(1996) 09 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

JOSEPH OLLAPALLY — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. — RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Citation : 1996 3 CPJ 528

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju J.

Final Decision : Complaint Partly allowed

Judgement

1. IN this Complaint, under Section 17 read with Section 12 of the Act, the complainant has sought compensation in a sum of US Dollars 35,000/-, equivalent to Rs. 7.00 lakhs with interest thereon from the opposite parties. The opposite party is the New INdia Assurance Company Ltd.

2. THE complainant, pending enquiry passed away. His legal representatives, sons and daughters have been brought on record as the L.Rs. of the late complainant. The complainant, Joseph Ollapally, a retired Army Officer, when he was to visit his son Philip Joseph Ollapally in America obtained Medical Insurance Policy for himself and his wife on 17.7.89 with opposite party No. 1, New India Assurance Company Ltd. The policy being overseas medi-claim policy for a period of 75 days commencing from 19.7.89. He paid a premium of a sum of Rs. 2,043/-.

The complainant, late Joseph Ollapally left India for America on 19.7.89. He stayed with his son in America. His visit to America was to end on 1.10.89, but his son and family members insisted upon him to extend his stay for few more days. So on 15.9.89, the period of insurance under the above mentioned policy was extended to 120 days from 75 days. The additional premium amounting to Rs. 1,455/- to each of the complainant and his wife was paid. The date of expiry of the policy was extended from 1.10.89 to 15.11.89.

3. THE complainant, while in America on 3.10.89 was admitted to Nashville Memorial Hospital, U.S.A., with diagnosis of acute stroke. He had a right sided

paralysis. THE son of the complainant, Phillip Joseph Ollapally contacted opposite party No. 3, Mercury Insurance Services Ltd., England for emergency assistance. All necessary information was quoted to opposite party No. 3 relating to the illness of late Joseph Ollapally. The complainant returned to India in the month of December, 1989 after rehabilitation and when he was declared medically stable to undertake the journey back to India. The medical bill of expenses about US Dollars 35,000 /- equivalent to about Rs. 7.00 lakhs was submitted to Mercury Insurance Services Ltd., opposite party No. 3.

4. OPPOSITE party No. 3 by its letter on 14.2.90 repudiated the claim of the complainant stating that the late complainant was receiving medication for mild hyper-tension during the year prior to admission to the Baptist Hospital, U.S.A. On enquiry, it was revealed that the said information was an erroneous one. So, in the month of June, 1990, the son of the complainant in America informed opposite party No. 3 the true facts. On 6th September, 1989, while the complainant and his wife were staying with their niece and her husband, Dr. Joseph L. Chatham, who checked up the complainant''s B.P. and recorded a reading of 170/100. Opposite party No. 3 had repudiated the claim on the basis of this single reading of the blood pressure which is not justifiable. The late Joseph Ollapally, the complainant took medication for his stroke which he sustained on 3.10.89, first at Nashville Memorial Hospital and thereafter in Baptist Hospital, where he underwent rehabilitation therapy. The complainant had no long-standing hypertension and the repudiation of the claim of the complainant on that ground was erroneous and not justifiable. Opposite party No.3 even on receipt of the relevant medical documents repudiated the claim by its letter on 27.11.90, declining the claim of the complainant for the medical bills of U.S. 35,000 dollars stating that 15th September when the extension was applied for, hypertension was not disclosed to the General Insurance Corporation of India Ltd. The complainant even after return to India was taking treatment with Dr. Srinivas who also had never detected any hypertension with the complainant.

5. THE repudiation of the claim of the complainant was on erroneous grounds, so, the complainant after the receipt of the said letter of repudiation filed the complaint seeking compensation in a sum of Rs. 7.00 lakhs from the opposite parties as referred above.

6. OPPOSITE party No. 1, New India Assurance Company filed its version. It has admitted the fact that the complainant and his wife had obtained an overseas medi-claim policy, first for a period of 75 days and thereafter it was extended for a further period of 45 days, that is, upto 15.11.89. OPPOSITE party further averred that the claim of the complainant came to be repudiated on the ground of suppressing the material facts while obtaining a policy. The opposite party further averred that the complainant had taken the extension of the policy on 15.9.89 without disclosing the ailment with which he was suffering while he was in America on 6.9.89. So, the complainant was not entitled to the claim made by

him. The opposite party further, in this regard, averred thus : "It is admitted by the complainant that the complainant was indisposed on 6.9.89 whether it was a passing in-disposition or a long standing hypertension, this medical condition of the complainant was not disclosed at the time of obtaining the policy on 15.9.89."

So, the opposite party admitted the fact that the complainant did suffer a stroke on 3.10.89 while in America during the policy period but he was not entitled to the reimbursement of the claim under the said policy, as the complainant had obtained the said overseas medical policy without disclosing the illness with which he was suffering as disclosed on 6.9.89.

The opposite party, on the basis of these averments, sought the complaint to be dismissed.

7. DURING enquiry, son of the complainant was examined as CW 1. The same witness was further examined as CW 3 as there was change in the Presiding Officer of the Commission. Dr. Srinivas was examined as CW 2. The documents filed by the complainant came to be marked as Exs. C1 to C 22. The opposite party examined its Deputy Manager as RW 1 and got Exs. R 1 to R 8 marked in evidence. We heard the learned Counsel for the parties. Perused the pleadings and the material on record.

8. IT is not disputed that the late Joseph Ollapally the complainant obtained overseas Medi-claim Policy for himself and his wife on 19.7.89 to go to U.S.A. This was a policy obtained for a period of 75 days commencing from 19.7.89. IT is also not disuted that this policy was further extended on 15.9.89 for a further period of 45 days. The last date of which was 15.11.89. It is also not disputed that the late Joseph Ollapally, the complainant while in America suffered an acute stroke, right sided paralysis on 3.10.89. He was admitted to Nashville Hospital and thereafter to Baptist Hospital for Physiotherapy, both in U.S.A. The complainant when he was declared medically fit for travel back to India, returned to India in the month of December, 1989. The complainant has claimed U.S. 35,000 Dollars equivalent to Rs. 7.00 lakhs towards medical expenses incurred by him. But the opposite party repudiated the said claim.

9. IT is the case of the opposite party that the complainant while getting the overseas Mediclaim policy extended on 15.9.89 did not disclose his ailment which he had suffered on 6.9.89 while in America.

10. IT was Dr. Chatham who had examined Joseph Ollapally on 6.9.89. He had found on that day mild hypertension, and so, had prescribed him TENORMIN 50 mg, one daily. This is all the medical history. Ex. C 8 is the letter written by Dr. Chatham to opposite party No. 3, which reads as under: "I have received your inquiry regarding the above named patient. IT is true that I have examined Mr. Ollapally on 6th September, 1989. This examination was simply a check up, as he did not have any specific complaints at that time. His previous history was negative for hypertension, diabetes or heart disease. He was not on any medications. Physical examination shows a very healthy looking individual. B/P :

170/100, Pulse 78/minute and regular. Heart: Normal 1st and 2nd heart sounds, no murmurs, no gallop, No other abnormal findings. My diagnosis was mild hypertension and I put him on: (1) Tenormin 50 mg once daily. (2) Periodic check up of blood pressure. He told me that he was going back to India in a few months. If you have any more questions, please feel free to contact me."

Ex. C 22, Annexure ''C is the letter written by Dr. Edwin B. Anderson to opposite party No. 3, which reads as under : "I have reviewed correspondence regarding Mr. Ollapally''s history of hypertension, including Dr. Chib''s letter of May 18, 1990, Dr. Chatham''s letter of April 23, 1990, and Dr. Ward''s letter of June 7,1990. Having seen Mr. Ollapally as a consulting internist when he was transferred to Dr. Ward''s care, I was also in the position of relying on transfer records for historical information, and took my history directly from Dr. Ward''s. Therefore, it was inaccurate for the same reasons with respect to his history of hypertension. It is clear from reviewing the letters from doctors Chatham and Chib that Mr. Ollapally''s hypertension was initially diagnosed in September, 1989."

This letter shows that the hypertension that was diagonised on 6.9.89 by Dr. Chatham was a mild hypertension initially diagnised. Ex. C 22, Annexure ''J'' a letter from Dr. Chib, which reads as under : To Whomsoever It May Concern "This is to certify that Colonel Joseph Ollapally is my patient. Upto June, 1989 he had never been noted to suffer from elevated arterial blood pressure (hypertension) or any related illness. From July, 1989 to January 1989 he was not under my care as he had proceeded abroad."

It would clearly go to show that the complainant had no earlier history of hypertension.

The National Commission in Life Insur ance Corporation of India v. Sanjeev Mahendralal Shah, reported in 1996 (1) C.P.R. 129, wherein, it held as under : "In life insurance policies, an assured is not required to disclose casual ailments not requiring any treatment or consultation with a medical doctor and the sickeness, ailment which is required to be disclosed with reference to serious disorders in health."

11. THIS would go to show that in life insurance policies, the assured is required to disclose the serious disorders in health, not the casual ailments. From the medical records, referred above, it is clear that the hypertension that was found on 6.9.89 by Dr. Chatham was an initial casual ailment, which the complainant had not disclosed when the policy came to be extended on 15.9.89. Having regard to these facts and in the circumstances of the case, we are constrained to hold that the opposite party did not substantiate its plea that the complainant did not disclose the material facts while obtaining the medical policy. So, we are of the opinion that the repudiation of the claim of the complainant on this ground by the opposite party was not justifiable, and that is the deficiency in service committed by the opposite party. The complainant has claimed 35,000 U.S.

Dollars, equivalent to Rs. 7.00 lakhs towards the money spent for medical treatment which he received in America. The complainant has produced though certain xerox copies of bills Ex. C11 for U.S. 13,465 Dollars and Ex. C 12 for U.S. 17,340 dollars but has not produced either receipts or the xerox copies of the cheques under which he had made the payment of the said amount to the hospitals. So, we cannot act on the basis of such bills.

12. THE complainant has produced xerox copies of cheques Ex. C 13 for U.S. 428 Dollars, Ex. C14 for U.S. 340 dollars, Ex. C17 for U.S. 150 dollars, Ex. C18 for U.S. 100 dollars, Ex. C 19 for U.S. 628 Dollars (three cheques) and Ex. C 21 for U.S. 236 dollars. So, the complainant has produced in all copies of cheques, as referred above for U.S. 1,882 dollars. We are of the considered opinion that the complainant is entitled to this amount towards the medi-claim. The complainant has claimed the amount equivalent to Rs. 20/- per dollar. At that rate, the amount of U.S. 1,882 Dollars to which the complainant is entitled would be Rs. 37,640/- which we deem it just and proper to award. The complainant is also entitled for a reasonable percentage of interest on this sum for having struggled to secure the claim. In the result, therefore, this complaint is allowed in part. Opposite party No. 1, the New India Assurance Company Ltd., is directed to pay to the L.Rs. of the complainant, a sum of Rs. 37,640/- with interest at 18% p.a. from 1.1.90 till the date of its payment.

13. OPPOSITE party shall also pay a sum of Rs. 5,000/- to the L.Rs. of the complainant towards costs of these proceedings.

14. OPPOSITE party No. 1 shall pay the sums so awarded to the L.Rs. of the complainant within a period of 60 days from the date of this order. Complaint Partly allowed.

