(2011) 09 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

LIC OF INDIA — APPELLANT

Vs

Rajan Behal — RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Citation : 2011 4 CPJ 333

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Appeal dismissed.

Judgement

1. FOR the reasons mentioned in the application for condonation of delay, the delay of seven days in filing this revision petition is condoned.

2. THE complainant who is respondent herein had obtained a Ashadeep policy bearing No. 174055813 dated 28.5.2004 for Rs. 1,00,000. He was paying premium on the policy regularly. Under the aforesaid policy, the complainant was entitled to claim compensation of Rs. 1,00,000 from the OP Insurance Co. in the event of any heart problem and treatment taken for the same. The complainant fell ill and the doctors advised him to undergo coronary angiography which revealed triple vessels disease. The doctors advised him to undergo Coronary Artery By-pass Graph (CABG) surgery which he underwent on 22.7.2005 at the Escort Heart Institute and Research Centre, New Delhi. The complainant was admitted in the Escort Heart Institute and Research Centre, New Delhi on 22.7.2005 and was discharged on 30.7.2005. He had spent Rs. 3 lakh on this treatment including cost of medicines, etc. He submitted claim to the OP Insurance Co. for payment of Rs. 1,00,000 along with relevant documents. However, the OP repudiated his claim vide its letter dated 20.12.2005. Challenging the action of the OP Insurance Co., the complainant invoked the jurisdiction of the District Forum seeking direction to the OP to pay compensation of Rs. 1,00,000 in respect of the treatment taken by him and Rs. 20,000 on account of cost and litigation expenses. On being noticed, the OP Insurance Co. resisted the claim and denied any kind of deficiency in service on its part and prayed for dismissal of the complaint. The District Forum did not find any

substance in the claim of the complainant and dismissed the complaint on the ground that the complainant had taken treatment within one year from the date of actual date of policy. Aggrieved by the order of the District Forum, the complainant went in appeal against that order before the State Consumer Disputes Redressal Commission, Haryana, Panchkula (''State Commission'' for short). The State Commission after hearing the parties and considering the documents filed before it accepted the complaint and allowed the appeal by setting aside the order of the District Forum. The present revision petition has, therefore, been filed by the OP Insurance Co. against the impugned order of the State Commission.

3. IT is contended on behalf of the Insurance Co. that as per condition No. 11(a) of the policy in question, the contingent benefit ''B'' under the policy is not payable to the complainant because the contingency had occurred within one year from the date of the policy. It has been submitted that the date of registration was 9.8.2004 but the commencement of the policy was 28.5.2004 because of the back dating of the policy and the complainant took the treatment on 22.7.2005, i.e., within one year of the policy. Learned Counsel for the petitioner has argued that the back dating of the policy was requested by the complainant and agreed to by the Insurance Co. but the same was for claiming benefits under income tax purposes. Since the illness in question occurred within one year of taking the policy, the complainant was not entitled for the claim made by him in respect of his treatment because of the specific condition in Para 11(a) of the policy. In support of his contention, the Counsel has relied on the judgments of the Apex Court in the cases of LIC of India and Anr. v. Dharam Vir Anand, III (1998) CPJ 3 (SC)=VIII (1998) SLT 461=(1998) 7 SCC 3481 and LIC of India v. Mani Ram, III (2005) CPJ 31 (SC)=VI (2005) SLT 210=(2005) 6 SCC 274.

4. ON the other hand, it is contended by learned Counsel for the respondent/ complainant that since the date of commencement of policy is 28.5.2004 because of the back dating agreed to by the Insurance Co. and the premium has been paid from that date by the respondent and accepted by the Insurance Co., it would be wrong to say that the treatment taken by the respondent was within one year from the date of policy. He further submitted that not only the commencement of the policy from 28.5.2004 and the payment and acceptance of the premium from that date are mentioned on the policy, the OP Insurance Co. itself has acknowledged the fact that the date of risk is 28.5.2004. In support of his contention, learned Counsel produced for our perusal the original receipts of premium issued by the petitioner Company in which the date of risk is specifically mentioned to be 28.5.2004 (this has not been disputed by the Counsel for the petitioner). In the face of such undisputed factual position emanating from the record, it was wrong on the part of the petitioner Insurance Co. to reckon the period of commencement of the policy from the date of registration, i.e., 9.8.2004 and repudiate the claim treating it as arising within one year of the taking of the policy. In support of his contentions, learned Counsel has relied on

the judgment of the National Commission in the case of T.S. Pushpalatha and Anr. v. The Manager, LIC of India, III (2007) CPJ 19 (NC)=R.P. No. 2051 of 2004 decided on 18.4.2007. He, therefore, pleaded that there is no merit in the, revision petition filed by the Insurance Co. and the same is liable for dismissal.

5. WE have considered the rival contentions, of the parties and perused the record. It is not in dispute that the premium for the policy in question has been duly paid by the complainant w.e.f. 28.5.2004 and accepted by the OP Company. It is also not denied that the date of risk has been acknowledged to be 28.5.2004. In such a situation, the correct factual position under the policy is that the period of coverage has to be reckoned from 28.5.2004 as per the receipts issued by the Insurance Company itself. Accordingly, the repudiation of the claim of the complainant in terms of the provisions of para 11(a) could not be sustained in the eye of law. The State Commission, therefore, reversed the order of the District Forum which had apparently failed to appreciate the correct factual position in this regard and hence returned defective finding in favour of the Insurance Co. while dismissing the complaint. The ratio laid down by the Apex Court in the case of LIC of India v. Mani Ram (supra), relied upon by the Counsel for the petitioner, if at all, goes contrary to the claim of the petitioner and will not provide any comfort to the Insurance Company. The State Commission has given detailed reasons in support of its finding in favour of the respondent/ complainant. We agree with the view taken by the State Commission and do not see any ground for interfering with the same. The cases relied upon by the Counsel for the petitioners have been carefully considered by us but in the given facts and circumstances of this case, we find that the case law in T.S. Pushpalatha''s case (supra), is fully attracted to the present case and hence we confirm the impugned order of the State Commission and dismiss the revision petition being devoid of any merit with the parties bearing their own costs. Appeal dismissed.

