(2017) 04 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Case No : 1090 of 2014

DR. J.R. BANIK — APPELLANT

Vs

MANAGING DIRECTOR, NATIONAL — RESPONDENT

Date of Decision : 18-04-2017

Acts Referred:

Citation : 2017 2 CPR 560

Hon'ble Judges : S.M. Kantikar

Advocate : Fazlur Rahman, Yogesh Malhotra

Judgement

1. The petitioner/complainant took a medi-claim policy from the National Insurance Company Ltd./OP in the year 2007. The company simply issued insurance certificate with the coverage of medical expenses upto Rs. 1 lakh. The OP has not given the terms and conditions of the policy. During the subsistence of the policy, the complainant suffered a brain haemorrhage and was treated at R. N. Tagore International Centre, and paid Rs.87,773/- to the hospital. The complainant submitted reimbursement claim with the OP. OP did not settle the claim completely. The OP proposed to pay Rs.64,360/- but denied to pay Rs.23,373/- the balance amount, which was intentionally deducted without any valid reason. Hence, the complainant filed a complaint before the District Forum, Unit -1, Kolkata with the prayer for payment of entire sum with interest @ 12.5% p.a. and Rs.3,30,000/- towards compensation and costs.

2. The OP resisted the complaint by way of filing written statement and denied all the allegations. The OP submitted that the complaint is not maintainable because the deduction of Rs.23,373/- was strictly in accordance with the terms and conditions of the policy.

3. The District Forum after considering the pleadings of the parties, evidence and documents, allowed the complaint and directed the OP to pay Rs.23,373/- together with interest @ 9% per annum from the date of repudiation till realisation and further directed to pay Rs.50,000/- for harassment and mental agony with Rs.5,000/- as litigation costs. Being aggrieved by the order of District

Forum, the OP filed first appeal before the State Commission. The State Commission allowed the appeal and dismissed the complaint. Being aggrieved of the said impugned order, the complainant is before this Commission in this revision petition.

4. I have heard the learned counsel for both the parties. Mr. Fazlur Rahman, learned counsel for the petitioner submitted that the insurance company had not given terms and conditions (agreement) to the complainant while issuing the policy cover. It was supplied to him only after the order of High Court. Learned counsel further argued that the petitioner is a senior doctor aged about 83 years and made to run from pillar to post in order to get justice. The OP has not quoted any reasons for rejection of genuine claim. Therefore, the complainant suffered severe mental agony and financial crunch due to arbitrary act of OP. It was the duty of OP that terms and conditions should be supplied by the insurance company. Non-production of terms and conditions to the insured amounts to deficiency in service and the repudiation of claim is unjust and arbitrary. The counsel relied upon various judgments, namely, Bajaj Allianz General Insurance Co. Ltd. vs. Achala Rudraniwas Marde I (2015) CPJ 146 (NC), Oriental Insurance Co. Ltd. vs. Satpal Singh and Shri Ram Transport Finance Ltd. II (2014) CPJ 374 (NC) and M/s Modern Insulators Ltd. vs. The Oriental Insurance Co. Ltd. 2000(2) SCC 734.

5. It is an admitted fact that initially OP had not provided terms and conditions alongwith medi-claim insurance policy, but it was supplied in compliance of direction given by Hon''ble High Court on 6.5.2016. It is submitted by OP that as per terms and conditions, it was calculated and the claim amount was paid properly. Therefore, the deduction of Rs.23,373/- was correct. In my view, the OP, who failed to provide terms and conditions of the policy to the complainant, had no right to repudiate the claim arbitrarily. This view dovetails from the judgment of Hon''ble Supreme Court in the case of M/s Modern Insulators Ltd. vs. The Oriental Insurance Co. Ltd. in which it has been held as under:- "It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties known. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material facts in their knowledge since obligation of good faith applies to both equally.

6. On the basis of foregoing discussion, it is clear that the complainant, who is a senior doctor by profession about 83 years old, had sustained physical and mental agony. He was made to run from pillar to post to claim meagre balance of amount. In the instant case, the complainant was never supplied the terms and conditions of the policy otherwise he would have opted medical treatment within four corners of the terms and conditions of the policy. It appears that the agents of insurance companies to achieve a target of number of insurance policies, act in haste and collect premiums. The consumers are supplied either cover note

only or the insurance certificate without any policy clauses or terms and conditions. If the insurance companies take a little pain to provide terms and conditions alongwith the policy certificate, then there will be limited scope of litigation. This is the trivial matter and involve meagre amount of Rs.23,373/-. I would like to quote and rely upon the judgment of Hon''ble Supreme Court in Gurgaon Gramin Bank vs. Smt. Khazani & ANR. [Civil Appeal No. 6261 of 2012 @ Special Leave Petition (C) No. 8875/2010] in which it has been categorially observed that: "Unless serious questions of law of general importance arise for consideration or a question which affects a large number of persons or the stakes are very high, court''s jurisdiction cannot be invoked for resolution of small and trivial matters. We are really disturbed at the manner in which those types of matters are being brought to courts, even at the level of the Supreme Court."

7. Considering the entirety, in my view, the complainant deserves entire amount (medi-claim) alongwith compensation for the mental agony. Resultantly, the impugned order of State Commission is set aside and the order of the District Forum is hereby restored.

8. The revision petition stands allowed.