(2005) 09 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

JYOTI KUMAR JAIN APPELLANT

Vs

United India Insurance Company Ltd. RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Citation : 2005 3 CPR 645 : 2005 4 CPJ 281 : 2006 1 CLT 171

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of ''1986") has been filed by the appellant-complainants against the order dated 3.5.2001 passed by the learned District Forum, Kota in Case No. 480/1999 by which the complaint filed by the complainant-appellants under Section 12 of the Act of 1986 was dismissed.

2. THE necessary facts giving rise to this appeal are as follows : On 1.12.1999, the complainant-appellants had filed a complaint under Section 12 of the Act of 1986 before the District Forum, Kota stating inter alia that on 30.1.1999, they have taken a medi claim policy from the respondent for the period from 30.1.1999 to 29.1.2000 for a consideration of Rs. 30,000 each and the policy number was 140604/48/1/8814/98-99. It was further stated in the complaint that during the force of the aforesaid policy, on 2.7.1999, the complainant-appellant No. 2 Kavita Rani, wife of complainant-appellant No. 1, developed pain in her stomach and thereafter, she was checked up by Dr. Jitendra Singh, who advised for sonography and after seeing the report of the sonography, the said doctor advised for operation of the gall-bladder. It was further stated in the complaint that thereafter, the complainant-appellant No. 2 was taken to Agra where operation of gall-bladder and appendicitis was got conducted on 28.7.1999 and she was discharged on 30.7.1999. It was further stated in the complaint that total expenses incurred in that operation were Rs. 22,570.16 and for reimbursement of that amount, a claim was preferred by the appellant-complainants before the respondent, but that claim was repudiated by the

respondent through letter dated 30.9.1999 stating inter alia that the claim of the appellant-complainants was not payable under the terms and conditions of Clause 4(1) of the policy as before the issuance of the policy in question, the complainant-appellant No. 2 was suffering from disease and thus, the disease, which was found in complainant-appellant No. 2, was pre-existing disease. THEreafter, the present complaint was filed by the appellant-complainants. A reply was filed by the respondent and the respondent has taken the same plea as is found in the repudiation letter dated 30.9.1999 referred to above and apart from that, it was further submitted by the respondent that the case of the complainant-appellant No. 2 was got examined by its penal Dr. J.G. Bhandari and that doctor has advised in his report dated 7.9.1999 that the disease from which the complainant-appellant No. 2 was suffering was a chronic disease and that was existing before the issuance of the policy. THErefore, as per terms and conditions of Clause 4(1) of the policy, the appellants-complainants were not entitled to claim any amount under the policy in question and their claim was rightly repudiated by the respondent through letter dated 30.9.1999 and thus, the present complaint deserves to be dismissed. After hearing both the parties, the learned District Forum, Kota through impugned order dated 3.5.2001 dismissed the complaint of the complainant-appellants holding inter alia that the case of the appellant-complainants was covered under the terms and conditions of Clause 4(1) of the policy in question, as according to the learned District Forum, the complainant-appellant No. 2 was having a pre-existing disease. Aggrieved from the said order dated 3.5.2001 passed by the learned District Forum, Kota, this appeal has been filed by the appellant-complainants. In this appeal, the main contention of the learned Counsel for the appellant-complainants is that the findings of the learned District Forum as well as the stand taken by the respondent are erroneous one as the complainant-respondent No. 2 was not having any pre-existing disease before issuance of the policy in question and she had developed the disease or problem of appendicitis and gall-bladder after issuance of the policy and, therefore, repudiation of claim of the appellant-complainants by the respondent through letter dated 30.9.1999 was an arbitrary exercise on the part of the respondent.

On the other hand, the learned Counsel appearing for the respondent has supported the impugned order of the learned District Forum.

3. WE have heard the learned Counsel appearing for the appellant-complainants and the learned Counsel appearing for the respondent and gone through the entire materials available on record. There is no dispute on the point that the policy in question, which was taken by the appellant-complainants from the respondent was for the period from 30.1.1999 to 29.1.2000.

4. THERE is also no dispute on the point that before 2.7.1999, there is no document to show that the complainant-appellant No. 2 was having any problem of gall-bladder accompanied by appedictis etc. There is also no dispute on the point that the operation of gall-bladder and appendicitis of complainant-

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respondent No. 2 was conducted in Shanti Ved Hospital, Agra on 28.7.1999 and she was discharged on 30.7.1999. There is also no dispute on the point that claim of the complainant-appellants was repudiated by the respondent through letter dted 30.9.1999 on the ground that the appellant-complainant No. 2 was having pre-existing disease and there is also no dispute on the point that the respondent has relied on the report of Dr. J.G. Bhandari, consulting Surgeon of respondent, dated 7.9.1999.

5. THERE is also no dispute on the point that there is a Biopsy Report pertaining to gall-bladder in which it was opined that it was chronic cholecystitis with adenomyoma.

6. THERE is also no dispute on the point that in the discharge certificate issued by Shanti Ved Hospital, Agra, the diagnosis of the disease of the complainant-appellant No. 2 was shown as cholecystitis-appendicitis. The question for consideration is whether in the facts and circumstances just narrated above, the repuduation of claim of the appellants-complainants by the respondent could be justified or not or whether the findigs of the learned District Forum could be sustained or not.

The word "appendicitis" means inflammation of the vermiform appendix. It generally occurs in the young, most often between ages 15 and 25, and very rarely before the 5th year or after the 50th. More common in males than in females. The disease may be acute, subacute or chronic.

7. THE word "gall-bladder" means pear-shaped sac on undersurface of right lobe of liver holding bile from the liver. THE bile is stored and while in the gall-bladder is concentrated by removing water. About 500 to 500 ml of bile is secreted each day and it is approximately 82% water. THE bile is then discharged through the cystic duct, which is 3 to 4 in. (7.6 to 10.2 cm) long, 1 in (2.54 cm) greatest diameter. THE cystic duct leads into the common bile duct which empties into the small intestine. The word "cholecystitis" means inflammation of the gall-bladder.

8. A bare perusal of the report of Dr. J.G. Bhandari dated 7.9.1999, upon which much stress has been laid by the learned Counsel for the respondent reveals that the said doctor has observed that the complainant-appellant No. 2 was suffering from a chronic disease and that disease was existing in her even before the policy in question was issued, but that doctor has further observed that there can be possibility that it would have remained undiagnosed and was noticed first time which ultimately required surgery. Thus, when there was possibility that the disease of complainant-appellant No. 2 would have not been diagnosed earlier, therefore, to say that the complainant-appellant No. 2 or complainant-appellant No. 1 were aware of the fact of disease before the issuance of the policy, cannot be accepted. Furthermore, the said disease could not be termed as pre-existing disease especially when definition of appendicitis clearly reveals the fact that it may be acute, subacute or chronic meaning thereby to say that in every case this disease would be chronic cannot be accepted. Apart from the above, ultra

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sonography is usually the only investigation needed to diagnose the problem in gall-bladder or to show gallstones. In the present case, the disease from which the complainant-appellant No. 2 was suffering i.e., cholecystitis (gall-bladder) has come into picture when her sonography was got conducted. Therefore, to say that before that she was aware of the disease cannot be accepted.

9. IT is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties known. The insured has a duty to disclose and similarly it is the duty of the Insurance Company and its agents to disclose all material facts in their knowledge since obligation of good faith applies to both equally.

10. THE onus probandi, in cases of fraudulent suppression of material facts rests heavily on party alleging fraud namely the insurer. In the present case, the onus of proof that there was suppression of facts by the appellant-complainants was on the respondent Insurance Company and the respondent Insurance Company should have led direct evidence to prove what it was asserted in the repudiation letter that the complainant-appellant No. 2 had the previous ill health while submitting proposal form. The respondent Insurance Company has not done so. There is no evidence or material except the report of Dr. J.G. Bhandari to show that the complainant-appellant No. 2 was having any pre-existing disease before issuance of the policy in question. The respondent has miserably failed to prove the fact that complainant-appellant No. 2 was suffering from the problem of cholecystitis (gall-bladder) and appendicitis before issuance of the policy in question.

Thus, for the reasons stated above, it is held that the respondent Insurance Company was not justified in repudiating the claim of the appellant-complainants on the ground that the complainant-appellant No. 2 was having pre-existing disease before issuance of the policy in question and in view of this, the findings of the learned District Forum rejecting the complaint of the appellant-complainants cannot be sustained as they suffer from basic infirmity, illegality or perversity and thus, the impugned order dated 3.5.2001 passed by the learned District Forum, Kota is liable to be quashed and set aside and this appeal deserves to be allowed and the appellant-complainants are entitled to get Rs. 22,570.16 under the policy in question, which were spent by them for operation of gall-bladder and appendicitis of appellant-complainant No. 2 along with interest at the rate of 9% p.a. from the date of repudiation letter dated 30.9.1999 till payment is made. Accordingly, this appeal filed by the appellant-complainants is allowed and the impugned order dated 3.5.2001 passed by the learned District Forum, Kota is quashed and set aside and the complaint filed by the appellant-complainants before the District Forum stands allowed in the manner that the respondent-United India Insurance Company is directed to pay to the appellant-complainants a sum of Rs. 22,570.16 under the policy in question, which were spent by them for operation of gall-bladder and

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appendicitis of appellant-complainant No. 2 along with interest at the rate of 9% p.a. from the date of repudiation letter dated 30.9.1999 till payment is made. Appeal allowed.

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