(2013) 09 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

H.N. Arora — APPELLANT

Vs

Family Health Plan Limited — RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : 2014 3 CPJ 475

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Petition dismissed

Judgement

1. BEING aggrieved by order dated 18.5.2011 passed by State Consumer Disputes Redressal Commission, Delhi (for short, ''State Commission''), Petitioner/Complainant has filed the present petition. Brief facts are "that Petitioner/Complainant obtained for himself and for his wife. Smt. Krisha Arora a Hospitalization and Domiciliary. Hospitalization Benefit Policy for a period commencing from 30.4.2005 to 29.4.2006, the insured sum for each being Rs. 1 lac and bonus amount of Rs. 5,000. Earlier also they had a similar policy. In the month of January, 2005, with complaint of back pain, petitioner went to three hospital from 8.1.2005 to 24.2.2006 for physiotherapy and was subsequently diagnosed Multiple Myeloma with UTI and was advised to get three phase bone scan, which was performed at Dr. Diwan Chand Diagnostic Centre, Delhi. Even thereafter, the pain persisted. On 28.5.2005, petitioner was taken to Rockland Hospital for the treatment and the hospital asked him to give details of his mediclaim number so that the hospital could get approval from Respondent No. 1/ O.P. No. 1 to provide the cashless facility. Petitioner''s grouse is that the Respondent did not provide him mediclaim number. The petitioner was referred to oncologist who advised him for thorough investigation Thereafter petitioner was referred to Shanti Mukund Hospital on 1.6.2005 where he was admitted and after much trouble, respondents agreed for the cashless facility for the treatment for five days where from he was discharged on 6.6.2005. It is further alleged that he was again admitted to Sir Ganga Ram Hospital under the treatment of an Oncologist as he was suffering from pain and was treated there. Thereafter, chemotherapy was given to him in two different hospitals but he did not improve

and then he was admitted to Anand Hospital and Cancer Centre on 3.6.2006 and was discharged on 10.6.2006. Petitioner''s further grouse is that despite his requests, respondent -Insurance Company did not provide him cashless facility barring the one as noted above for treatment in different hospitals. He, therefore, lodged a claim before the respondent - Insurance Company for a sum of Rs. 1,43,439 on 15.12.2006 annexing with it summary of his hospitalization and details of post hospitalization bill and also claimed Rs. 61,000 towards medical charges paid by him to Anand Hospital but in vain. The petitioner therefore filed a complaint before District Forum alleging deficiency in service on the part of the respondents claiming Rs. 2,50,000 towards medical insurance claim and Rs. 61,000 paid by him to Anand Hospital along with pendente lite and future interest @ 24% totaling to Rs. 4,53,439

2. RESPONDENT No. 1 was proceeded ex parte. However, respondent No. 2 opposed the claim and filed its written statement pleading that it had instructed respondent No. 1 to look into the claim, who informed that the claim was settled for a sum of Rs. 1,05,000 which is the sum assured under the policy and no amount more than the sum assured is payable.

3. DISTRICT Forum vide order dated 16.3.2009, allowed the complaint and passed the following directions: "1. OP -2 will pay Rs. 2.00 lac (rounded -off) to the complainant for his medical treatment which is covered by the insurance policy.

2. On account of deficiency of service, mental agony and harassment OP -2 will pay Rs. 50,000 to the Complainant.

3. OP -2 will pay Rs. 10,000 towards Cost of litigation."

4. BEING aggrieved by the order of the District Forum, respondent No. 2 filed an appeal before the State Commission, which vide its impugned order, modified the order of District Forum. Now petitioner has challenged the order of the State Commission by way of filing the present revision.

5. WE have heard the learned Counsel for the petitioner and gone through the record.

6. IT has been contended by learned Counsel that appeal filed by respondent No. 2 before the State Commission was barred by limitation and State Commission ought not to have condoned the delay, as no sufficient cause was made out. Further, State Commission has erred in reducing the awarded amount to half, which was originally awarded by the District Forum and as such impugned order is liable to be set aside. Relevant portion of the impugned order passed by the State Commission states: "7. At the outset it should be noticed that under the insurance agreement between the respondent -complainant and the appellant - OP Insurance Company the insured sum is Rs. 1 lac along with bonus Rs. 5,000 and it is to that extent that he alone could claim from the appellant -Insurance Company and which the OP -Insurance Company could be made liable to pay

him. It is undisputable that the appellant -OP has already paid him Rs. 1,05,000 but the District Forum has awarded him Rs. 2,00,000 much more than the insured sum for the medical treatment which is patently erroneous and cannot be sustained and is reduced to the sum already paid by the appellant to the respondent. Similarly Rs. 50,000 awarded to the respondent complainant is also on the higher side to which we slash to a half and fix it to Rs. 25, 000 in the facts and circumstances of the case. No interference in the amount of costs. The impugned order, is thus modified to Rs. 1,45,000 in all from the amount awarded by the District Forum and the appeal is disposed off accordingly."

7. WITH regard to the plea that appeal preferred by the respondent before the State Commission was barred by limitation, is neither here and nor there since petitioner has not placed on record the application for condonation of delay, filed by the respondent before the State Commission. Moreover, in the entire grounds of revision, petitioner has nowhere stated as to how much delay was there in filing of the appeal before the State Commission. Thus, these arguments on behalf of the petitioner, are but -rightly rejected.

8. NOW , coming to the merits of the revision, as per policy in question placed on record, the sum insured qua the present petitioner was Rs. 1 lac only and the commencement period of the said policy was with effect from 30th April, 2005 to mid -night of 29th April, 2006. Under these circumstances we fail to understand as to how the District Forum has awarded the double amount of the insured sum. The State Commission under these circumstances rightly modified the order passed by the District Forum. We do not find any infirmity or illegality in the impugned order passed by the State Commission.

9. CONSEQUENT LY , we find that there is no merit in the present revision and same has been filed without any legal basis and as such we dismiss the same with cost of Rs. 10,000.

10. PETITIONER is directed to deposit cost of Rs. 10,000 (Rupees ten thousand only) by way of demand draft, in the name of "Consumer Legal Aid Account" of this Commission within four weeks from today. In case, petitioner fails to deposit the cost within the prescribed period, then he shall also be liable to pay interest @ 9% p.a., till realization. List on 15th November, 2013 for compliance.

