(2000) 09 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Divisional Manager, National Insurance Co. Ltd. APPELLANT

Vs

SUKHDEO PRASAD RANA RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Citation : 2001 1 CPJ 342

Hon'ble Judges : A.N.Chaturvedi , C.R.Venkataraman , Asma Ahmad J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal by opposite party-appellant (Divisional Manager, National Insurance Company, Hazaribagh), is directed against the order dated 4.7.1996 passed by District Forum, Koderma at Hazaribagh in Complaint Case No. 9of 1996/63 of 1995 whereby the District Forum has directed the opposite party-appellant to pay Rs. 1,57,859/- to the complainant (respondent) as medi-claim amount with interest @ 18% from November, 1994 till payment. There is further direction for payment of Rs. 5,000/- as compensation and Rs. 2,000/- as cost.

2. IT appears that the complainant (respondent) filed a complaint petition before the District Forum on 5.4.1995 alleged therein that he was insured by National Insurance Company, Hazaribagh Division under Medi Claim Insurance Scheme, category vide policy No, 171100/8500005/93 which was for the period 19.5.1993 to 19.5.1994. During the insurance period he (complainant) had massive heart attack for which he was under the treatment of a number of doctors. Finally he was admitted in B.M. Birla Heart Research Centre at Calcutta on 8.5.1994 where he, after investigation, underwent coronary bye-pass surgery. After discharge from the said B.M. Birla Heart Research Centre he came back and submitted claim form to the Divisional Manager of National Insurance Company at Hazaribagh with regard to the expenditure incurred by him over his treatment. The Divisional Manager made several enquiries and investigations but did not settle his claim. On the allegations aforesaid the complainant claimed Rs. 1,57,359/- as expenses over his treatment, Rs. 1,00,000/- as compensation for mental agony and harassment and Rs. 35,000/- as expenses incurred in coming

to Hazaribagh from Koderma several times. In all, the claim was for Rs. 2,92,859/-. The opposite party-appellant filed written statement and contested the case before the District Forum. The case of the opposite party was that the complainant was insured under Medi-claim Policy No. 8500005/93 during the relevant period but he (complainant) had obtained the insurance policy by practising fraud upon the Insurance Company. The complainant at the time of submitting proposal form did not disclose his previous history regarding his illness and suffering from heart disease for the last three years otherwise such policy would not have been granted to him. Insurance is a contract and the concealment of the material fact renders the contract invalid and unenforceable. Clause 2.1.14 of the insurance policy excludes such claim. On investigation it was found that the insured was suffering from heart disease and other diseases since twelve years and repudiated the claim on 30.3.1995 as notpayable. Before doing so, enquiry had been made from Dr. Anil Mishra and at B.M. Birla Heart Research Centre where thc- complainant had been treated. Enquiry had also been made from Dr. Satendra Singh of Escorts Heart Institute and Research Centre. Dr. Anil Mishra and Dr. Satendra Singh who had treated the complainant had reported in their prescriptions that the complainant w as suffering from heart disease from before. Enquiry in this regard had also been made from complainant''s familv physician Dr. K.P. Daruka of Koderma and expert opinion of doctor had also been obtained. On investigation it had transpired that the complainant was suffering from asthma since three to four years, hypertension since last twelve years in addition to angina (chest pain) which he had concealed while submitting proposal form and obtained insurance policy without disclosing these ailments. The investigation was prompt and there is no deficiency in service on the part of the Insurance Company to attract the jurisdiction of Consumer Forum. On the allegations aforesaid, the opposite party in its written statement had prayed for rejection of the complaint with cost.

Both the parties brought on the record of the District Forum photo-copies of documents and affidavit in support of their cases. The District Forum after considering the cases of the parties and relevant documents passed the impugned order. The question for consideration is as to whether the impugned order is sustainable in law or not.

3. CERTAIN facts are not disputed. It is not disputed that the complainant (respondent) was insured by the opposite party-appellant under Medi-claim Insurance Scheme (B. Category) vide Policy No. 8500005/93 which was for the period 19.5.1993 to 19.5.1994. It is also not disputed that during the insurance period the complainant had heart attack for which he was treated at B.M. Birla Heart Research Centre at Calcutta. It is also not disputed that after his discharge from the said B.M. Birla Heart Research Centre, the complainant submitted claim form claiming Rs. 1,57,859/- as the amount spent by him on his treatment which was not allowed by the opposite party-appellant. Moreover, these facts are also apparent from the photo copies of documents brought on record by the parties. From letter dated 30.3.1995 addressed to the complainant by the opposite party

it appears that the claim of the complainant was repudiated by the opposite party on the ground that the complainant at the time of submitting the proposal form had stated that he was not suffering from any ailment when in fact he was suffering from heart disease but this fact was concealed and in view of Exclusion Clause No. 2.1.14 of the policy, his claim is not payable and hence is repudiated. Photo-copy of the proposal form dated 10.5.1993 submitted by the complainant is on the record of the District Forum. In the proposal form there is a column which requires details of any knowledge of any positive existence or presence of any ailment, sickness or injury which may require medical attention in immediate future, details of medical treatment/surgical operation during preceding 12 months, nature and period of treatment, name of doctor/ hospital and certificate of treating doctor/surgeon if fully cured of the ailment. Against the column meant for the said informations the complainant has written nil/ N.A. It means that at the time of submitting proposal form the complainant had no knowledge of any positive existence or presence of any ailment, sickness or injury which might have required medical attention in immediate future. According to the opposite party, the investigation into the claim of the complainant revealed that the complainant was suffering from asthma since three to four years, hypertension since twelve years and heart disease since three years but he did not disclose this in the proposal form and due to this concealment the contract of insurance became invalid and Clause 2.1.14 of the insurance policy excluded his claim. As mentioned earlier, the claim of the complainant was repudiated by the opposite party on the ground that he had concealed the existence of heart disease at the time of submission of proposal form. The complainant in his affidavit dated 14.9.1995 has stated that prior to submission of proposal form he was not having any heart disease and no material information regarding health was suppressed. Now it has to be seen if the complainant had knowledge of any positive existence or presence of the said heart disease at the time of submission of the proposal form or not.

4. THE learned Counsel for the appellant referred to the prescription of Dr. Anil Mishraof B.M. Birla Heart Research Centre, Calcutta, with regard to the complainant and pointed out that the complainant had chest pain for three years usually on exertion and on tension and palpitation on exertion, cold, cough etc. and this fact must have been based on the statement of the complainant before the said doctor but this fact was not disclosed in the proposal form by the complainant. THE learned Counsel further referred to the Discharge Summary given by B.M. Birla Heart Research Centre, Calcutta and pointed out that even this discharge summary shows that the complainant had angina (chest pain) for three years, Class II diabetic for one year, hypertension for twelve years, palpitation on exertion, occasional attack of bronchial asthma for 3 to 4 rears. THE learned Counsel further invited the attention of the Commission towards letter dated 10,8.1994 addressed to the complainant by the opposite party and pointed out that the complainant had been asked to give his comments regard to the said fact as mentioned in the prescription of Dr. Anil Mishra and the report of

the B.M. Birla Heart Research Centre. In reply, the complainant sent his letter dated 28.8.1994 stating therein that he was unconcious at the lime of examination by Dr. Anil Mishra and the said doctor in his prescription has written about chest pain (angina) for three years on the basis of statement of a distant relation. THE prescription of Dr. Anil Mishra does not show that the complainant was unconcious at the time of examination by him. Neither the name of the distant relation has been disclosed nor there is any affidavit by the so-called distant relation of the complainant in support of the complainant''s plea that the doctor had written in the prescription bout chest pain for three years on the basis of his relation''s statement. Dr. Mishra in his prescription has nowhere written that history of patient was told by his relation or attendant. So the plea of the complainant to this effect does not appear to be acceptable. Now the question arises if existence of angina (chest pain) for three years can be treated as conclusive indication of heart disease and on the basis thereof, can the complainant be said to have knowledge of existence of heart disease at the time of submission of proposal form. In this connection it was rightly contended on behalf of the complainant (respondent) that chest pain may be caused even by indigestion and other causes and the same cannot be conclusive Indication of heart disease and that being so, it cannot be said that the complainant had knowledge of the exitence of heart disease at the time of submission of proposal form. In his aforesaid letter dated 28.8.1994 addressed to the opposite party, the complainant has stated that on 1.9.1990 he had got himself medically checked at Escort Heart Research Centre, New Delhi, where everything was found normal. In support of this assertion the complainant appears to have enclosed with his said letter photo-copies of test reports of Escorts Heart Research Centre. From letter dated 1.12.1994 of the opposite party addressed to the complainant it appears that photo-copies of test reports enclosed with the said letter dated 28.8.1994 of the complainant were Echo Test/2 D Doppler Test reports. As regards Echo Test and 2 D Doppler Test the opposite party vide its letter dated 11.11.1994 addressed to Dr. C.S. Prasad of Hazaribagh had sought his opinion and the said doctor vide his reply dated 19.11.1994 had opined that these tests are not to diagnose Myocardial Infraction for which E.C.G. and Coronary Angiography is must. It further appears from the said letter dated 1.12.1994 of the opposite party that the complainant was asked to let the opposite party know as to what necessitated him to go to Escort- Heart Research Centre in 1990 for medical check up. The complainant by his letter dated 5.12.1994 informed the opposite; party that on 1.9.1990 he had taken his wife to Escort-Heart Research Centre for check up with regard to her chest pain and for his own satisfaction he got his echo check up done and no abnormality was found. From the letter dated 8.2.1995 of opposite party addressed to Dr. Satyendra Singh, Medical Coordinator of Escort-Heart Research Centre, New Delhi, it appears that the opposite party while sending photo-copies of Echo test/2 D Doppler Test concerning the complainant had requested for copy of angiography (coronary), if any, with a further request to let the opposite party know if any heart ailment had been detected after the test or not. Though in para

8 of the written statement it has been stated that Dr. Satyendra Singh had reported that the complainant was suffering from heart disease before he was admitted for treatment at Escorts Heart Institute and Research Centre but neither the copy of any prescription of Dr. Satyendra Singh has been brought on record by the opposite party nor copy of any report of Dr. Satyendra Singh has been brought on record. Even the reply of Dr. Satyendra Singh to the said letter dated 8.21995 of the opposite party has not been brought on record to support the case that the complainant was suffering from heart disease on 1.9.1990 when he had been to Escorts Heart Research Centre, New Delhi. The statement of the complainant that on 1.9.1990 he had taken his wife to the said Escorts Heart Research Centre for check up regarding her chest pain has not been challenged by the opposite party. In the proposal form submitted by the complainant, Dr. K.P. Daruka of Koderma has been named as family physician of the complainant. The opposite party vide letter dated 11.8.1994 addressed to Dr. Daruka had requested him to let the opposite party know if the complainant was under his treatment for heart ailment and if so, for what period. By his reply letter dated 19.9.1994 Dr. Daruka informed the opposite party that he had treated the complainant for general illness like fever, cough, cold etc. from time to time and that he had first of all noticed chest pain on exertion in the complainant in the first week of April, 1994 and prior to that he had never treated him for heart ailment. The reply of Dr. Daruka does not support the case of the opposite party that the complainant had heart disease at the time of submission of proposal form.

5. ON the record of the District Forum there is letter dated 7.10.1994 of the opposite party addressed to Dr. C.S. Prasad of Hazaribagh in which opinion of the said doctor was sought on the basis of the papers submitted by the complainant. The doctor was specifically asked to examine if the complainant was suffering from heart ailment at the time of taking insurance policy. Dr. C.S. Prasad in his reply letter dated 17.10.1994 has mentioned eight causes of chest pain other than heart ailment. So the existence of chest pain for three years can neither be conclusive evidence of heart disease nor knowledge of heart ailment can be imputed to the complainant on the basis thereof. According to Dr. C.S. Prasad, chest pain for three years due to exertion and tension and palpitation due to exertion indicate something irregular in cardiac system. But a non-medical man cannot be expected to know if the trouble was due to heart disease or due to some other case.

6. IN the discharge summary given to the complainant by B.M. Birla Heart Research Centre, Calcutta, there is a column for Past Medical History. IN this column the entry is as follows - "Severe chest pain on 21.4.1994. No definite history of M.I. Occasional attack of bronchial asthma for3 to 4 years". Had the complainant any past history of heart ailment, he must have disclosed that to the doctor who had treated him at B.M. Birla Heart Research Centre. The opposite party has not brought on record any paper which could show that the complainant had ever heart trouble prior to submission of proposal form or that

he had ever been treated for heart ailment prior to taking of medi-claim policy. From the above discussion it is apparent that the evidence brought on record by the opposite party does not prove that the complainant-respondent had heart ailment since before submission of proposal form and he was aware of this ailment but he concealed this fact while submitting the proposal form, That being so, the question of contract of insurance becoming invalid due to concealment of material fact in the proposal form would not arise. Similarly the question of exclusion of the claim of the complainant respondent under Clause 2.1.14 of the policy would also not arise. The complainant has claimed Rs, 1,57,859/ - as the amount spent over his treatment and the District Forum has allowed the same. The details of the amounts spent are given in the claim form submitted by the complainant. In the written statement of the opposite party (appellant) the case of the complainant that he had spent the said amount over his treatment has not been challenged or denied. That being so, the District Forum has rightly allowed the said amount of Rs. 1,57,859/ - as the medi-claim of the complainant and hence the same does not call for any interference by this Commission.

The complainant (respondent) submitted his claim form on 26.7.1994 as admitted in para 7 of the affidavit dated 12.6.1996 of the Assistant Administrative Officer of the Insurance Company. The claim was repudiated vide letter dated 30.3.1995 of the opposite party. It means that the opposite party took eight months time for repudiating the claim. Undoubtedly there was delay on the part of the opposite party in investigating and repudiating the claim which amounts to deficiency in service. In view of this, the District Forum has allowed interest over the said amount of Rs. 1,57,859/- @ 18% from November, 1994 till the date of payment. It may be pointed out that the complainant has not claimed any interest over the medi-claim amount. But the fact that the complainant might have earned interest over the medi-claim amount had the same been paid to him, cannot be over- looked. The complaint case was filed on 5.4.1995. Interest at the rate of 12% per annum over the medi-claim amount of Rs. 1,57,859/- with effect from 5.4.1995 till payment would meet the ends of justice. So the direction of the District Forum with regard to rate of interest and the date from which it would be payable is modified to this extent. The opposite party would pay interest @ 12% per annum over Rs. 1,57,859/- with effect from 5.4.1995 till payment.

7. THE complainant had claimed Rs. 1,00,000/- as compensation for mental agony and harassment caused to him and the District Forum has allowed Rs. 5,000/- as compensation. After the grant of interest over the medi-claim amount, grant of further amount as compensation and that too without evidence does not apepar to be jusrtified. In view of this, the direction of the District Forum for payment of Rs. 5,000/- as compensation is not sustainable and is set-aside. The District Forum has allowed Rs. 2,000/- as cost though the complainant had claimed Rs. 35,000/- as cost for going to Hazaribagh from Koderma several times. There is no evidence to show expenditure of Rs. 35,000/- in this regard. Perhaps it is due to this that the District Forum has allowed only Rs. 2,000/- as

cost. The amount allowed as cost by the District Forum being reasonable does not call for any interference by this Commission.

8. WITH the above modification in the impugned order, this appeal is hereby dismissed. There is no order as to cost. Appeal dismissed. _______________