(2015) 12 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Case No : 1620 of 2015

NEW INDIA ASSURANCE CO. LTD APPELLANT

Vs

ANIL MANGLUNIA S/O SHRI RAMAVTAR RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Citation : 2016 1 CPR 150

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Atishay K. Prasad, Sushil Kumar Gupta, Archana Pathak Dave

Judgement

1. For the reasons stated in the application for delay, we condone the delay of three days in filing of this revision petition.

2. The complainant, Shri Anil Manglunia, initially obtained a Mediclaim policy from Bajaj Allianz General Insurance Co. for a sum of Rs.1,00,000/- in respect of his mother, Smt. Shanta, during the periods from 28.07.2005 to 27.07.2007 and 03.08.2007 to 02.08.2008. Thereafter, from 03.08.2008, the complainant obtained policy from the petitioner-OP-New India Assurance Co. Ltd. and the sum assured was Rs.3,00,000/- in respect of Smt. Shanta. It was renewed on 03.08.2009 for the period of 2009-2010 and the sum was increased to Rs.3,50,000/-. On 16-04-2010, Smt. Shanta was admitted to Saket Hospital in Jaipur and she underwent bilateral knee replacement surgery. After discharge, the complainant lodged a claim for her treatment with the OP through Raksha TPA. The OP repudiated the claim, on 10.05.2010.

3. Therefore, the complainant filed a complaint before the District Consumer Disputes Redressal Forum, Jaipur (for short, ''the District Forum''). The District Forum dismissed the complaint. Thereafter, the complainant filed first appeal before the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (for short, ''the State Commission'') which reversed the order of the District Forum and held the OP insurer liable to reimburse Rs.3,52,060/-, along with interest at the rate of 9% per annum, from the date of complaint and Rs.20,000/- as costs.

4. Aggrieved by the order of the State Commission, the petitioner has filed this revision petition.

5. We have heard the counsel for the parties. The counsel for the OP vehemently argued that the policy was not an extension of earlier policy from Bajaj Allianz General Insurance Co.. The claim was repudiated because Mrs. Shanta was suffering from bilateral Osteoarthritis, for which bilateral knee replacement was done. As per clause 4.3, the Age Related Osteoarthritis is excluded for 4 years, whereas, the complainant''s said policy was running in the 2 year. The counsel nd further submitted that, even if the policy in question is considered to be an extension of the Bajaj Allianz Policy, the continuation, at the maximum, can only be to the extent of original sum insured, which was Rs.1,00,000/-. Therefore, policy issued by OP was a fresh policy, at least in respect of the subsequent increase in 2008 and 2009. As per said clause, it requires a continuous renewal for four years, with OP Company (New India Assurance).

6. We have perused the Annexure P5, the policy in which it is mentioned that "the Previous Mediclaim Policy Number (Renewed), THIS POLICY IS SUBJECT TO Mediclaim Policy (2007) CLAUSE ATTACHED HEREWITH". Clause 4.3 of the policy, mentions waiting period for specified diseases/ailments/conditions in the Annexure P6, wherein at serial number 21, the waiting period for Age related Osteoarthritis & Osteoporosis, is mentioned as four years. Therefore, the insured was operated for bilateral knee replacement due to osteoarthritis, within four years, after taking the policy from OP. Therefore, the claim was properly repudiated.

7. The counsel for the complainant vehemently argued that it was a continuously renewed policy. The terms & conditions and the policy clause were not provided, but only cover note was issued. The counsel brought our attention to Exhibit P-4, which shows that the policy was issued on 03.08.2008. There is no mention of the clause attached herewith. Therefore, it clearly indicates that the OP had not provided any policy clause, along with first policy. The counsel brought our attention towards the observation made by the State Commission, which is reproduced, as below: "However, it is the submission of the learned counsel for the insurance company that the policy taken from them was a new policy and not a renewal of the old policy. We have perused a cover note of the policy which taken for the first time from New India Assurance Company for the term 2008-2009, on the main page of that cover note, the word indicated is "Previous Mediclaim Policy Number (Renewed)" it makes it clear that the policy which was taken from the respondent insurance company, was not a fresh (new) insurance policy but certifies a (renewed) policy. Thus, the contention of the insurance company that they had provided a new insurance policy, this statement of theirs is not believable. The lines of the cover note reiterated above do not allow the contention of the insurance company to sound believable".

8. On the basis of medical literature, Osteoarthritis (OA) is a chronic and progressive medical condition. Most people find that their symptoms increase,

over the time. Arthritis is a common joint problem and is usually associated with older adults. According to the National Library of Medicine (NLM), most people show symptoms of osteoarthritis by the time they are 70 years'' old. Although OA doesn''t have a cure, there are different treatments available to ease the pain and maintain mobility. Although, OA affects people of all ages, genders, and sizes, the risk increases, if the persons are ''overweight''. Excess body weight places additional stress on the joints, especially the knees, hips, and back. It can also cause cartilage damage, which is the hallmark of osteoarthritis. Almost everyone will eventually develop some degree of osteoarthritis. However, several factors increase the risk of developing significant arthritis, at an earlier age.

9. Therefore, we are of considered view that, Osteoarthritis is a generalized term. The Petitioner /OP took frivolous ground that it was age-related osteoarthritis, hence claim was repudiated. Also, the evidence shows the OP failed to provide Policy clause to the complainant and rejected genuine claim of complainant. We do not find any merit in this revision petition. Therefore, the revision petition is dismissed.