(2016) 05 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Case No : 1240 of 2015

HARJINDER KAUR DADIALA — APPELLANT

Vs

NATIONAL INSURANCE COMPANY LTD. & 2 ORS. — RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:
Public Grievances Rules,1988, Rule 16

Citation : 2016 2 CPR 779

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta, Abdhesh Chaudhary

Judgement

1. The instant complaint No.1240 of 2015 has been filed by the Complainant-Harjinder Kaur Dadiala against the Opposite Parties No. 1-National Insurance Company Ltd, Opposite Party No.2- Karvat Travel Services Pvt. Ltd. and Opposite Party No.3-HeritaSge Health TPA Pvt. Ltd. for alleging deficiency in services on their part. 2 Briefly, faScts of the case as per the Complainant are, that son of the complainant namely Mr. Surjit Singh worked and lived in United States, for which the complainant used to travel to United States very often out of her love and affection towards her son. During these visits the complainant had been availing the services for consideration of "TrawellTag" offered by the opposite party no. 2, from time to time. The opposite party no.2 offered protection for luggage and valuables worldwide, while travelling. Apart from the other benefits, as a privileged TrawellTag member, complainant was also offered an overseas Mediclaim Policy underwritten initially by Oriental Insurance Company Ltd. during her travel in the year 2010. The complainant after obtaining the aforesaid overseas Mediclaim policy, travelled to United States of America in March, 2010 to visit her son and returned home safely thereafter and there had been no complaint of her health, whatsoever.

3. Opposite party No.2 had been able to develop and build trust and confidence with the complainant and as such, when the complainant planned to travel to United States in the year 2013, she did not think twice before availing the services of "TrawellTag" offered by the opposite party no. 2. Apart from the other benefits, as a privileged TrawellTag member, the complainant was also offered an

overseas Mediclaim Policy underwritten this time by the Opposite Party No.1-National Insurance Company Ltd, for her travel period between 13.05.2013 to 19.10.2013. The complainant was hale and healthy at the time of taking the policy and made all disclosures as were required by the opposite parties no.1 & 2.

4. Further, the opposite party no.1 issued a confirmation of availability of Insurance Policy and as such Overseas Mediclaim Insurance Policy bearing No.251100/48/11/057000001/80198014 for the period valid from 13.05.2013 to 19.10.2013 was issued to the complainant. Unfortunately, during the complainant''s stay in United States, she experienced chest pain and as such was admitted to Providence St. Vincent Medicare Hospital at Portland, USA, wherein the Doctors advised for a heart operation. The complainant had been keeping reasonably good health and had never been diagnosed with any heart trouble before and this was the first instance when she felt such pain in her chest.

5. As per the policy norms, the complainant informed April USA Assistance Inc. and was operated by doctors at Providence St. Vincent Medicare Hospital, Portland, USA, wherein she incurred an expenditure of USD 2,36,938.00 on her treatment which was duly paid by the complainant. Thereafter all the medical records and various documents were also sent to the opposite party no.3 through the hospital concerned. On 29.11.2013, the opposite party no.3 informed the complainant that her claim was sought to be rejected on the ground of policy exclusion to the effect that the policy did not cover any pre-existing condition and related ailments. Further, the complainant contended that so called exclusion terms of the policy were never made available to her nor was she ever informed about the said clause, which makes the opposite parties guilty of Suppressio veri , suggestio falsi as they have deliberately and willfully suppressed material facts from the complainant. But the fact of the matter remained that the diagnosis and operation of the complainant being coronary artery disease had no relation with the alleged past medical history of Dyslipidemia, Diabetes Mellitus and in any case diabetes was not the immediate or proximate cause of coronary artery disease.

6. The main grievance of the complainant against the opposite party was that the rejection of claim was most illegal, obnoxious and misconceived to somehow deny the legitimate claims of the complainant as there was no definition nor the policy document mentioned diabetes to be a pre-existing disease. Besides, the complainant being over age of 60 years and a senior citizen was would be offered the mediclaim policy, only after a compulsory medical check as mandated by IRDA. Thus, their action was in contravention of the IRDA rules, for which the complainant reserves her right to file appropriate complaint with the IRDA. On 20.06.2014 the complainant sent a representation to the opposite party no.1 at their Karnal & Chandigarh offices and the opposite parties vide its letter dated 30.06.2014, informed and directed the complainant to approach the Divisional office No.-11 at Mumbai and was also assured that her complaint had been forwarded/sent to the said office. Thereafter, complainant patiently waited for

more than one month, but no response was received from the opposite parties and as such the complainant was left with no alternative but to approach the office of the Insurance Ombudsman, Chandigarh and file a complaint bearing No.INS/OMB/CHD-G-048-1415-0239 on 05.08.2014. The Ombudsman, vide its letter dated 21.08.2014, had given a personal hearing on 01.09.2014 and after examining the various documents observed that the stand taken by the complainant was correct and the claim was for an amount of Rs.1,44,00,000/- and as such in terms of rule 16 of the Public Grievances Rules,1988. The Ombudsman expressed its inability to hear the matter. Hence, finding no other alternative, complainant has filed a Consumer Complaint before this Commission praying for the following reliefs; " (i) Claim Amount raised by the complainant :USD 2,36,936/- (approximately Rs.1,44,00,000/-) under a policy providing coverage of USD 2,50,000 (approximately Rs.1,52,50,000/-), jointly & severally from all the opposite parties;

(ii) Compensation for causing Mental agony, harassment & torture, Loss of public image etc.: Rs.50,00,000/-;

(ii) Interest @ 24% on the claim amount from the date of refusal i.e. 29.11.2013;

(iv) Litigation Expenses : Rs.5,00,000/-

(v) Pendente-lite & Cost: As may be allowed by this Hon''ble Forum ."

7. We have heard the learned counsel for the complainant. He has contended that the opposite party no.3 has unlawfully and unjustly repudiated the medical insurance claim of the complainant on the ground of pre-existing conditions. He admitted that the complainant suffered from Diabetes Mellitus (DM) and Dyslipidemia but these two diseases had no direct nexus with the treatment undertaken in the abroad for coronary artery disease. Hence, the rejection of the claim of the complainant was most illegal, unjust, obnoxious and misconceived and only to somehow deny the legitimate claim of the complainant. The opposite parties are hence guilty of deficiency in service for denying the legitimate claim of the complainant.

8. We have carefully gone through the record. The opposite party no.3 had repudiated the medical insurance claim of the complainant vide its letter dated 29.11.2013. The same read as under; " Policy Number : 251100/48/11/0570000001/80198014

Policy Period : 13.05.13 to 19.10.13

Date of Incidence : 26.06.13

Ref No. : JVDY-1-02017

CLAIM AMT. : USD 2,36,938.00(maximum limit as per sub Limit USD,25,000)

From the documents you submitted, we learn that you suffered the following complaints during your trip abroad

PRESENTING COMPLAINT : CHEST PAIN

DIAGNOSIS/ES : CORONARY

ARTERY DISEASE,

CARDIOGENIC SHOCK

PAST MEDICAL HISTORY : DYSLIPIDEMIA, DIABETES

MELLITTIUS

POLICY EXCLUSION : PREEXISTING CONDITION AND RELATED AILMENT

Any pre-existing medical condition/ailments declared or undeclared will be excluded from the policy. The coverage period is subject to the details and declaration made by the proposal to the company and attached policy wording bearing.

10(c) Pre-existing condition :- The pre-existing condition means any sickness/ illness, which existed prior to the effective date of this insurance including whether or not the insured person had knowledge that symptoms were related to the sickness/illness. Complications arises from a pre-existing condition will also be considered part of the pre-existing condition.

Our medical panel is of the opinion that you have been treated for severe coronary artery disease and cardiogenic shock. We have also noticed from your medical documents that you have past history of Diabetes Mellitus and Dyslipidemia. Please note that policy doesn''t cover any preexisting disease and related complication.

Hence based on these documents, and the opinion of our medical panel, we shall not consider your claim admissible for the reasons they are related to the direct complications of your past medical history and excluded from the scope of policy coverage ."

9. We have also seen that the complainant in the complaint has admitted as under; " but the fact of the matter remains that the diagnosis and operation of the complainant being coronary artery disease have no relation with the alleged past medical history of Dyslipidemia, Diabetes Mellitusand in any case diabetes is not the immediate or proximate cause of Coronary Artery Disease ."

10. We have also find a letter dated 26.6.2014 addressed by the son of the complainant to the Redressal Cell of the National Insurance Company Ltd-Opposite Party No.1. Even therein it has been acknowledged that the complainant was suffering Diabetes Mellitus and Dyslipidemia before the issuance of the Insurance Policy. The relevant extract is reproduced as under; " Further, she was having diabetes problems before the issuance of policy. But diabetes is not the reason of heart attack whereas the TPA rejected the claim saying that it is a pre-existing diseases ."

11. Hence, it is an admitted fact that the complainant had suffered from Diabetes Mellitus (DM) and Dyslipidemia prior to take the insurance policy and hence there were pre-existing diseases. As per Principles of Internal Medicine by Harrison''s 17 Edition page 1498; "Diabetes Mellitus (DM)

Diabetic patients are more likely to suffer a myocardial infarction, have a greater burden of CAD, have larger infarct size, and suffer more post infarct complications, including heart failure, shock, and death, than non- diabetics.

Importantly, diabetic patients are more likely to have atypical ischemic symptoms; nausea, dyspnea, pulmonary edema, arrhythmias, heart block, or syncope may be their anginal equivalent. Additionally, "silent ischemia," resulting from autonomic nervous system dysfunction, is more common in diabetics, accounting for up to 90% of their ischemic episodes. Thus, one must have a low threshold for suspecting CAD in diabetic patients. The treatment of diabetics with CAD must include aggressive risk factor management. Pharmacologic therapy and revascularization are similar in diabetics and nondiabetics, excepting that diabetics have greater morbidity and mortality associated with revascularization, have an increased risk of restenosis after percutaneous coronary intervention. (PCI), and likely have improved survival when treated with surgical bypass compared with PCI for multivessel CAD.

Patients with diabetic mellitus may also have abnormal left ventricular systolic and diastolic function, reflecting concomitant epicardial Cad and hypertension, coronary microvascular disease, endothelial dysfunction, ventricular hypertrophy, and autonomic dysfunction. A restrictive cardiomyopathy may be present with abnormal myocardial relaxation and elevated ventricular filling pressures. Histologically, interstitial fibrosis is seen, and intramural arteries may

demonstrate intimal thickening, hyaline deposition, and inflammatory changes. Diabetic patients have an increased risk of developing clinical heart failure, which likely contributes to their excessive cardiovascular morbidity and mortality. There is some evidence that insulin therapy may ameliorate diabetes-related myocardial dysfunction ."

12. As per Principles of Internal Medicine by Harrison''s 17 Edition page 2291; th " Dyslipidemia : Dyslipidemia individuals with DM may have several forms of Dyslipidemia. Because of the additive cardiovascular risk of hyperglycemia and hyperlipidemia, lipid abnormalities should be addressed aggressively and treated as part of comprehensive diabetes care. The most common pattern of Dyslipidemia is hypertriglyceridemia and reduced HDL cholesterol levels. DM itself does not increase levels of LDL, but the small dense LDL particles found in type 2 DMR more atherogenic because they are more easily glycated susceptible to oxidation.

13. As per Principles of Internal Medicine by Harrison''s 17 Edition page 1514; " Ischemic heart disease (IHD) is a condition in which there is an inadequate supply of blood and oxygen to a portion of the myocardium; it typically occurs

when there is an imbalance between myocardial oxygen supply and demand. The most common cause of myocardial ischemia is atherosclerotic disease of an epicardial coronary artery (or arteries) sufficient to cause a regional reduction in myocardial blood flow and inadequate perfusion of the myocardium supplied by the involved coronary artery ."

14. As per Principles of Internal Medicine by Harrison''s 17 Edition page 1521; th " TREATMENT OF RISK FACTORS a family history of premature IHD is an important indicator of increased risk and should trigger a search for treatable risk factors such as hyperlipidemia, hypertension, and diabetes mellitus.

15. From the above, it is clear that coronary heart disease, for which insured took treatment was the consequence of pre-existing diseases, namely Dyslipidemia and Diabetes Mellitus with which insured was suffering. Therefore, in view of the exclusion clause in the insurance policy dealing with the pre-existing condition and related ailment, the opposite party- insurance company was justified in repudiating the insurance claim and it can by no means be said to be deficiency in service. In view of the above, we do not find merit in the complaint. It is accordingly dismissed.

16. No order as to cost.

