(2014) 09 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Kanhaiyalal Aghi — APPELLANT

Vs

NATIONAL INSURANCE CO. LTD — RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 657

Hon'ble Judges : K.S.CHAUDHARI , VINAY KUMAR J.

Advocate : R.MISHRA

Judgement

1. THIS revision petition arises from repudiation of an insurance claim under a hospitalization benefit policy taken by the revision petitioner/Complainant from the respondent/National Insurance Co. The petition has been filed with delay of 43 days. We have perused the application for condonation of this delay. The application is vague and seeks to place the entire blame at the doorstep of the Advocate who was allegedly engaged to file the revision petition. The application itself is signed by another Advocate, who eventually filed this revision petition. In our view, no reasonable explanation comes out from this application. The revision petition is therefore, liable to be dismissed on the ground of delay alone.

2. THE claim pertains to hospitalization of the insured/complainant with heart ailment, for nine days in June, 2007. Significantly, it is the admitted case of the respondent/National Insurance Co that the pre -existing heart condition of the insured was a known fact at the time of issuance of the policy. In this behalf, the Written Statement filed by the OPs before the District Forum makes the following categorical statements: - a) At the time of taking the mediclaim policy the Complainant was suffering from heart disease and was not fit for taking the policy. But, on his request the policy was issued to him, subject to exclusion of heart and other related diseases. (Preliminary Objection 6)

b) The policy was first issued in 2004 subject to exclusion of heart and related diseases. It was later renewed in 2005 and 2006 on the same terms and conditions. (On Merits 1)

c) The claim of the Complainant under the policy was repudiated on 14.1.2008 on the ground of his pre -existing illness. (Preliminary Objection 5)

3. THE District Forum allowed the claim observing that it was an admitted fact that the policy was taken specifically mentioning that the complainant was having heart problem. Therefore, the respondent cannot be permitted to take shelter under ''revised policy '' which sought to exclude ''all diseases/injuries, which are pre -existing when the cover incepts for the first time ''. The District Forum also observed that the respondent insurance Co. could not even clarify the date and year of commencement of the ''revised policy ''. In this behalf the District Forum has noted that the counsel for respondent/National Insurance Company placed reliance on Ex. R -2, which was the mediclaim insurance policy (revised). Clause 4.1 therein specifically excluded all diseases/injuries which were pre -existing on commencement of the insurance cover. It also observed that as these terms and conditions were revised conditions and as counsel for the respondent could not clarify the date or year of commencement thereof, their applicability to the case of the Complainant could not be ascertained. It was on this ground that the District Forum held that in case of any ambiguity or confusion in the rules, the benefit of doubt needs to be given to the consumer. On the other hand, the State Commission has allowed the appeal and set aside the District Forum order observing that: - ''''It has not been denied that the complainant had taken out Hospitalisation and Domiciliary Benefit Policy and had intimated about the disease of heart problem to the OPs in the proposal filled up by him. It has also not been disputed that complainant received treatment for heart problem and sought disbursement of the amount. It was specific stand of OP that though complainant had intimated about the heart problem, however the heart related diseases were excluded from the coverage of the policy. Our attention has been drawn to the cover note, wherein it has specifically been mentioned, ''''subject to exclusion of heart and its related diseases ''''. Since the OP has excluded the heart and its related diseases and complainant received treatment about heart disease, therefore, it fell in the exclusion clause and thus OP could not liable to pay the amount. The District Consumer Forum has not appreciated the factual position on record and committed great error while accepting the complaint of the complainant and as such the impugned order under challenge is not sustainable in the eyes of law. ''''

4. IT is clear from the above that the perceptions of the District Forum and the State Commission differ from each other on the applicability of exclusion Clause 4.1 to the case of the complainant. In this background and considering the averments in the Revision Petition, several opportunities were provided to the revision petitioner/Complainant by this Commission to file the insurance cover note (policy) for the relevant period. Different counsels appearing on his behalf were, on as many as seven occasions, allowed time to produce the relevant documents, but they failed to produce any. The main counsel who had filed the revision petition never appeared before this Commission. 6. We therefore find no material or ground to interfere with the well reasoned order passed by the

Haryana State Consumer Disputes Redressal Commission. Consequently, Revision Petition No.4078 of 2012 is dismissed. Both parties to bear their own costs.

