**(1992) 11 NCDRC CK 0082**

**In the National Consumer Disputes Redressal Commission**

DRAUPADI DEVI S. CHAUDHARI APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

**Date of Decision :** 02-11-1992

**Acts Referred:**

**Citation :** 1993 1 CLT 52 : 1993 1 CPJ 94 : 1993 1 CPR 224 : 1993 1 CTJ 9

**Hon'ble Judges :** V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

**Final Decision :** Appeal dismissed

## Judgement

1. THE Appellant here was the successful complainant before the State Commission which has awarded a sum of Rs. 28,250/- as payable under the policy of Mediclaim insurance besides interest from 1st October, 1989 till payment and cost of Rs. 500/-. She had lodged a claim for Rs. 1,29,752/- under the Mediclaim insurance policy and in appeal has submitted that the rejection of the full claim and limiting it to Rs. 28,250/- by the State Commission is wrong; it has also wrongly rejected the claim for Rs. 14,100/- for post hospitalisation and that the said Commission has failed to award to her compensation including penal damages and that the said State Commission has awarded inadequate interest and costs.

2. THE facts of the case briefly are that the Appellant had taken a Mediclaim insurance policy from the Respondent covering risks of expenses incurred for hospitalisation and domiciliary hospitalisation for the period from 12th January, 1989 to 11th January, 1990. On 30th of March, 1989 the appellant''s husband Mr. Shyam Sunder Chaudhari felt chest discomfort for the first time and was advised to undergo bye-pass surgery. He underwent bye-pass surgery at Appolo Hospital, Madras in May, 1989. THE Respondent Insurer repudiated the Mediclaim on the ground that Mr. Chaudhari had been suffering from chest discomfort since ten years and this fact had not been disclosed in the proposal form. The repudiation of the insurance claim by the insurer-Respondent was primarily based on the ''history'' of the patient as recorded in the Hospital Discharge Card of the 28th April, 1989 wherein it had been stated that Shri Shyam Sunder Chaudhari had

"..chest discomfort since ten years..". In addition the Insurer also cited a certificate issued by one Dr. Bharat Patel dated the 24th August, 1989 stating that Shri Shyam Sunder Chaudhari had been seen by Dr. Patel earlier 11/4 years before for pain in chest, and that the patient was referred by him to the Cardiologist Dr. Om Prakash Modi on whose advise the patient had undergone bye-pass heart surgery at Madras. Mr. Chaudhari had, however, maintained that he had no history of chest discomfort prior to 30th of March, 1989 and that there was an error in the hospital record and this he supported by a letter from Dr. Mathew of the Appolo Hospital. Dr. Mathew has stated as under: "...From the history I got from you that all your symptoms started recently. I still do not know how they have mentioned 10 years history of chest pain, it is quite possible that it must be the mistake while writing the history..."

He further elaborated that it was not necessary to make correction in the hospital records "as I am already aware that your history of chest pain is only since last couple of months before your admission..". This was further supported by the statement of the Cardiologist Dr. Modi who claimed to be the family consultant of the patient for last several years and who averred that the complainant''s husband has never any chest discomfort before 30th April, 1989 (30th March, 1989) and that he had never any chest pain and so never had to go for ECG tests. It is on this basis that the State Commission passed the order in favour of the appellant- complainant awarding certain reliefs mentioned above.

An examination of the record as well as the evidence of the parties at the hearing disclosed certain disquieting features in the adjudication of these complaints by the State Commission: (i) Ordinarily the history of a patient is recorded at the time of admission. If the history as recorded in the Discharge Card was factually incorrect, it should have been cross-checked with the history recorded at the time of admission of the patient. The Counsel for the Appellant was unable to clarify.

(ii) It was not possible to accept that the ''history'' recorded in the Discharge Card of the Hospital as erroneous merely on a communication from Dr. Mathew of the hospital to the Insured that there was a mistake in the hospital record. There was no affidavit from Dr. Mathew nor was he examined. The Appellant''s Counsel was unable to explain why the affidavit of Dr. Mathew was not produced. It is to be noted that the operation was performed by Dr. Girinath at the Appolo Hospital but he was not examined.

(iii) Whether there was any need for Cardiologist viz., Dr. Modi to be the family consultant of the patient since last several years when the patient never had any chest discomfort before March, 1989 and when he never had any occasion to go for ECG tests.

(iv) Whether on the first occasion of an episode of chest discomfort, as distinguished from heart attack, the Cardiologist found that heart condition of the patient was as such requiring bye-pass surgery. In this context, the evidentiary value of the certificate of Dr. Bharat Patel that the patient had suffered from chest pain about 11/4 years before August, 1989 (date of certificate) when the patient was referred to Dr. Modi deserved to be considered.

3. WE have found it expedient to give expression to our misgivings in this case inasmuch as, prima facie, the repudiation of the claim by the Insurer-Appellant in this case appears bona fide, being based on the history in the Discharge Card of the hospital and that, therefore, there was no deficiency in service on its part attracting the mischief of the Consumer Protection Act. Hence there is no merit in the Appeal which is hereby dismissed. There is no order as to costs. Appeal dismissed.