(2007) 05 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

Saroj Sian — RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Citation : 2007 4 CPJ 426

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been directed by opposite party-New India Assurance Company Ltd. against order dated 26.2.2007 passed by Consumer Disputes Redressal Forum-II, U.T.Chandigarh (hereinafter to be referred as District Consumer Forum), vide which the complaint of respondent No.1 Smt. Saroj Sian (complainant) was accepted and the New India Assurance Company Ltd. was directed to pay Rs. 67,846 along with interest @ 9% p.a. from the date of repudiation of claim i.e. 25.10.2005 till payment and further to pay Rs. 10,000 as compensation on account of damages for harassment besides Rs. 2,500 as litigation expenses. The order was directed to be complied with by the insurance company within two months from the date of receipt of its copy.

2. BRIEFLY stated the facts are that Smt. Saroj Sian, complainant (respondent No. 1) along with Balwinder Singh took joint medi-claim policy from New India Assurance Company Ltd. bearing No. 350102/48/02/00382 dated 31.3.2003, Annexure C-1 for the period 31.3.2003 to 30.3.2004 for a sum of Rs. one lac each and premium of Rs. 3,274 was paid. At the time of taking insurance policy, she was not suffering from any kind of disease. Earlier also in the years 2000-01 and 2001-02, she had taken medical insurance policies Annexure C-2 from the New India Assurance Company Limited on payment of premium. It was next averred that on or about 3.2.2004, she went to Fortis Heart and Multi Specialty Hospital (OP No. 5 in the complaint) as she was having some pain in the lower abdomen and there she was examined by Dr. Rashmi Garg, Gynaecologist, who after medical checkup advised her to undergo surgery for the removal of uterus.

Accordingly she was admitted in the hospital on 6.2.2004 where some medical tests were conducted and she was discharged on 8.2.2004 and at the time of discharge from the hospital, she had paid a sum of Rs. 14,177 to the hospital for medical investigation and tests which are Annexure C-3.

It was further averred that New India Assurance Company Ltd. had a tie up with Raksha TPA Pvt. Ltd. which was having its office across India for settling the medical claims of medical insurance policy holders of New India Assurance company Ltd.

3. IT was next averred that she was admitted on 24.2.2004 in the Fortis Hospital where she had undergone surgery for removal of uterus and was discharged on 1.3.2004 and she paid Rs. 51,594 towards surgery and Rs. 2,075 spent on medicines and medical investigation vide bill copy of which is Annexure C-5. She lodged claim with Raksha TPA for reimbursement of Rs. 67,846 but ultimately her claim was rejected vide letter dated 27.10.2005 on the ground that she had been suffering from the disease for the last 8 years, so, it was pre-existing. The letter of repudiation is Annexure C-13. Alleging deficiency in service, the claim was filed for Rs. 1,19,205 as stated in para 18 of the complaint.

4. THE appellant (New India Assurance Co. Ltd.) contested the complaint and stated that there are complicated matters which could not be decided by summary manner and required detailed evidence, so, respondent be relegated to the civil Court for proper adjudication. It next stated that the claim was not payable as risks of such ailment were specially excluded. It was admitted that complainant had purchased medical insurance policy Annexure R-1 and also admitted the filling of the proposal form Annexure R-2. It further admitted the purchase of other two policies during earlier period but stated that no policy was purchased during the year 2002-2003 and there was no continuation of the policy. It next stated that since respondent had concealed the previous disease, so, entire contract of insurance had become null and void. It further stated that the claim had been rightly repudiated. None appeared on behalf of Raksha TPA Pvt. Ltd., so, it was proceeded against ex pare. Opposite party No. 5 as mentioned in the complaint was a formal party and as such it was not summoned. Parties adduced their evidence by way of affidavits.

5. AFTER hearing Counsel for the parties, District Consumer Forum vide order dated 26.2.2007 accepted the complaint with costs of Rs. 2,500 as stated in the earlier part of the judgment.

6. AGGRIEVED by the said order, opposite party-New India Assurance Co. Ltd. has filed the present appeal. Summons sent to Raksha TPA Pvt. Ltd.-respondent No. 2 were received back unserved with the report that the company has shifted its premises. Since, both the Counsel did not know present address and otherwise also, it was stated to be a formal party as no relief was claimed against it and further it was ex parte in the District Consumer Forum, so its service was abandoned.

The appellant has admitted that complainant (respondent) had purchased medical insurance policy in question extending the insurance cover for the period from 31.3.2003 to 30.3.2004 vide insurance policy Annexure C-1. The allegation of respondent as stated in the complaint as well as in the affidavit is that she was having some pain in her lower abdomen and therefore she got herself examined from Dr. Rashmi Garg, MD, Gynaecologist, Fortis Heart & Multi Specialty Hospital on 3.2.2004 who advised her to have surgery of the uterus. Therefore, she got herself admitted in the hospital on 6.2.2004 where some medical tests were conducted and on 8.2.2004 she was discharged from the hospital and at that time she had paid Rs. 14,177 to the hospital for medical investigation and tests and the bill is Annexure C-3. She further stated in the affidavit that on 24.2.2004, she was admitted in the Fortis Hospital and had undergone surgery for removal of uterus and after operation, she was discharged on 1.3.2004 and on 1.3.2004 she had paid Rs. 51,594 towards surgery and Rs. 2,075 were spent on medicines and medical investigation and copy of the bill is Annexure C-5. She next stated that after discharge from the hospital, she had sent registered letter to the appellant for reimbursement of the bill to the tune of Rs. 67,846/- and had sent along with claim letter original bills, receipts and copies of medical claim policy. She further submitted the documents as demanded by the appellant but ultimately her claim was rejected vide letter dated 27.10.2005 Annexure C-13 by stating that the disease was pre-existing.

7. ADMITTEDLY complainant had taken insurance policy dated 31.3.2003 for the third time and she was hospitalized on 6.2.2004 for the pain of abdomen off and on for the last 8 years and irregular cycles with excessive flow (Menorrhagia) and subsequently it was detected that the respondent was suffering from Adenocarcinoma of uterus with fibroids for which hysterectomy was performed. There is no evidence that the respondent had knowledge of the disease in question for which she was operated upon by Fortis Hospital and later on lodged the claim. The existence of off and on abdomen pain or having irregular cycles with excessive flow is not such a serious disease to be taken notice because it happens with many ladies having irregular cycles. It was only during checkup after 6.2.2004, it was detected that she was suffering from Adenocarcinoma of uterus with fibroids for which hysterectomy was performed. It is true that respondent had filled the proposal form with respect to the current medical insurance policy covering the period 31.3.2003 to 30.3.2004 but she had stated that she was not suffering from any disease. She had rightly stated so because she had no knowledge that she was suffering from Adenocarcinoma of uterus with fibroids. Counsel for appellant contended that according to Clause 4.3 of the terms and conditions of medical claim insurance policy, during the first year of the operation of insurance cover, the expenses on treatment of diseases such as Cataract, benign prostate, hypertrophy, hysterectomy for Menorrhagia or Fybromyoma, were not payable if these diseases were pre-existing at the time of proposal. In our opinion, the contention of learned counsel is not tenable. There is no evidence by way of affidavit of responsible person that this clause was

brought to the notice of respondent. The copy of the insurance policy Annexure R-1 placed on file by appellant does not contain any such terms and conditions of medical insurance policy.

8. THE affidavit of Sh. B.S. Khosla, Divisional Manager, New India Assurance Co. Ltd. does not state that it was brought to the notice of respondent about the terms and conditions of the medical claim insurance policy. THErefore, it is not proved on file that there was suppression of pre-existing disease and consequently repudiation of claim is unjustified and Insurance Company is liable under the policy as exclusion clause was not disclosed to the insured and it is also not part of the policy. We are supported by the authority of Madhya Pradesh State Consumer Commission in case titled New India Assurance Co. Ltd. v. Ashraf Bee Patel, IV (2003) CPJ 700. Having similar facts is the authority of National Commission in Oriental Insurance Co. Ltd. v. Asim J. Pandya, I (2006) CPJ 115 (NC)=2006 (1) CPC 460, and another authority of Delhi State Commission in New India Assurance Co. Ltd. v. Mrs. Pushpa Verma, I (2004) CPJ 388. It has been further observed by the Delhi State Commission in National Insurance Co. Ltd. v. Mukesh Bhargava, III (2006) CPJ 62=2006 (3) Con.LT 92 that unless the patient or insured is hospitalized or undergoes an operation for some particular disease but otherwise leads a normal and healthy life is not supposed to disclose the factum of normal and day-to-day minor problems of life. THErefore, it is held that the policy was not bad for non-disclosure of the fact of irregular menses etc. We concur with the reasoning given by the District Consumer Forum and hold that there is no force in the appeal. Consequently, it is dismissed with costs of Rs. 1,000. Copies of this order be communicated to the parties, free of charge. Appeal dismissed.

