(2011) 01 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

J. Bhaskar Joel APPELLANT

Vs

The Branch Manager The New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : 2011 0 NCDRC 47 : 2011 1 CPJ 216

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Petition is disposed off

Judgement

1. THE present revision petition has been filed by one J. Bhaskar Joel (hereinafter referred to as the ''Petitioner'') against the order passed by the State Consumer Disputes Redressal Commission, Tamil Nadu (hereinafter referred to as the ''State Commission'') which had dismissed the appeal filed by the Petitioner, in favour of THE New India Assurance Co. Ltd. (hereinafter referred to as the ''Respondent'').

2. THE facts of the case are that the petitioner who is a principal of a college in Nazareth, Tuticorin District had taken a medi-claim policy for a sum of Rs.1,50,000/- for the period from 13.08.1999 to 12.08.2000 from the Respondent. According to the Petitioner during 1999 he underwent a medical check-up and was advised to consult Apollo Hospital, Chennai for some wheezing problem. Complainant thereafter underwent a medical check-up on 09.06.2000 at Apollo Hospital which included cath procedures and was thereafter advised to undergo Mitral Valve repair surgery for which he was admitted in the hospital on 15.07.2000. THE operation was done on 20.07.2000 and he was an in patient in that hospital till 21.07.2000. He incurred medical expenses of Rs.1,41,958/- for his treatment in that hospital. He filed a claim for reimbursement of this amount with the Respondent Insurance Company. THE Insurance Company repudiated his claim on the grounds that he had suppressed a material fact of having a pre-existing disease at the time of taking the policy (rheumatic fever when he was 10 years old). Aggrieved by this action, petitioner filed a complaint before the District Forum alleging deficiency in service and requested that the Respondent

be directed to pay him Rs.1,61,308/- spent on his entire treatment and Rs.50,000/- towards mental agony and strain. The Respondent stated that the claim was rightly repudiated because as per the discharge summary of Apollo Hospital it was noted that the Petitioner had rheumatic fever when he was 10 years old and it is well known that rheumatic fever is connected with the heart disease for which the petitioner had undergone treatment / surgery at Apollo Hospital. The District Forum after hearing both the parties allowed the complaint. The operative part of the order of the District Forum is reproduced:- "It is contended by the complainant the Rheumatic fever at the age of 10 was not at all known to the complainant. The complainant had never taken any treatment for the Rheumatic fever at any time. The opposite party had not made any separate investigation regarding the existence of Rheumatic fever the discharge summary wherein it is stated that the complainant had Rheumatic fever at the age of 10. To repudiate the claim the opposite party must prove positively that the complainant had the pre-existing disease at the time of taking the policy and that the disease is the cause or nexus with the subsequent the disease for which treatment was taken. As per the decision reported in 1997 CPJ Page 1 National Commission, in cases of fraudulent suppression of material facts raised heavily on the party alleging fraud namely the insurer. As per the decision reported in 1997 National Commission Judgements page 314, the Insurance Company must prove in support of his assertion about the pre-existing disease. Further merely an existence of a disease will not confer any right on the Insurance Company to repudiate the claim. To repudiate the claim the Insurance company must prove that the pre-existing disease which was alleged to be suppressed is the real cause for the subsequent disease or any connection with the subsequent disease. Unless it is proved by the Insurance Company positively the pre-existing disease was the cause for the subsequent disease for which treatment was taken, the Insurance Company cannot repudiate the claim of the complainant. In the present case there is no evidence to prove that the Rheumatic fever, the complainant alleged to have had at the age of 10 was the cause for the subsequent heart ailment for which the complainant had underwent treatment in the Apollo Hospital. So under these circumstances without any positive evidence, the repudiation of the opposite party is not legal and so there is deficiency of service on the part of the opposite party in not settling the mediclaim of the opposite party ."

The District Forum directed the respondent to reimburse the medical expenses of Rs.1,41,458/- to the petitioner with interest @12% p.a. from 21.08.2000 till payment, Rs.5,000/- as compensation and Rs.2,000/- as costs. Aggrieved by this order, Respondent filed an appeal before the State Commission, which was allowed. The State Commission in its order relied on the medical literature given in the Complete Family Health Encyclopedia of the British Medical Association and came to the conclusion that the rheumatic fever from which the petitioner suffered at the age of 10 years had led to the disease which and was therefore, pre-existing in nature. The State Commission concluded that since Apollo

Hospital in the discharge summary had specifically recorded this fact obviously this had been disclosed to them by the petitioner because there was no other way in which the Hospital would have come to know of this fact. The suppression of this material fact by the petitioner was established. Hence the present revision petition before this Commission.

3. VIDE order dated 06.05.2010, in order to satisfy ourselves as to whether rheumatic fever from which the petitioner suffered at the age of 10 years led to his later ailment of Mitral valve prolapse we decided to obtain the opinion of a medical expert. The Dean of All India Institute of Medical Science (AIIMS) was therefore, requested to constitute a medical board of experts to give their opinion on this point. A report of the medical board consisting of Dr. Anita Saxena, Prof. of Cardiology and Dr. S. Ramakrishnan, Asstt. Prof. of Cardiology (AIIMS) has been forwarded to us through the Head of Department (Cardiology) AIIMS. The report is reproduced:- "After going through the details available it is difficult to say that mitral valve prolapse had occurred secondary to the rheumatic fever which the patient suffer at the age of 10 yrs. Mitral valve proplase is still known to occur in chronic rheumatic heart disease however, it is also known to occur as an isolated condition. The operative finding in such cases could indicate whether the mitral valve was rheumatic or not. Also the medical history between the age of 10 years and 45 years which time the patient was operated could also be helpful to differentiate between the two conditions."

From a perusal of this report, it is clear that the medical board of cardiologists found it difficult to conclude that the mitral valve prolapse which had occurred was secondary to the rheumatic fever from which the patient suffered at the age of 10 years. The petitioner has stated that prior to this disease he did not have any medical problem related to his heart condition and in view of this fact, it cannot be established that the childhood rheumatic fever led subsequently to the Mitral valve prolapse. The onus to proof the facts to the contrary was on the respondent who has failed to do so. Under these circumstances, we feel that the the State Commission erred in accepting the appeal. We, therefore, set aside the order of the State Commission and uphold the order of the District Forum. The Respondent is directed to reimburse the petitioner for medical expenses of Rs.1,41,458/- with interest @12% from 21.08.2000 till the date of payment, a sum of Rs.5,000/- as compensation for the mental agony and a cost of Rs.2,000/-. The above payment be made by the Respondent Insurance Company within two months from the date of passing of this order. The revision petition is disposed off in the above terms.