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In the National Consumer Disputes Redressal Commission

Case No : 1465, 1257,1283 and 1326 of 2013

Gurtej Singh - Petitioner — APPELLANT

Vs

ICICI Lombard General Insurance Co. Ltd. and others — RESPONDENT

Date of Decision : 28-11-2016

Acts Referred:

Citation : 2017 2 CPJ 515 : 2017 2 CPR 894

Hon'ble Judges : Prem Narain

Advocate : Rajesh Kumar Gupta

Judgement

1. These two revision petitions have been filed by Gurtej Singh, petitioner against the order dated 19.3.2015 of the State Consumer Disputes Redressal Commission, Punjab (in short the ''State Commission'') passed in FA No. 1465 of 2013, FA No. 1257 of 2013, FA No. 1283 of 2013 and FA No. 1326 of 2013 filed against order dated 6.9.2013 of the District Consumer Disputes Redressal Forum, Bathinda, (in short ''the District Forum'') passed in CC No. 51 of 27.1.2011. The Revision Petition No. 2477 of 2015 has been filed against the order dated 19.3.2015 of the State Commission, passed m FA No. 1465 of 2013, FA No. 1257 of 2013, FA No. 1283 of 2013 and FA No. 1326 of 2013 and Revision Petition No. 2538 of 2015 has been filed against the order dated 19.3.2015 passed in FA No. 1465 of 2013. 2. Brief facts of the case are that a complaint was filed by the complainant under the Consumer Protection Act, 1986 (in short the Act) against the opposite parties on the allegations that complainant was member of OP No. 3 and he along with his wife Veerpal Kaur were insured for the period 1.2.2010 to 31.1.2011 for medical cashless insurance under Bhai Ghanhya Sehat Sewa Scheme (in short BGSSS) with OP Nos. 1 and 2 through OP Nos. 3 to 5 for sum insured of Rs. 1,50,000 each and insurance cards were duly issued to the complainant and his wife. They had paid a sum of Rs. 2,546 for that purpose as a premium. Veerpal Kaur wife of the complainant had some pain in the stomach in the end of March, 2010 and as such, she had first consulted Dr. Amar Singh Brar of Brar Hospital, Jaito. However, there was no relief and then ultimately she consulted OP No. 6 Dr. Rupinder Singh Sidhu, DM. Gayestro practicing at M/s.

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Delhi Heart Institute and Research Centre, Bathinda. She approached him on 15.4.2010 and her Biopsy Test and Endoscopy was done and after receiving the report of Biopsy Test on 18.4.2010, the Doctor diagnosed cancer to Veerpal Kaur in her food pipe i.e. CA Escophagus and the Doctor advised for stenting of Esophagus. At that time the complainant and her wife had told OP No. 6 that they were insured under BGSSS and OP No. 6 also intimated that his hospital is registered under that scheme and that treatment upto Rs. 1,50,000 was free and cashless. Accordingly, they had deposited the photocopy of the I.D. Card of BGSSS with the said hospital and she was admitted there and on 22.4.2010, Doctor inserted the stent in the food pipe and she was discharged on 23.4.2010. All the necessary papers i.e. photocopy of the I.D. Card issued by OP Nos. 1 and 2 under the BGSSS, duly signed claim form from OP No. 6 were sent to OP Nos. 1 and 2. After treatment, OP No. 6 demanded a sum of Rs. 55,762 for her reatment. OP No. 6 also filed the claim with OP Nos. 1 and 2 and sent the treatment file to them but they did not release the said payment. Having no alternative, the complainant had to pay the said amount to OP No. 6. Thereafter Dr. Rupinder Singh Sidhu also advised Veerpal Kaur for Chemotherapy on regular intervals. The complainant several times approached the officials of OP Nos. 1 to 5 and demanded the list of registered hospitals under BGSSS from where she could get the Chemotherapy under cashless insurance Scheme as the complainant was suffering from financial crunch. However, OPs did not supply the list of the hospitals. Seeing no alternative, the complaint No. 348 of 2010 under the Act was filed by her with District Forum, demanding a sum of Rs. 55,762 and also again demanded the list of hospitals from where she was to take the cashless Chemotherapy. However, due to non-supply of the list of hospitals, she was unable to get the Chemotherapy and she died on 14.9.2010. OP Nos.l and 2 had offered a sum of Rs. 84,000 to the complainant qua medical bills only after the death of Veerpal Kaur and during the pendency of the complaint. The complainant had accepted the said offer and withdrew the said complaint on 6.12.2010. 3. Later on, another complaint was filed by the complainant No. 51 of 27.1.2011, which was dismissed by the District Forum vide its order dated 9.2.2011 on the ground that second complaint was not maintainable. An appeal was filed before the State Commission against the order dated 9.2.2011 of the District Forum and the State Commission allowed the appeal vide its order dated 12.12.2012 and ordered that the instant complaint has a different cause of action i.e. death of the insured and remanded the matter to the District Forum for deciding on merits. Tire District Forum vide its order dated 1.9.2013 allowed the complaint as under: "18. Keeping in view the facts, circumstances and the evidence placed on file by the parties, this Forum is of the considered opinion that there is no doubt that Veerpal Kaur was died of deadly disease of cancer in food pipe within five months, when firstly this disease was diagnosed, but the lapse on the part of the opposite party Nos. 1 to 4 specially opposite party Nos. 1 and 2 is such which cannot be avoided. If the insurance amount would have been paid in time and list of hospitals provided for taking chemotherapy to the complainant, the life of Veerpal Kaur may be prolonged for few days or months if

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not for years and she should have spent incredible period of her life with her near and dear ones. The opposite party Nos. 1 and 2 delayed in sending approval to opposite party No. 6 due to which the complainant paid Rs. 55.762 from his pocket and thereafter till the death of her wife he got her treated according to his financial position but could not get chemotherapy done due to financial crunch. The opposite party Nos. 1 and 2 paid him Rs. 84,000 when he lost his wife. At the risk of repletion, we again mention here that since Veerpal Kaur died within live months, undoubtedly, her stage of cancer was such where she cannot survive but her life could have been saved for few months, more if she was given chemotherapy/proper treatment. Thus, it seems that the Insurance companies are only interested in earning the premiums and find ways and means to decline claims. Hence, there is deficiency in service on the part of all the opposite parties. 19. In view of that has been discussed above, the complaint is accepted with Rs. 5,000 as cost and Rs. 30,000 as compensation against opposite party Nos. 1 and 2 which will be paid by them jointly and severally, and against opposite party Nos. 3 to 6 with compensation of Rs. 10,000 which will be paid by opposite party Nos. 3 to 6 jointly and severally, to the complainant. 20. The compliance of this order be made within 45 days from the date of receipt of copy of this order." 4. OP-1 and OP-2/respondent Nos. 1 and 2 filed appeal No. 1465 of 2013 and complainant also filed appeal No. 1257 of 2013, whereas appeal No. 1283 of 2013 was filed by OP- 5 and appeal No. 1326 of 2013 was filed by OP-3 and OP-4. The learned State Commission by a common order dated 19.3.2015, accepted the Appeal No. 1465 of 2013 filed by OP-1 and OP-2 as well as appeal No. 1283 of 2013 and appeal No. 1326 of 2013 filed by Cooperative Society and Cooperative Department and dismissed the appeal No. 1257 of 2013 filed by the complainant Gurtej Singh. 5. Aggrieved with the order dated 19.3.2015 of the State Commission, the present revision petitions have been filed by the complainant/petitioner. 6. Heard the learned Counsel for the petitioner and perused the records. The learned Counsel for the petitioner stated that wife of the petitioner suffered some pain and was originally shown to some local doctor and she consulted OP-6/Dr. Rupinder Singh Sidhu, D.M. Gayestro, in his Nursing Home M/s. Delhi Heart Institute and Research Centre, Bathinda. That hospital was covered under the BGSSS scheme. However, after stent was inserted into the food pipe, the patient was discharged and all the relevant papers were submitted to OP-1 and OP-2 through OP-6 for payment of Rs. 55,762. However, no response came from OP-1 and OP-2 and approval was not given. In such condition, the complainant had to pay the payment from his own pocket. The patient was further advised Chemotherapy for treatment of her cancer. The complainant requested OPs 1 to 5 to provide the list of recognised hospitals under BGSSS, where Chemotherapy could be taken. However, no response was received from the OP-1 and OP-2 and due to non-treatment, the wife of the complainant died on 14.9.2010. Thus, it is clear that first, OP-1 and OP-2 did not approve the claim of bills of treatment amounting to Rs. 55,762 for the treatment taken in the accredited hospital of OP-6 and consequently for further treatment of Chemotherapy, the OP-1 and OP-2 did not supply the list of

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accredited hospitals under the scheme where Chemotherapy could have been taken. Consequent the wife of the complainant died due to non-treatment and spread of cancer. Thus, OPs/respondents a re liable for deficiency on their parts. The District Forum had allowed the complaint against OPs vide, its order dated 6.9.2013 after considering all the aspects of the case. However, the State Commission has accepted the appeals filed by OPs -1 to 5 and also dismissed the appeal filed by the complainant. The State Commission has not considered the evidence on record. The OPs have clearly accepted the deficiency and the order of the State Commission deserves to be set aside and the revision petition needs to be allowed in the interest of justice. 7. I have carefully considered the arguments of the learned Counsel for the petitioner and have examined the records. From the record, it comes out that during the life time of the deceased, a complaint No. 348 of 2010 was filed before the District Forum, which was withdrawn by the complainant on 6.12.2010 on the basis of a compromise reached between OP- 1 and OP-2 on one side and complainant on the other. According to this compromise OP-1 and OP-2 gave Rs. 84,000 to the complainant as full and final payment for settling the dispute, which was filed for a claim of Rs. 55,672 as medical expenses. This fact was not narrated during the arguments by the learned Counsel for the petitioner. The State Commission in the impugned order has recorded the statements given by both the parties in this compromise. Statements on behalf of OP-1 and OP-2 as well as by the complainant are recorded as follows: "Stated that as per instructions from opposite party No. 2, the said opposite party No. 2 offers Rs. 84,000 as full and final payment qua the entire claim including medical bills of Veerpal Kaur upto death i.e. including medical bills during pendency including the bills of Delhi Heart Institution and Research Centre, Bathinda, etc. to the complainant. The complainant will not claim the said medical bills from any Institution/insurance Co. etc. and the complainant along with his Counsel had given the following statement: Stated that I have heard the above said statement of Counsel of opposite party No. 2. The same is acceptable to me qua medical bills of Veerpal Kaur as full and final settlement including bills incurred during pendency of complaint. The same may be disposed off accordingly." 8. When the present complaint was dismissed by the District Forum vide its order dated 9.2.2011 on the ground that second complaint was not maintainable, then the State Commission has allowed this complaint to be proceeded further on the ground that its cause of action was different then the cause of action of the previous complaint No. 348 of 2010. In this complaint No. 51 of 2011, the State Commission had allowed to be proceeded on the ground that death of the insured was cause of action for this complaint, whereas the cause of action in the earlier complaint was nonpayment of medical bills for treatment of the insured. But the learned Counsel for the petitioner has mainly argued on the basis of the deficiency of the OPs for not paying the claim of Rs. 55,762 and then for not submitting the list of accredited hospitals where the Chemotherapy could have been taken. A perusal of the statement on behalf of OP-1 and OP-2 mentioned above reveals that opposite party No. 2 offered Rs. 84,000 as full and final

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payment qua the entire claim including medical bills of Veerpal Kaur upto death. So, the death was also covered. Moreover, this policy in question relates to medical insurance and is available for reimbursement of treatment bills. It is not a life insurance policy. The maximum liability of the Insurance Company was only Rs. 1,50,000. The present complaint was filed fora compensation of Rs. 16,00,000. This is clear that the main thrust of arguing Counsel was on the deficiency of the OPs for non-payment of the bills of Rs. 55,762 for treatment of the deceased in the hospital of OP-6 and for not supplying the list of accredited hospitals under the scheme. The complaint based on these aspects was already compromised between tire parties and Rs. 84,000 were paid by OP-1 and OP-2. Hence, clearly on the same cause of action, a second complaint was not maintainable. However, if it is treated as complaint with different cause of action for the death of the deceased, it is to be examined whether any of the OPs are liable for this claim. The learned Stale Commission in impugned order dated 19.3.2015 has observed as follows: "The complainant has not been able to place on the record any document vide which Dr. Rupinder Singh Sidhu had recommended for Chemotherapy. In case, we go through the affidavit tendered by Dr. Rupinder Singh Siddhu, he has filed just a short affidavit Ex. C-6/1. Whereas in his written reply, he has submitted that he had treated the patient according to the terms and conditions of the insurance policy and provided the best treatment to the patient and her condition needed inconstant stenting of Esophagus, which was done. He does not say anywhere that he had recommended for Chemotherapy, therefor, apart from the letter Ex. C-13 written by the complainant to TPA OP No. 2, there is no evidence on the record that she was to undergo any Chemotherapy or that Chemotherapy was not provided by OP No. 6. Otherwise in case she had taken the treatment, it was empanelled hospital under the scheme and Chemotherapy can also be taken from the same hospital. Otherwise the complainant was having the list 01 network hospital. which he tendered as Exs.C-8 and 9. She has not written any letter to OP Nos. 1 and 2 to intimate any empanelled hospital from where the patient could get the Chemotherapy, therefore, in case the Doctor did not recommend or that the patient herself did not get the Chemotherapy, then OP Nos. 1 and 2 cannot be held liable." 9. From the above observations of the State Commission and otherwise also it is clear that the complainant would have taken a treatment of Chemotherapy for his wife from any of the accredited hospitals or with the hospital of OP-6 as well. As the list of accredited hospitals was already printed in the brochure of the scheme and the same was supplied to the complainant. The complainant should have availed the facilities of any of those hospitals. Thus, OP-1 and OP-2 cannot be said to be responsible for death of the wife of the complainant. Similarly, the OP Nos. 3-5 are related to Cooperative Society and the Cooperative department and are not involved in the treatment of the deceased. Hence, no liability fastens on them for the death of the wife of the complainant. OP-6 had treated the wife of the complainant by putting the stent into food pipe and offered the life for some time to the patient. It is not the case of the complainant that there was some deficiency on the part of OP-6 in

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inserting that stent. Moreover, further treatment of the patient was at the sweet will of the complainant for which OP-6would not be responsible. 10. Based on the above examination, I do not find any illegality, material irregularity or jurisdictional error in the order dated 19.3.2015 of the State Commission, which calls for any interference by this Commission. Accordingly, I find that both the revision petitions have no merits and are liable to be dismissed. 11. Consequently, both the revision petitions No. 2477 of 2015 and 2538 of 2015 are dismissed in limine. Revision Petitions dismissed.

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