

(2009) 02 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD.

APPELLANT

Vs

Arunaben Jayantibhai Shah

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Citation : 2009 2 CPJ 121

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Advocate : AVROJYOTI CHATTERJEE , S.J.MEHTA

Judgement

1. IN this case, there is a delay of 44 days in filing this revision petition. For the reasons stated in the application for condonation of delay, this delay is hereby condoned. In this case the complainant and her husband took a Mediclaim Insurance Policy for Rs. 1 lakh for a period covering 28.9.1998 to 27.9.1998.

2. THE District Forum after hearing the parties and examining the case in detail has awarded compensation of Rs. 1 lakh apart from Rs. 2,000 as cost and also directed Rs. 2,000 should be deducted from the responsible employees who had the responsibility of settling the claim as the complainant had suffered mental agony. The State Commission after hearing the learned Counsel for parties in great detail and by well reasoned order concurred with the decision of the District Forum except that it quashed the operation of that part of the District Forum order wherein it had directed that Rs. 2,000 to be deducted from the concerned employee. Dissatisfied by this order, the revision petition has been filed.

3. WE have heard the arguments for the learned Counsel for petitioner and respondent. The main issue to be decided is whether the complainant had not disclosed the disease which was material to arrive at a decision in this case. The complainant had not objected to any medical examination prior taking of this mediclaim policy. It is the case of the complainant that though the deceased suffered from diabetes and Coronary Artery Disease way back in 1985, he had stopped taking medicines for this 2 years prior to taking of the policy and he was leading a normal and healthy life without the aid of medication. Further, the

disease of cirrhosis of liver was detected in December, 1998 after taking the insurance policy and it is not the case of the insurance company that the cirrhosis has any nexus between Coronary Artery Disease and Diabetes.

4. THE complainant's husband suffered from diarrhoea after taking the policy within one month and subsequently after three months he died. It is urged by the learned Counsel for petitioner that the deceased should have immediately rushed to the insurance company to state that he has suffered from diarrhoea. Diarrhoea, Dysentery, Cold, Cough, Mild Fever and Headache, etc. are minor ailments which need not be reported to the insurance company and he was not hospitalized within one month after taking a policy.

5. LEARNED Counsel for petitioner submitted that the deceased had suppressed that fact that he was suffering from Coronary Artery Disease and Diabetes, five years prior to taking of the policy whereas learned Counsel for respondent contended that he was cured and had stopped taking medicines two years prior to taking of the policy.

6. AT the time of issue of the policy, the insurance company had itself excluded cataract for the deceased after he was examined by the Doctor nominated by the insurance company. Similarly for his wife Smt. Arunaben Shah, heart disease and complications were excluded. If the Doctor had found that the deceased was still suffering from Coronary Artery Disease/Diabetes after 2 years of treatment definitely he could have excluded the deceased from these two diseases also but it was not done. The insurance company repudiated the claim for non-disclosure of these diseases. It has come on record that the deceased died due to cirrhosis of liver which has no connection with Coronary Artery Disease.

7. IN *Praveen Damani v. Oriental Insurance Co. Ltd.*, IV (2006) CPJ 189 (NC), wherein the National Commission has held that: In this case, the National Commission paid special attention to the Exclusion Clause -4.1 of the policy which states that it is not relevant whether the insured person had knowledge of the existence of a disease or not. If symptoms of the disease existed before the effective date of insurance and even if the insured person was not aware of these symptoms, the insurance company was not liable to pay any claims arising out of the condition. If this interpretation of the exclusion clause was to be accepted, then, the insurance company would not be liable to pay any claims whatsoever, because most people suffer from symptoms of diseases without the knowledge of the same. The National Commission noted that: "This policy is not a policy at all as it is just a contract entered only for the purpose of accepting the premium without the bona fide intention of giving any benefit to the insured under the garb of pre-existing disease. Most of the people are totally unaware of the symptoms of the disease that they suffer and hence, they cannot be made liable to suffer because the insurance company relies on their Exclusion Clause 4.1 of the policy in a mala fide manner to repudiate all the claims. No claim is payable under the mediclaim policy as every human being is born to die and diseases are perhaps pre-existing in the system totally unknown to him which he is not aware

of: It further held: "In hindsight, everyone realizes much later that the symptoms were indicative of a disease. But common people are not all familiar with the medical knowledge and so they cannot diagnose their own diseases. If they were expected to be so aware, of their medical condition at all times, there would be no use of insurance policies."

8. THE ratio of the case is squarely applicable to the case on hand. Accordingly, we do not find any merit in this revision petition filed against the concurrent decisions of the Fora below. Therefore it is dismissed. There shall be no order as to cost. R.P. dismissed.