forum and learned State Commission has given too much weightage to discharge card issued by Breach Candy Hospital in which it was mentioned "3 years complaining with pain in intensity". No doubt, it has been mentioned in the hospital discharge card that Mrs. Archana Agrawal was complaining pain in hip joint since 3 years and was facing difficulty in sitting, squatting but only on the basis of endorsement of 3 years complaining pain it cannot he held that she was suffering pain since last three years in the light of prescription filed before State Commission of Dr. Rajesh Patel, prescription of Vaidya Mohd. Shakil of the year 2006 in which it was observed that she was suffering from pain in her right hip since February, 2006. I do not agree with the observations of learned State Commission that these documents were prepared after losing case in the District forum to come out of purview of Clause 4 of the Exclusion Clause of Mediclaim policy. Learned State Commission also observed in the order that reduction of space in hip joint and head of femur can only be attended after a long duration of the trouble. If space can be reduced in period of 3 years, it can also stand reduced in a period of 2 years and 3 months. Merely by observing that patient apprised pain since last 3 years it cannot be conclusively held that she was having pain since last 3 years. Had she been having pain since last 3 years she could have got it operated even at the inception of pain i.e. in July, 2004 because at that time also her mediclaim policy was in force right from 22.3.2003 and in such circumstances, no undue weightage can be given to the endorsement that Mrs. Archana Agrawal was suffering pain from 3 years meaning thereby from July, 2004 and in such circumstances, I am of the view that there was no suppression of any material fact at the time of renewal of insurance policy.

9. Perusal of record further reveals that complainant intimated about aforesaid operation vide letter dated 24.2.2007 to OP. Inspite of having this intimation, her policy was renewed by OP from 31.3.2007 to 30.3.2008 on the same terms and conditions and no objection regarding non-disclosure of pre-existing disease was taken by OP at the time of renewal of insurance policy.

10. In the light of above discussion, it becomes clear that there was no suppression of material fact at the time of renewal of mediclaim policy and OP committed deficiency in repudiating claim and learned District Forum committed error in dismissing complaint and learned State Commission further committed error in dismissing appeal and revision petition and complaint is to be allowed.

11. Consequently, revision petition filed by the petitioner is allowed and order dated 3.3.2010 passed by the State Commission in Appeal No. 368/2009 - Deep Saraf Vs. Branch Manager, United India Insurance Co. Ltd. and order of District Forum dated 8.7.2009 passed in Complaint No. 33/08 -Deepak Saraf Vs. Branch Manager, United India Insurance Co. Ltd. is set aside and complaint filed by complainant is allowed and OP is directed to pay Rs. 5,00,000/-, expenses incurred in replacement of hip joint as policy was for Rs.5,00,000/- only. Parties to bear their own costs.