

(2006) 01 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

MADHVI SHARMA

APPELLANT

Vs

NEW INDIA ASSURANCE CO

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Citation : 2007 4 CPJ 45

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

Advocate : Ankur Mathur , Asgari Khan

Final Decision : Allowed

Judgement

1. MR. Justice Sunil Kumar Garg, President-This appeal has been filed by the complainant appellant against order dated 26. 12. 2003 passed by the District Forum, Jaipur Camp, Jaipur by which the complaint of the appellant for claiming medi-claim was dismissed.

2. IT arises in the following circumstances: that the complainant appellant had filed a complaint before the District Forum, Jaipur IInd on 23. 4. 2001 against the respondents inter alia stating that her husband Sh. Anand Kumar Bhardwaj (now deceased) had taken a medi-claim policy from the respondents for the period from 30. 12. 1998 to 29. 12. 1999 and thereafter that policy was renewed for the period from 30. 12. 1999 to 29. 12. 2000. It was further stated in the complaint that since the deceased felt some trouble in his throat and nose, he was admitted in the Monilek Hospital, Jaipur on 3. 3. 2000 and he was discharged from the hospital on 5. 3. 2000. Thereafter he was referred to the Mahaveer Cancer Hospital, Jaipur where he had taken the treatment up to 2. 4. 2000 and on that day he had died. For the expenses which were incurred by the deceased a claim was made before the respondents but their claim was repudiated by the respondents through letter dated 13. 10. 2000 inter alia stating that since the deceased was having the disease for which he had taken treatment in the Mahaveer Cancer Hospital, therefore, medi-claim was not found payable. Thereafter the complaint was filed before the District Forum. A reply was filed by the respondents and they have taken the same plea which they have

taken in the repudiation letter dated 13. 10. 2000 and it was further stated by the respondents in their reply that the disease for which the deceased was suffering was a pre-existing disease since 1997. Hence the claim was rightly repudiated. The District Forum through its impugned order dated 26. 12. 2003 has dismissed the complaint inter alia holding that since the disease was pre-existing disease, therefore, medi-claim was not payable. Aggrieved from this order of the learned District Forum this appeal has been filed. In this appeal the main contention of the learned Counsel for the complainant appellant is that the findings of the District Forum are erroneous one as the deceased if he was having any pre-existing disease before issuance of the policy in question, the deceased was not aware and this disease was made only known to him when he was admitted in the hospital. Therefore, repudiation of the claim by the respondents through letter dated 13. 10. 2000 was an arbitrary exercise on the part of the Insurance Company.

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

3. WE have heard the learned Counsel appearing for the appellant as well as for the respondents and gone through the entire materials available on record. There is no dispute on the point that the deceased had taken a Medi-claim policy from the respondents and there is also no dispute on the point that the deceased was admitted in the Monilek Hospital, Jaipur on 3. 3. 2000 from where he was discharged on 5. 3. 2000 and the diagnosis which was made in the discharge card of the Monilek Hospital was "granulocytosis".

4. THERE is also no dispute on the point that on 10. 3. 2000 the deceased was admitted in the Mahaveer Cancer Hospital, Jaipur where the Cronic Sinusitis was diagnosed. The question for consideration is whether in the facts and circumstances just narrated above, the repudiation of the claim of the appellant complainant by the respondents could be justified or not or whether the findings of the District Forum could be sustained or not. In the present case so far as the fact that the deceased was suffering from disease Granylocytosis as is found in the Monilek Hospital record and the disease of Cronic Sinusitis as is found in the record of the Mahaveer Cancer Hospital is concerned, it may be stated here that at the time when the medi-claim policy was taken by the deceased, there was no proof to show that he was aware of the above diseases when he got the policy from the respondents.

5. IT may further be stated here that there is no record on the file to show that the deceased had been admitted in any hospital before the issuance of the policy. Apart from that the diseases which are found in the record of Monilek Hospital or in the Mahaveer Cancer Hospital are such serious diseases which could only be diagnosed by modern scientific instruments such as MRI, Sonography etc. Therefore, when the deceased was not aware of the above diseases repudiation of the claim by the respondents on the ground that the deceased was suffering from the above diseases since 1997 could not be sustained.

6. APART from that it may be stated here that simply because there is a mention in the record of Mahaveer Cancer Hospital that the deceased was suffering from Cronic Sinusitis since 1997 is concerned, it may be stated here that he might be suffering from that disease but the question is whether he was aware or not. For that there is no record to show that he had ever taken the treatment for that diseases prior to getting the policy. Thus it is held that the respondents were not justified in repudiating the claim of the appellant complainant on the ground mentioned in their repudiation letter dated 13. 10. 2000 and similarly the findings recorded by the District Forum by which the complaint of the appellant was rejected could not be sustained and the appeal filed by the appellant deserves to be allowed and the matter is going to be remanded back to the District Forum, Jaipur IInd to make the assessment of quantum of compensation payable by the respondents to the complainant appellant.

For the reasons stated above the appeal is allowed and the impugned order dated 26. 12. 2003 is set aside and the matter is remanded back to the District Forum, Jaipur IInd to make assessment of the quantum of compensation payable to the complainant appellant by the respondents. Parties are directed to appear before the District Forum, Jaipur IInd on 27. 4. 2006. Appeal allowed.