(1993) 03 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

Divisional Manager, New India Assurance Co. Ltd. — APPELLANT

Vs

PONNURU SATYA NARAYANA — RESPONDENT

Date of Decision : 09-03-1993

Acts Referred:

Citation : 1993 2 CPJ 1169

Hon'ble Judges : A.Venkatarami Reddy , Pothuri Venkateswara Rao , J.Ananda Lakshmi J.

Final Decision : Appeal dismissed

Judgement

1. THE respondent in this appeal has taken a medi-claim policy from the appellant on 11-9-1989. On 24-10-1989 at Appollo Hospital, Madras she underwent an operation for Incession Hernia and was discharged from the hopsital on 1-11-1989 for the medical expenses incurred for the operation, she made a claim and handed-over the papers and vouchers to the Branch Manager of New India Insurance Company Limited on 10-11-1989. According to her, although her husband went number of times to the Divisional Office of the Company, they have not settled the claim and informed him every-time that the claim was under process. THErefore, the Complainant filed the Consumer Dispute on 30-8-1990 and claimed before the District Forum a sum of Rs. 8,274-00 with interest at 12% per annum for nine months.

2. AFTER receiving the notice of the claim on 4-4-1991 the appellant informed the respondent that they want the case-sheet from the Appollo Hospital, Madras to process her claim. In the counter filed, it was admitted that such a policy was taken by the respondent and premium was paid in that regard and the policy was of a duration of 12 months. It was mentioned that they need the case sheet of the Appollo Hospital, Madras to verify whether the respondent, for which she got treatment and underwent operation was suffering with the ailment prior to taking of insurance policy. According to them since the respondent has not be supplied them with necessary case sheet, the claim could not be settled. It was argued before the District Forum that under the policy since the respondent has suffered

this particular disease during the first (30) thirty days from the date of commencement of the policy, the Company is not liable to pay. Reliance is placed on Clause 3(A)(1) of the Exclusions. The clause reads as follows : "The Company shall not be liable to make any payment under this policy in respect of any expenses, whatsoever incurred by any insured person in connection with or in respect of (1) "Any disease suffered by the insured person during the first 30 days from the commencement date of the policy."

The District Forum held that since the respondent has underwent an operation after (30) days after the issuance of the policy, the Insurance Company cannot take shelter under this clause and refuse to pay the compensation amount. It further held that in the absence of any evidence by the Insurance Company that they have reasonable and bona fide suspicion that the respondent got treated for any ailment that was existing prior to the issuance of the Insurance Policy, the contention that they are not liable cannot be accepted. It accordingly allowed the claim of the complainant.

3. IN this appeal preferred by the INsurance company it is firstly submitted by the learned Counsel for the appellant that their liability is excluded under Clause-III(A)(i) of the Policy. We are not inclined to agree with this contention. Clause-III (A)(i) says that the Company shall not be liable to make any payment under the policy in respect of expenses, whatsoever incurred, in connection with or in respect of any disease suffered by the insured person during the first (30) thirty days from the date of commencement of the policy." In this case, the date of policy commenced from 11-9-1989 and the operation was conducted on 24-10-1989 and the expenses incurred towards that operation and treatment, were claimed. Thus, it is evident that the expenses incurred by the insured is in respect of a disease suffered after a period of thirty (30) days from the date of the policy. We are not concerned with the exclusion clauses, which enables the payment for such case also, that is, in case of expenses incurred during the first 30 days of the policy on the certificate issued by the Board of Doctors. As in the instant case the said part of the Clause (1) has no application, we have no hesitation to reject the said contention.

4. IT is next submitted that the respondent has not co-operated with the Insurance Company in settling the claim. According to the Counsel she has not produced the case sheet from the Appollo Hospital and also not issued any authorization letter to give a copy of the case sheet to the Insurance Company and that, therefore, she is not entitled to any compensation. We are not inclined to agree with the aforesaid contention, since we have held that the instant case does not fall within the exclusion of Clause-III (A)(i). If the appellants want to establish that they are not liable to pay on account of the circumstances that she was suffering with a preexisting disease, which was not disclosed. IT is for them to establish. In the absence of any evidence, on behalf of the Insurance Company, the District Forum rightly repelled that contention. For all the aforesaid reasons, the appeal is dismissed. No costs. Appeal dismissed.

