**(2014) 08 NCDRC CK 0057**

**In the National Consumer Disputes Redressal Commission**

ICICI PRUDENTIAL LIFE INSURANCE CO. LTD. — APPELLANT

Vs

Arunjeet Thakur — RESPONDENT

**Date of Decision :** 28-08-2014

**Acts Referred:**

**Citation :** 2014 4 CPJ 388

**Hon'ble Judges :** Rekha Gupta J.

**Final Decision :** Petition dismissed

## Judgement

1. REVISION petition no. 2935 of 2013 has been filed against the judgment and order dated 29.04.2013 passed by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (''the State Commission'') in First Appeal no. 241 of 2012.

2. THE brief facts of the case as per the respondent/ complainant are that the respondent at the persuasion of an agent of the petitioner got himself insured under the Hospital Care Policy of the petitioners. The insurance cover was obtained on 04.12.2007. The insurance was to remain in force for a period of 20 years during which period the respondent was to be provided Annual Limit Benefit of Rs.4,00,000/ - and Life Time Limit of Rs.20,00,000/ -. Under the Hospital Care Policy, the respondent/ insured was entitled to Daily Hospital Cash Benefit upon hospitalisation, ICU Benefit on hospitalisation in an ICU Ward, surgical benefit upon undergoing surgery and convalescence benefit for post hospitalisation period apart from the expenses incurred. The respondent in August 2010, was undergoing his studies at Swargiya Dadasahib Dental College, Hingua, Nagpur at Maharashtra. On 10.08.2010 the respondent unfortunately suffered a snake bite on his left hand. The respondent was bitten by a black cobra, one of the most venomous snakes in the world. The respondent on account of emergency had to be admitted in the Late Mangeshkar Hospital, Nagpur for emergency treatment. The respondent remained admitted with the Intensive Care Unit of the said Hospital for two days during which period he was given TT injection and thereafter put on Ampicillin injection 500 mg, 6 hourly

 

Anti Snake Venom doses were also administered. Thereafter, when the respondent developed ptosis the treatment was changed to Ceftriaron injection and Clindamycin injection. ASV was started with the dose of 200 ml stat and 100 ml TD. Atropine injection every hour and Neostigraine injection every hour was also administered. On the following day, the respondent developed hyper - tension and was managed with IV fluids and lonotropic support. Thereafter, in view of persistent hyper -tension, oligura and Deranged KFT the respondent was referred to Aditya Hospital, Nagpur for better specialised treatment on 12.08.2010. The expenses incurred at the said hospital were to the tune of Rs.46,663/ -.

3. AT Aditya Hospital, the respondent remained admitted in Intensive Care Unit of the hospital with effect from 12.08.2010 to 24.08.2010. During this period apart from other treatment, the respondent on 13.08.2010 underwent first surgery wherein Debridement of the left hand was done. Thereafter the respondent underwent four more surgeries where Debridements were done and Necrotic tissues were debrided. Every time, the respondent was administered general anaesthesia as all the five operations were conducted at different times on different dates. The surgeries were performed in order to avoid the impending danger of gangrene to the forearm and hand which could have resulted in loss of limb and permanent disability. Thereafter the respondent was discharged from Aditya Hospital and referred for further treatment of the wound, dressing and the skin grafting which the respondent proposed to carry out at the IGMC, Shimla. The expenses incurred at the said hospital was to the tune of Rs.1,58,861/ -.

4. WHILE shifting from Aditya Hospital, Nagpur to IGMC Shimla the respondent had to get the wound checked up in transit and dressing treatment done which was administered on 24.08.2010 at the Fortis Hospital at Mohali. The respondent incurred expense of a sum of Rs.2,084/ - for the same. Thereafter the respondent was admitted to the IGMC Hospital on 26.08.2010. At the IGMC Hospital the respondent underwent first surgery under general anaesthesia on 31.08.2010 of the aforesaid hand to harvest a groin flap and split skin graft. Thereafter the respondent underwent second surgery under general anaesthesia on 06.10.2010 at the same hospital for groin -split skin grafting. The respondent remained admitted with IGMC Shimla up to 12.10.2010 during which period the respondent incurred a total expenses of Rs.73,269/ - the respondent is still undergoing follow up treatment from IGMC Shimla. Till the date of his discharge from the IGMC, Shimla on 12.10.2010 the respondent had incurred a total sum of Rs.2,80,878/ - on his treatment. After discharge from IGMC, Shimla, the respondent preferred a claim with the petitioner on 19.10.2010. As per the conditions of the policy, the petitioner was to indemnify the claim within fifteen days of receipt. The respondent had claimed a sum of Rs.2,80,878/ - being the actual expenses incurred. Apart from this the petitioner had claimed a sum of Rs.61,000/ - as Daily Hospital Cash Benefit at the rate of Rs.1000/ - per day for 61 days, Rs.2500/ - at Intensive Care Unit Benefit at the rate of Rs.500/ - per day for 5 days, Rs.3,00,000/ - as Surgical Benefit at the rate of Rs.75,000/ - per

 

surgery for 7 surgeries and convalescence Benefit of Rs.6000/ - at the rate of Rs.1000/ - per day. All the covering document, bills etc., stood submitted to the petitioners along with the claim form. Thus, in all the respondent as per the terms of the policy conveyed to him by the agent of the petitioners claimed a sum of Rs.6,50,378/ - and was bonafide believing that the payment made to him within 15 days from 19.10.2010.

5. IT was, therefore, prayed that the complaint be allowed and the opposite parties jointly and severally be directed to pay the respondent a sum of Rs.6,50,378/ - along with interest at the rate of 12% per annum with effect from 10.08.2010 till the date of payment, a sum of Rs.1,00,000/ - as damages for the deficiency in service and a sum of Rs.15,000/ - as cost of litigation.

6. THE petitioner/ opposite party in their written statement before the District Forum stated that the complainant was not entitled to the claim of Rs.6,50,378/ - along with other compensation as claimed. It was stated that the policy was a contract entered by the policy holder with the insurance company and parties to it are bound by its terms and conditions. In the present case, the respondent purchased the Hospital Care Plan A Policy from the petitioner. The Hospital Care Policy offers: (a) Daily Hospital Case Benefit (DHCB) upon hospitalisation;

(b) An Additional ICU Benefit upon Hospitalisation in an ICU Ward (ICUB)

(c) Surgical Benefit (SB) upon actual undergoing a surgery and

(d) Convalescence Benefit (CB) is a post hospitalisation benefit.

The subject policy offers lump sum benefits upon occurrence of one or more specific event.

The subject policy offers benefits to the extent indicated in table 1 below: JUDGEMENT_71_LAWS(NCD)8_2014.htm

7. THE respondent with respect to the claim for his hospitalisation from 12.08.2010 to 24.08.2010 in Aditya Hospital, Nagpur was issued a cheque bearing no. A 005422 of Rs.31,500/ -. The break -up as per the policy terms of the said payment is reproduced hereunder: JUDGEMENT_71_LAWS(NCD)8_20141.htm

8. WITH respect to the respondent''s hospitalisation from 26.08.2010 to 12.10.2010 in IGMC Shimla, the respondent failed to provide the necessary original documents to the petitioners and therefore, the claim could not be processed as per the policy contract. Thus, the respondent was not entitled for any claim benefit except as submitted hereinabove. Thus, the present complaint was liable to be dismissed. On 19.10.2010 the respondent submitted the claim statement form along with documents to the petitioners alleging that he was bitten by a snake.

9. THE claim of the respondent was processed by the petitioners the details of the status and summary of the claim are given hereunder:

 

JUDGEMENT_71_LAWS(NCD)8_20142.htm

10. THAT since the respondent failed to furnish the original documents as demanded the claim of the respondent could not be processed. However, if the respondent submitted the requisite documents, on verification and satisfaction by the company, the respondent may be entitled for a claim of Rs.1,01,000/ - less the payment of Rs.31,500/ - already paid vide cheque no. 005422 as per the policy terms and conditions, details of which are given hereunder: JUDGEMENT_71_LAWS(NCD)8_20143.htm The District Consumer Disputes Redressal Forum, Shimla (HP) (''the District Forum'') vide its impugned order dated 05.03.2012 observed that: "8. Thus, it becomes evident from the reading of the evidence of the complainant coupled with the discharge card of these hospitals that he had suffered snake bite and resultantly, he remained admitted in the foresaid hospitals for treatment from time to time and resultantly, he had to spent Rs. 2,80,875/ - on his treatment.

9. Significantly, complainant had obtained hospital care policy of Plan -A as is evident from the Insurance Policy documents Annexure -A. The policy document has also been tendered in evidence as Annexure -B. Clause 2 -C of this policy goes to show that maximum benefit payable in any one policy year is limited to an amount equal to three hundred times DHCB in the Plan opted for by the policy holders. For the purpose of accumulation, all surgeries performed within the same year are aggregated. The surgeries having been conducted on the complainant falls under the category of Grade -3 as per contents of policy documents. Thus, entitlement of the complainant for Grade -3 surgery is for Rs. 75,000/ - which is subject to maximum amount of Rs. 3,00,000/ -. It stands established on record from the perusal of the affidavit of the complainant that discharge card of IGMC, Shimla Annexure A - 8 that nine surgeries had been performed upon the complainant under general anesthesia and as such he is entitled for the benefit under this category for a sum of Rs. 3,00,000/ - as per terms of the policy.

10. It is also revealed from the aforesaid evidence that total period of hospitalization is 61 days which includes 5 days in intensive care unit.

12. A perusal of the policy documents shows that daily hospital care benefit is to the tune of Rs. 1,000/ - per day and intensive care unit benefit is to the tune of Rs. 5,00/ - per day and Convalescence benefit to be extended to the tune of Rs. 1000/ - per day. Aforesaid benefits are required to be extended to the complainant which comes as follows : -

1. SURGICAL BENEFITS.

Under Grade -3 @ Rs. 75,000 -00 Per Surgery (Maximum permissible:

.....Rs. 3,00,000 -00

2. DAILY HOSPITAL CARE BENEFIT FOR 61 DAYS @ Rs. 1000 -00 per day

 

.....Rs. 61,000 -00

3. ICU Benefits for 5 days @ 500/ - per day.....Rs. 2,500 -00

4. Convalescence Benefit @ 3,000 - per Hospital for 2 Hospitals where stay was exceeding 5 days (Aditya Hospital Nagpur and IGMC Shimla Rs. 6,000 -00

5. Expenses incurred at Lata Mangeshkar Hospital Nagpur Rs. 46,663 -00

6. Expenses incurred in "Aditya Hospital" Nagpur.....Rs. 1,58,861 -00

7. Expenses incurred in Fortes Hospital Mohali, Chd. Rs. 2,084 -00

8. Expenses incurrer at IGMC Shimla (H.P) Rs. 73,269 -00

Total : - Rs. 6,50,378 -00

14. The claim of the complainant has been repudiated by the opposite parties on the ground that necessary documents had not been provided by the complainant to the Insurance Company and as such this claim could not be processed. A specific stand has been taken on oath by the complainant to the effect that the entire documents including hospital and medical bills had been submitted to the insurance Company by the complainant. Further, claim settlement form has also been tendered in evidence as Annexure A -7 by the complainant in which there is clear cut recital to the effect that all the documents were received by the Insurance Company from the complainant. Thus, plea of the insurance company for repudiating of the claim cannot sustain. It may not be out of mention here that no reliable evidence has been led on record by the insurance Company to dispute the claim of the complainant. There is no reliable rebuttal evidence on record at the behest of the insurance company to show that complainant had not undergone 9 surgeries at various hospitals under General Anesthesia for his treatment nor there is cogent evidence to deny the complainant benefits of aforesaid insurance policy. Complainant has been able to lead cogent and reliable evidence including hospital treatment charts and discharge cards to show that he had spent aforesaid amount on his treatment and he has also entitled for the benefits to be extended under the policy.

15. Opposite parties have taken objection about the maintainability of this complaint on the ground that this complaint does not raise consumer dispute and complainant has no cause of action to file this complaint nor this Forum has jurisdiction to entertain the complainant. Aforesaid pleas of opposite parties do not carry merit because complainant has obtained hospital care policy from Insurance company and during the valid period of this insurance policy, he had suffered snake bite and resultantly, he was subjected to hospitalization and medical treatment at various hospitals. The claim of the complainant has been repudiated by the insurance company without any justifiable cause and resultantly, this dispute can be adjudicated under Consumer Protection Act and this Forum has jurisdiction to entertain and adjudicate this complaint. The insurance policy has been obtained by the complainant within the jurisdiction of

 

this Forum and one of the branch office of the Insurance company is also located within the jurisdiction of this Forum and as such jurisdiction of this Forum cannot be ousted. Thus, aforesaid objections having been raised in the reply by the opposite parties are required to be ignored.

11. IN this view of the matter, it can be said that opposite parties have indulged in unfair trade practice and committed deficiency in service for not settling the just and fair claim of the complainant and as such cause of the complainant merits acceptance and this complainant stands allowed. It is ordered accordingly. Opposite parties are directed to pay Rs. 6,50,378/ - to the complainant with pending and future rate of interest @ 9% per annum till payment is made. Furthermore, complainant is also entitled for a sum of Rs. 1,00,000/ - for having caused harassment and inconvenience to him. Since he happens to be a student, cost of litigation is also quantified to the tune of Rs. 15,000/ -". 16. Aggrieved by the order of the District Forum the petitioner filed an appeal before the State Commission. The State Commission in their order held that:

"9. It is not a case of the appellants that papers pertaining to admission, treatment and surgeries of respondent, on account of cobra bite, had not been submitted to them. Their plea is that the original documents had not been submitted. Documents are required to be submitted to the insurer to enable it to verify the claim. Normal practice followed by the insurers is to depute some investigator or surveyor for the verification of claim. Almost all the insurers have their branches in all the towns and cities of the country. In any case, Nagpur in Maharashtra and Shimla in Himachal Pradesh are having appellants'' branches, where they have their employees and on the basis of copies of papers supplied by the respondent, they could have very easily verified the claim of respondent. So, the filing of claim of respondent by the appellants on the pretext of non - submission of original documents was nothing, but a ploy to avoid payment of insurance money.

10. Next submission that has been made is with regard to the quantum of money payable to the respondent, on account of insurance claim. We have been taken through the documents pertaining to admission and treatment of respondent at Nagpur Aditya Hospital and Shimla IGMC. Record consists of Annexure A -9 and several documents annexed therewith pertaining to Nagpur Hospital and Annexure -8, discharge summary with history of treatment and a clarificatory certificate pertaining to treatment at IGMC, Shimla.

11. As per Annexure A -9 and documents attached therewith, in addition to being provided other treatment, respondent was subjected to six grade two surgeries in the nature of debridement of left hand from 13.08.2010 to 23.08.2010.

12. According to the appellants, respondent was subjected to only two grade one surgeries, because in their calculations of the amount payable by them, they have mentioned that two surgeries were conducted for which a sum of Rs.30,000/ - is payable. According to insurance policy, Annexure -B, insurance

 

money payable for a single grade one surgery is Rs.15,000/ -.

13. We have with us the schedule pertaining to gradation of surgeries attached with the policy issued by the appellants. Six surgeries which were performed at Nagpur Hospital are in the nature of debridement, as is clear from Annexure A -9. In the list of surgeries in grade one forming part of Annexure -1 of the policy, there is no reference to surgery involving debridement. Reference is there in the list of surgeries in grade two at item No. 151, which reads as follows: -

"Hand. Crush injuries (complex). Wound debridement."

14. All the six surgeries performed at Nagpur Hospital were under general anesthesia and they involved debridement of left hand, which was stung by cobra. That''s why we have observed hereinabove that all the six surgeries were of grade two.

15. As per table of surgical benefits for a surgery of grade two, money equivalent to daily hospitalization cash benefit multiplied by fifty is payable for a single surgery and daily hospitalization cash benefit is Rs.1,000/ - in case of Plan -A, which had admittedly been purchased by the respondent. Thus, for six surgeries performed at Nagpur Hospital, respondent is entitled to Rs.50,000/ -, on account of surgical benefits for each surgery. Total amount comes to Rs.3,00,000/ -.

16. Three surgeries for filling the left hand after debridement were performed at IGMC, Shimla, by means of split skin graft procedure and these surgeries were also performed under general anesthesia. These surgeries also fall in grade two surgeries, vide item No. 297 and for these three surgeries, respondent is entitled to a sum of Rs.1,50,000/ -. However, there is an upper cap for surgical benefits and the same is Rs.3,00,000/ -. So, it is held that the respondent is entitled to a total sum of Rs.3,00,000/ -, on account of surgical benefits.

12. AS regards other benefits, it is not denied that amount of Rs.71,000/ - has been correctly worked out by the appellants. Total amount payable under the insurance policy to the respondent for the treatment/ surgeries, undergone by the respondents, thus comes to Rs.3,71,000/ -. As a result of the above discussion, appeal is partly allowed and it is ordered that instead of Rs.6,50,378/ -, appellants shall pay a sum of Rs.3,71,000/ -, on account of insurance money. Order of learned District Forum with regard to payment of compensation and litigation expenses, remains unchanged". 17. Hence, the present revision petition.

18. The main grounds for the revision petition are that:

• The State Commission has failed to appreciate the fact that it has no jurisdiction and power to go beyond the terms and conditions of the policy contract. Therefore, the impugned order is liable to be set aside.

• The State Commission erroneously put the surgery performed at Nagpur hospital in Grade 2 at item no. 151 which reads as ''Hand, Crush Injuries (complex), Wound Debridement'' instead of Grade I at item no. 103, which reads

 

as ''skin and subcutaneous tissue, deep/ extensive contaminated wound, debridement''.

• The State Commission erroneously put the surgery performed at IGMC, Shimla in Grade 2 at item no. 297, which read as ''skin and subcutaneous tissue, defect, free grafts (split skin graft 2 to less than 5%)'' instead of Grade 1 at item no. 106 which is read as ''skin and subcutaneous tissue, defect (single digit), free full thickness graft''.

• The State Commission failed to appreciate the fact that if all the nine surgeries performed both at Nagpur Hospital at IGMC, Shimla are considered, then at the most the respondent was entitled to Rs.1,27,500/ - (Rs.82,500/ - at Aditya Hospital, Nagpur + Rs.45,000/ - at IGMC Shimla) towards the Surgical Benefit (SB) against Rs.3,00,000/ - awarded by the State Commission.

• The State Commission has erred in allowing Rs.1,00,000/ - as compensation towards harassment and inconvenience allegedly caused to the respondent. On what basis and under what conditions, the said compensation was allowed, was not discussed or explained neither by the District Forum nor by the State Commission and thus, both the Foras below have acted without jurisdiction in awarding the said amount.

• The District Forum and thereafter State Commission has erred in allowing Rs.15,000/ - as litigation costs to the respondent. There was no basis, reasons or finding given by both the Foras below and thus, committed a patent error of law. Therefore, the impugned order is liable to set aside.

13. WE have heard the learned counsels for the petitioner and the respondent and have carefully gone through the records of the case. The only issue raised by the learned counsel for the petitioner is that whether surgical procedures conducted in Aditya Hospital, Nagpur and IGMC Shimla were grade 1 or 2 as that would decide the entitlement of the respondent. The District Forum in their order dated 05.03.2012 had come to the conclusion that the respondent/ complainant was entitled for reimbursement of grade 3 surgeries and hence, entitled to a total payment of Rs.6,50,378/ -. The State Commission however, came to the conclusion that all the six surgeries performed at Nagpur Hospital and three at IGMC Shimla were of grade 2 hence, they came to the conclusion that taking into account the upper cap for surgical benefits of Rs.3.00 lakh the respondent was entitled to Rs.3,71,000/ - on account of insurance money. Learned counsel for the petitioner drew our attention to the gradation list of surgeries and argued that the nature of operations at Aditya Hospital, Nagpur were covered under Sl no. 103 of the list for Grade 1 surgeries which reads as follows: Skin and subcutaneous tissue, deep/extensive contaminated wound, debridement''.

The other surgeries conducted at Shimla were covered under Sl no. 106 of the list of Grade 1 surgeries which reads as under:

"Skin and subcutaneous tissue, defect, (single digit), Free Full Thickness Graft".

 

14. ON the other hand, the counsel for the respondent argued that the injuries and procedure carried out, were covered under grade 2 surgeries at Sl no. 151 which reads as under: "Hand, crush injuries (complex) wound debridement", and Sl no. 297 which read as follows; "skin and subcutaneous tissue, defect, free grafts (split skin graft 2 to less than 5%)". He further argued that the difference between the procedure at Sl No. 106 under grade I and 297 under grade 2, was that of percentage of skin graft. The surgery at Sl No. 106 under Grade 1 covered "split skin graft of 1/2 to less than 2% and surgery at Sl no. 297 under grade 2 cover split skin graft 2 to less than 5%". As per the medical record filed at Nagpur debridement c fascioctomy was done which resulted in loss of skin over exterior surface of forearm and hand leading to exposure of tendon of left forearm and hand. In the Shimla Hospital, Groin Flap c SSG (Split Skin Graft) surgeries were performed. Here it would be useful to briefly indicate the meaning of the procedures carried out. Debridement is the medical removal of dead, damaged, or infected tissue to improve the healing potential of the remaining healthy tissue. Removal may be surgical, mechanical, chemical, autolytic (self - digestion) and by maggot therapy. Debridement is an important part of the healing process for burns and other serious wounds, it is also used for treating some kinds of snake and spider bites. In the instant case, the respondent was bitten by a Cobra snake resulting in wound which needed debridement. Fasciotomy is a limb saving procedure when used to treat acute compartment syndrome. A fascia is a structure of connective tissue that surrounds muscles, groups of muscles, blood vessels and nerves, binding some structures together, while permitting others to slide smoothly over each other.

As per the discharge summary of Aditya Critical Care Hospital at Nagpur "on 13.08.2010 debridement of left hand was done. Short GA left axillary block debridement of necrotic tissue and fascioctomy done. Thrombosed veins and necrotic skin excised..... Four debridements were done subsequently and necrotic tissues was debrided....."

15. THE respondent developed loss of skin over exterior surface of fore arm and hand post snake bite. Hence, groin flap c SSG was done on 31.08.2010 and thereafter, final inner groin flap was done on 21.09.2010 c stored SSG given over raw area of left hand and forearm. Another procedure was again done on 06.10.2010.

16. IT is obvious from the above that the procedures carried out did not fall under Sl no. 103 and 106 of grade I surgeries. Debridement and fascioctomy of the left hand and forearm had to be carried out to prevent gangrene to the forearm which would have resulted in loss of limb and permanent disability as the respondent had developed "thrombocytopenia with raised urea and creatinine with deranged PTT". This surgery was more than that covered under Sl no. 103 of Grade 1 surgeries. The procedure for groin flap c split skin surgery to cover the loss of skin and the exposed tendon of the forearm was also more than that covered under Sl No. 106 of Grade I surgeries. The State Commission has rightly

 

concluded that reimbursement should be as per the list of grade II surgeries. The State Commission has given a well -reasoned order and we find no reason to disagree with the same. Hon''ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., : 2011 (3) Scale 654 has observed: Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora.

17. THUS , no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21(b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed with no order as to cost.

 