
(1995) 11 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

M Sabhjan

APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Citation : 1996 1 CPJ 108 : 1997 1 CPC 655 : 1997 1 CPR 153 : 1998 6 CTJ 425

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , S.P.BAGLA J.

Judgement

1. THIS Revision Petition has arisen out of the order dated 11.8.94 of the State Commission, Tamil Nadu at Madras dismissing the complaint by reversing the order dated 22.12.93 of the District Forum, Krishnagiri which had allowed the complaint and directed the opposite party to pay Rs. 15,000/- as consolidated compensation.

2. THE complainant and his wife applied on 6.6.91 for a Hospitalisation and Domiciliary Hospitalisation Benefit Policy from the New India Assurance Company Ltd. in pursuance of which Policy No. 4871140400746 for the period 6th June, 1991 to 5th June, 1992 was issued and was renewed for a further period of one year upto 5th of June, 1992. At the time of taking the said policy, the complainant filled up the proposal form in which he declared that his wife had undergone treatment for stone in the bile duct. In April, 1991 from Dr. Krishna Rao, Lady Wellington Nursing Home, Madras and was fully cured. According to the complainant there was no stone in the bile duct as it had passed out by then, that she was discharged from the Nursing Home as completely cured and that no further treatment was prescribed nor was she called for review at a later date as Dr. Krishna Rao did not consider it necessary. The complainant submitted a claim for Rs. 10,796.64 in respect of the treatment taken by his wife for removal of stones from the Gall Bladder/Bile Duct at Baptist Hospital, Bangalore during the period 2nd May, 1992 to 13th May, 1992 and another claim for Rs. 8,822.34 in respect of the treatment in the same hospital during the period 22nd June, 1992 to 1st July, 1992. The complainant also supported the claims by vouchers from the said hospital. The New India Assurance Co. Ltd. investigated the claim and

the documents in respect of the treatment taken by her and upon examination of the same it was noticed that multiple stones existed in the Gall Bladder and common Bile Duct of the complainants wife for which she had undergone the treatment in March, 1991 but multiple stones in the Gall Bladder were not removed and they existed at the time of taking the policy which fact was not disclosed by the complainants wife in the proposal form filed by her at the time of taking the policy. The Insurance Company sought the opinion of Dr. N.S. Chandrasekaran, who opined that the complainant had previous knowledge of the disease and incurs disqualification of claim under Rule 4.2. After examining the opinion of the penal doctor and documents on records, the Insurance Company took the view that the complainants wife had suppressed the factum of existence of stones in the Gall Bladder at the time of taking the policy. The Insurance Co. repudiated the claim on 29th March, 1993 and sent the repudiation letter to the complainant.

3. THE complainant then made the complaint to the District Forum, Krishnagiri which by the order dated 22.12.93 allowed the complaint and directed the Insurance Co. to pay a sum of Rs. 15,000/- in settlement of the two claims. The Insurance Co. filed an appeal before the State Commission. The State Commission considered the grounds of repudiation namely (1) there was deliberate suppression in the proposal form to the effect that patient Mumtaz Begum suffered from stones in Gall Bladder, (2), she has made mis-statement in Exhibit B4 proposal form that she was completely cured of the stones in the bile duct and the stones in the Gall Bladder was a pre-existing disease and excluded risk under the condition 4.13 of the Exhibit A2 - Prospectus. The State Commission considered the report (Exhibit B1) of St. Johns Medical College Hospital, Bangalore for the treatment undergone by Mrs. Mumtaz Begum on 15.3.91 and 16.3.91. Exhibit B2 is the discharge note issued by the Lady Wellington Nursing Home, Madras where she was admitted on 8.4.91 and discharged on 11.4.91. It is clearly recorded in Exhibit B2 that ultra sound showed Cholelith Cholecystitis (Gall Stone) "dilated CBD with calculus obstruction". Exhibit B2 reads as under : - "Gall Bladder showed multiple stones (4) Cystic Duct showed low medical insertion. No stones seen in the CBD."

4. IT was also found that Exhibit B2 is just two months prior to the proposal form given by Mrs. Mumtaz Begum and it was the last treatment taken by her at Lady Wellington Nursing Home prior to the taking of Medi-claim Policy. There was a Lady Member of the State Commission who is a Medical Doctor and an observation is recorded in the impugned order that the accumulation of stones in the Gall Bladder is a disease, though the patient may not be aware of it until it gives trouble, but in the instant case, Exhibit B2 which is the report issued by Lady Wellington Nursing Home, Madras has clearly disclosed the presence of multiple stones in the Gall Bladder and non-mentioning of this fact in the proposal form (Exhibit B5) amounts to suppression of material fact and vitiates the policy. We see no error of jurisdiction or any illegality or irregularity in the exercise of jurisdiction in the finding recorded that this is a case of suppression

of material fact and vitiates the policy. Apart from it when the claim was preferred the Insurance Company sought the opinion from Dr. N.S. Chanderasekaran about the medi -claim and he was sent the proposal form, history sheet of the patient who has taken treatment for stone in Bile Duct in April, 1992 and her claim that she was completely cured. The questionnaire that was sent to the Doctor and his expert opinion contained in the letter are part of the record. The Insurance Company repudiated the claim on 29th March, 1993 stating that on verifying the proposal submitted by the complainant the Insurance Company found that complaint regarding stone in the Bile Duct was in existence prior to taking medi -claim policy and thus the claim was rejected. The repudiation is bonafide and thus there is no deficiency of service. We do not find any error relating to the jurisdiction in the order passed by the State Commission either by assumption of jurisdiction which it did not have or the failure to exercise jurisdiction which it had or by exercising its jurisdiction illegally or with material irregularity.

5. IN the result, the Revision Petition is dismissed and the order of the State Commission is upheld. There will be no order as to costs. Petition dismissed.