(2007) 09 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

A THIRUPATI REDDY — RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Citation : 2008 2 CPJ 262

Hon'ble Judges : M.Shreesha , G.Bhoopathi Reddy J.

Final Decision : Appeal partly allowed

Judgement

1. -AGGRIEVED by the order in C. D. 172/2005 on the file of the District Forum, Kurnool, the first opposite party preferred this appeal.

2. THE brief facts as set out in the complaint are that the complainant obtained individual Mediclaim policy, i. e. , Hospitalization and Domiciliary Hospitalization Benefit Policy for a sum of Rs. 3 lakhs for the period from 27. 6. 2005 to 26. 6. 2006 from opposite party No. 1 and the second opposite party is a third party administrator to act on behalf of the first opposite party to process all claims. The complainant submits that he has undergone treatment for chest pain and breathlessness complaint from 29. 8. 2005 onwards till 27. 9. 2005 at Gupta Hospital, Nandyal and operated at Usha Mullapudi Cardiac Centre at Hyderabad and incurred medical expenditure of Rs. 2,33,935 and the opposite parties rejected his claim on the ground that the complainant''s disease was pre-existing. Hence the complaint seeking direction to the opposite parties to pay Mediclaim amount together with compensation, interest and costs. The second opposite party remained ex parte and was set ex parte. The first opposite party contested the case stating that the complainant is a known diabetic and having knowledge of pre-existing diseases did not declare it at the time of obtaining the policy and, therefore, he is not entitled to the Mediclaim benefits under Condition No. 4. 1 of the policy. Therefore, it seeks dismissal of the complaint with costs.

The District Forum based on the evidence adduced, Ex. A1 to Ex. A19 and Exs. B1 and B2 allowed the complaint directing the opposite party Nos. 1 and 2 jointly and severally to pay the amount of Rs. 2,53,735. 50 within a month, with

interest at 12% p. a. in default. Aggrieved by the said order, the first opposite party preferred this appeal.

3. THE learned Counsel for the appellant/first opposite party submitted that the date of policy is 27. 6. 2005 and the complainant first complained of chest pain on 29. 8. 2005, he was treated at Gupta Hospital from 29. 8. 2005 to 27. 9. 2005 and he was admitted and operated in Usha Mullapudi Cardiac Centre at Hyderabad on 21. 9. 2005 and discharged on 27. 9. 2005. The claim was made on 27. 9. 2005 and was repudiated on 13. 10. 2005. The learned Counsel submitted synopsis stating that the claim was rejected by the appellant on the ground that there is pre-existing disease of diabetes and it was suppressed by the first respondent/complainant at the time of obtaining the policy. It is the contention of the appellant that Ex. A14 shows that the complainant is diabetic patient and that the complainant did not discharge his burden of proof by getting himself examined and also the doctors who treated him, to prove his case. The learned Counsel further contended that CAG was done on 21. 3. 2005 which is just prior to the issuance of policy. The learned Counsel for the respondent/ complainant relied on the earlier judgment of this Commission reported in 2000 (1) ALD (Cons.) 49, in which, the complainant had taken the same Domiciliary Hospitalization Benefit policy and this Commission held that the Insurance Company failed to establish that the complainant was aware of the symptoms of the disease prior to taking of the policy and held that the repudiation was unjustified.

4. WE perused the material on record. The policy and the sum assured and the period of coverage are not in dispute. Even the date of admission, the date of operation and discharge from Usha Mullapudi Cardiac Centre at Hyderabad also are not in dispute. The contention of the learned Counsel for the appellant that the CAG was conducted on 21. 3. 1995 is without any basis. She relied on the discharge summary which clearly states that the date of admission is 21. 9. 2005 and the date of discharge is 27. 9. 2005 and his clinical summary states that he was referred for CAG Course in the hospital and that he was subjected to CAG on 21. 3. 2005 which is apparent on the face of record that the month is Typographical mistake. Since the date of admission itself is 21. 9. 2005 and in the CAG report (EXA 15), it is dated 21. 9. 2005 which clearly states diabetic disease in RCA which is once again reflected in the discharge summary. Therefore, it is very clear that the Coronary Angiogram was done in Usha Mullapudi Cardiac Centre only on 21. 9. 2005 as per Ex. A15 and also Ex. A14. The discharge summary says that the complainant was diabetic but does not disclose positively the time period nor does it say that the complainant has been suffering from severe diabetes which was led to this hospitalization. The next contention of the appellant that the complainant himself ought to have get himself examined and to prove that he did not suppress any material facts with respect to his health, is also unsustainable, on the ground, that the burden of proof is on the insurer to establish whether the insured has known at the time of making the statement that it was false or suppressed the facts which are

materially to disclose. The appellant/opposite party has failed to establish that the complainant was aware of the symptoms of the disease prior to the taking of the policy. It is held by the Apex Court in LIC of India and Ors. v. Asha Goel and Anr. , reported in I (2001) SLT 89=air 2001 SC 549, that for determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable inquiry by a prudent person. The appellant/ opposite party has failed in its duty to establish that the complainant has suppressed any material facts with respect to his health prior to the issuance of the policy. Therefore, we do not see any infirmity in the order of the District Forum in exercising its appellate jurisdiction. However, interest that was awarded at 12% p. a. in case of default, is being reduced to 9%. In the result, the appeal is allowed partly reducing interest from 12% to 9% and confirmed in other aspects of the order of the District Forum. Time for compliance six weeks. Appeal partly allowed.

