(2012) 03 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

K. Vasudeva Rao S/o Late Krishna — APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD — RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 206 : 2012 2 CPJ 119 : 2012 2 CPR 207

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Advocate : D.P.CHATURVEDI

Judgement

1. K. Vasudeva Rao, the original complainant, has filed the present revision petition challenging the order dated 25th of January, 2011 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore (State Commission for short), whereby the State Commission has dismissed the appeal preferred by the petitioner/complainant against the order dated 6th of December, 2010 of the District Consumer Forum, Bangalore Urban District No. 8, Bangalore (District Forum for short) vide which the District Forum had allowed the complaint of the petitioner and directed the respondents/opposite parties to jointly and severally reimburse the amount of Rs.1,50,900/ - (correct amount appears to be Rs.1,50,000/ - which is 50% of sum assured but wrongly stated as Rs.1,50,900/ -) to the complainant, besides a cost of Rs.3000/ -.

2. THE facts in brief are that the petitioner/complainant, who was a diabetic patient, had taken Group Mediclaim and Personal Accident Insurance Policy from the respondent/opposite party no.1/Insurance Co. in the sum of Rs.3,00,000/ - for himself and his wife. This insurance policy was renewed year by year and lastly when it was effective from 11.03.2007 to 10.03.2008 the petitioner/ complainant perceived some problem in his heart and on the advice of the doctors, he had undergone Coronary Artery Bypass Graft Surgery on 11.11.2007 at Wockhard Hospital, Bangalore incurring an expenditure of Rs.2,13,553/ -. Besides, the petitioner/complainant also spent a sum of Rs.14,100.92 on the treatment. THEreafter the petitioner/complainant requested the respondents/ opposite parties for the payment of the above sums duly furnishing a certificate

issued by the treating doctor, Dr. Anupama on behalf of Dr. Vivek Jawali, to the effect that he had no pre -existing disease for Coronary Artery Disease and that Diabetes Mellitus was not a risk factor for Coronary Artery Disease but the respondents/opposite parties repudiated the claim under Clause 4.1 of the Policy asserting that the hospitalization was in connection with a pre -existing disease.

3. AGGRIEVED thereupon, the petitioner filed a consumer complaint before the District Forum and, as stated earlier, the District Forum while rejecting the objection of the respondent no.1/Insurance Company that the petitioner/ complainant had suppressed any material fact passed an award of Rs.1,50,900/ - even though the petitioner/complainant had incurred expenditure of Rs.2,27,653/ - in his treatment and in undergoing a Coronary Artery Bypass Graft Surgery. Not satisfied with the said award, the petitioner/complainant had filed appeal before the State Commission, seeking the reimbursement of the full amount of expenditure incurred by him in his treatment, which has been dismissed by the State Commission in the order now under challenge.

4. THERE is a delay of 179 days reported by the Registry, which is 114 days as per the petitioner/complainant. Notice on the application for condonation of delay as also on the revision petition was issued to the respondents as far back as on 24th of October, 2011 but despite a lapse of more than 30 days, no one is present on behalf of the respondents. It is, therefore, presumed that the notice has been duly served.

5. THE delay in filing the revision petition is condoned for the reasons stated in the application for condonation of delay and to render substantive justice to the consumer who is a senior citizen.

6. LEARNED counsel for the petitioner -complainant has been heard and the records of the case perused. The moot point for consideration in this revision petition is as to whether the petitioner/complainant under the terms of the Group Mediclaim and Personal Accident Insurance Policy, which covered him and his wife for a sum of Rs.3,00,000/ -, is entitled to the full reimbursement of his expenditure on treatment amounting to Rs.2,13,553/ - and Rs.14,100/ - A perusal of the terms and conditions of the policy document at page 70 of the paper -book in clause 1.1 itself states as under : - 1.1) This POLICY WITNESSES that subject to the terms, conditions, exclusions and definitions contained herein or endorsed, or otherwise agreed hereon the Company undertakes that if during the period stated in the schedule or during the continuance of this policy by and any insured person shall contract any disease or suffer from any illness (hereinafter called DISEASE) or sustain any bodily injury or rough accident (hereinafter called INJURY) and if such disease or injury shall require any such insured Person, upon the advice of the qualified Physician/Medical Specialist/ Medical Practitioner (hereafter called MEDICAL PRACTITIONER) or of a duly qualified surgeon (hereinafter called SURGEON) to incur hospitalization/expenses for medical/surgical treatment at any Nursing Home/Hospital in India herein defined (hereinafter called HOSPITAL) as an inpatient, the company will pay

through TPA to the Hospital/Nursing Home or such person the amount of such expenses as are reasonably and necessarily incurred in respect thereof by or on behalf of such other person but not exceeding the Sum Insured in aggregate in any one period of insurance stated in the schedule hereto. (emphasis added)

7. IN the case in hand, there is no dispute with regard to the amount of Rs.2,27,653/ - having been incurred by the petitioner -complainant and, therefore, he was fully entitled to the full reimbursement of such expenditure. This is also borne out from the clarification to Clause 1.2, which states that Company s Liability in respect of all claims admitted during the period of insurance shall not exceed the sum insured per FAMILY as described in the schedule . IN this case, the petitioner -complainant alone has been hospitalized and taken the treatment and the amount of expenditure incurred does not exceed the insured sum of Rs.3,00,000/ -.

8. IT appears to us that the fora below have divided the total sum of Rs.3,00,000/ - between the petitioner -complainant and his wife as both of them are stated in the policy document to be covered under the policy. However, the policy document nowhere states that the total sum insured would be divided in equal proportion between the husband and the wife for the purpose of claiming medical expenses. The assured sum of Rs.3,00,000/ - would be applicable for treatment of either of them or both of them as per the explanation to Clause 1.2 supra. IT appears that the fora below have erroneously carried the impression of dividing the insured sum between the petitioner -complainant and his wife relying upon the special conditions in the policy, which states that PA cover 100% to Employee 50% to Spouse . The fora below have failed to appreciate that the special conditions are applicable only in case of death by accident, in which case if the account holder dies his nominee will be entitled to the 100% of the medical sum insured while it would be only 50% in case of death of insured s spouse. This has been clarified under the heading Salient Features of Personal Accident (Death) Insurance) at page 76. Thus, viewed from any angle limiting the medical reimbursement only to 50% of the mediclaim insurance amount is not sustainable. The petitioner -complainant is legally entitled to the full reimbursement of the medical expenditure.

9. IN view of the above, the revision petition deserves to be allowed and we order accordingly. While setting aside the orders passed by the fora below, we direct the respondent/INsurance Company to fully reimburse the total expenditure of Rs.2,27,653/ - (i.e. Rs.2,13,553/ - + Rs.14,100/ -) to the petitioner/complainant within a period of four weeks from the date of passing of this order, failing which the amount will attract an interest of 10% for the period of default.

