(2001) 10 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Dilip — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. — RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:

Citation : 2002 1 CPJ 282

Hon'ble Judges : S.K.Dubey , B.L.Khare J.

Final Decision : Appeal dismissed

Judgement

1. THIS is a complainant''s appeal against the order dated 16th July, 1999 passed in Case No. 261/1998 by the District Consumer Disputes Redressal Forum, Indore (for short the ''District Forum'').

2. FACTS giving rise to this appeal are thus : M/s. Gokuldas Hospital Limited, Indore obtained a Group Mediclaim Insurance Policy No. 4845130006917 covering the risk from 17.9.1996 of which the appellant was one of the beneficiary. On or about 2.10.1996 the appellant suffered from acute congestive glaucoma and was admitted in the Gokuldas Hospital for the treatment where he was treated medically for reducing the tension. He was operated for Glaucoma on 4.10.1996 and was discharged on 7.10.1996. However, the appellant developed secondary complications Cataract and the swelling of the lens in the right eye, hence, was referred to Dr. Kulin Kothari of Bombay for advice and treatment, where Dr. Kulin Kothari performed surgery basically for Glaucoma and to give relief permanently to the appellant. The appellant lodged a mediclaim of Rs. 17,994/-. The Insurance Company vide letter dated 27.2.1997 did not make the payment as during the first year of the operation of the insurance cover the expenses incurred were excluded from the scope of the policy cover in view of Exclusion No. 4.2 of the policy. After correspondence and notice when the claim was not paid, the appellant filed the complaint before the District Forum, which was resisted. The District Forum after appreciation of evidence held that the appellant suffered the disease Glaucoma, which was not an accidental causing an injury due to accident, therefore, in view of exclusion Clause No. 4.2, the

Insurance Company rightly did not make the payment. Mr. V.K. Jain, learned Counsel for the appellant submitted that the Insurance Company erred firstly in treating the claim as of Cataract while the appellant suffered from Glaucoma, an unexpected event as the Glaucoma is sudden and is not known before hand. Besides, a disease which develops slowly without showing any symptom is also covered within the meaning of accident. The Insurance Company illegally applied exclusion Clause 4.2 and did not make the payment on the basis of the technical opinions obtained by the Insurance Company which were not produced before the District Forum, hence, the District Forum ought to have drawn adverse inference against the Insurance Company. The Insurance Company by mis-interpreting the words ''accident'' and ''injury'' applied exclusion Clause 4.2 to repudiate the claim.

Mr. V.K. Saxena, learned Counsel for the respondent supported the order and submitted that Glaucoma is a disease which is neither an accident nor an injury. Counsel referred to the Oxford and IBII New Medical Dictionary, First Edition and took us through the conditions of the policy and submitted that the District Forum rightly held that the Insurance Company was right in not making the payment of the claim which does not fall within the scope of the policy and was excluded by exclusion Clause 4.2.

3. THE question for our consideration is whether the glaucoma is an injury due to accident falling within the exception of exclusion Clause 4.2. Admittedly, the parties were bound by the terms and conditions "Exclusions" and definitions contained in the policy. It would be appropriate to quote relevant covenant and exclusion Clause 4.2 of the policy which are extracted thus : "Now this policy witnesseth that subject to the terms, conditions, exclusions and definitions contained herein or endorsed or otherwise expressed hereon, the Company undertakes that if during the period stated in the Schedule or during the continuance of this policy by renewal any insured person shall contract any disease or suffer from any illness (hereinafter called disease) or sustain any bodily injury through accident hereinafter called injury) and if such disease or injury shall require any such insured person, upon the advice of a duly qualified Physician/Medical Specialist/Medical Practitioner (hereinafter called Medical Practitioner) or of a duly qualified Surgeon (hereinafter called Surgeon) to incur, (a) hospitalization expenses for medical/surgical treatment at any Nursing Home/ Hospital in India as herein defined (hereinafter called Hospital) as an inpatient or (b) on domiciliary treatment in India under Domiciliary Hospitalisation Benefits as hereinafter defined, the Company will pay to the Insured Person the amount of such Expenses as are reasonably and necessarily incurred in respect thereof by or on behalf of such insured person, but not exceeding the sum insured in aggregate in any one period of insurance stated in the schedule hereto. 1.0 xxx xxx xxx 2. Definitions 2.1 xxx xxx xxx 4. Exclusions : 4.0 xxx xxx xxx 4.1 xxx xxx xxx 4.2 Any expenses on hospitalisation/domiciliary hospitalisation incurred during first 30 days from the date of commencement of insurance cover, except in case of injury arising out of accident."

4. FROM a bare reading of the covenant and exclusion Clause 4.2 any expenses on hospitalisation/domiciliary hospitalisation incurred during first 30 days from the date of commencement of insurance cover, are not payable except in case of injury arising out of accident. It is not necessary to refer various medical dictionaries to burden this order suffice to quote from Stedman''s Medical Dictionary 26th Edition by Villiams and Wilkins the meaning of the words Accident, Injury, Disease, Cataract, Glaucoma, Trauma thus : "Accident. An unanticipated but often predictable event leading to injury, e.g., in traffic, industry or a domestic settings, or such an event developing in the course of a disease. Injury. The damage or wound of trauma. Disease. 1. An interruption, cessation, or disorder of body functions, systems, or organs. Syn illness, morbus, sickness. 2. A morbid entity characterised usually by at least two of these criteria : recognised etiologic agent(s), identifiable group of signs and symptoms, or consistent anatomical alterations, SEE ALSO syndrome, 3, Literaly disease, the opposite of ease, when something is wrong with a bodily function. Cataract. Loss of transparency of the lens of the eye, or of its capsule, SYN cataracta. [L. Cataracta, fr. G. katarrhaktes, a downrushing, a waterfall, fr. kata-rrhegnymi, to break down, rush down]. Glaucoma. A disease of the eye characterised by increased intraocular pressure, excavation, and atrophy of the optic nerve; produces defects in the field of vision. [G. glaukoma, opacity of the crystalline lens, fr. glaukos, bluish green]."

From the above, it is evident that Glaucoma is a disease of the eye exhibiting raised intraocular pressure causing internal damage to the vision and affecting the vision if untreated. This disease develops without giving any symptoms and by the time it is diagnosed the patient looses his vision. In view of the Glaucoma will not fall within the ambit of injury arising out of accident so as to fall within the exception carved out in Clause 4.2 of the exclusions.

5. READING the text of the policy, the coverage and the exclusion Clause No. 4.2 of the Policy, it is clear that injury should arise out of accident. An accident is something that happens out of the ordinary course of things. The idea of something fortuitous and unexpected is involved in the word "accident", which is not the case here. In the circumstances, even if the Insurance Company has not produced the technical opinions that would not give rise to an inference that the injury or loss of vision was arising out of accident, so as to direct the Insurance Company to pay the amount of mediclaim.

6. IN the circumstances, no relief can be granted under the summary jurisdiction. However, the appellant shall be at liberty to institute the civil suit in the Court of competent jurisdiction for seeking the relief. In the result, the appeal fails and is dismissed with no order as to costs. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with the record of the case. Appeal dismissed.