(2006) 09 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

New India Assurance Company Ltd. — APPELLANT

Vs

MARY JANE GOVIAS — RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Citation : 2006 4 CPJ 228

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Revision Petition dismissed

Judgement

1. THIS revision petition is filed against the judgment and order dated 12th May, 2000 passed by the Tamil Nadu State Consumer Disputes Redressal Commission in Appeal No. 710/97 whereby the appeal of the complainant was allowed.

2. BRIEF facts of the case are: The insured, Mr. Irwin Govias, had taken a group Mediclaim Policy under Plan Option 6, through Citibank, with the petitioner New India Insurance Company, when he was alive. The duration of the policy was from 1.10.1994 to 30.9.1995. Mr. Irwin Govias was suffering from common dry cough during September, 1994 which was initially treated by an ENT specialist for three months. When the dry cough persisted, he was directed to undergo a biopsy test on 1.11.94. The result was given on 2.11.94 and the patient was diagnosed to have Nasopheryngeal Cancer and he had to undergo treatment in Apollo Cancer Hospital where he spent a sum of Rs. 80,014.65. Thereafter, he had preferred a claim to the Insurance Company for reimbursement of the amount spent for his treatment. The petitioner Insurance Company rejected the claim after processing the same for over a year on two grounds; firstly on the ground that pre-existing diseases are excluded and secondly that it was contracted within 30 days from the commencement of the cover. This has led the assured to file a complaint against the Insurance Company in the District Forum, Mylapore, Madras. The complainant died during the pendency of the complaint before the District Forum. Hence, the legal heirs i.e. his wife and children were added as complainants. It is alleged by the respondent No. 1 that her husband did not suffer from Cancer at any point of time prior to 2.11.94 and that the

disease could not be stated to be a pre-existing one. District Forum dismissed the complaint reserving liberty to the complainants to seek redressal in a Civil Court.

Aggrieved by the order dated 6th June, 1997, of the District Forum, the complainants filed an appeal before the State Commission. "The State Commission partly allowed the appeal and directed the Insurance Company to pay Rs. 80,014.65 along with interest @ 12% p.a. and Rs. 10,000 for mental agony to the legal heirs of Irwin Govias within a period of two months from the date of receipt of the order failing which the complainants would be at liberty to invoke the provisions of Section 27 of the Consumer Protection Act, 1986.

3. AGGRIEVED by the State Commission''s order, opposite party/petitioner, Insurance Company has come here in revision. It is the case of the petitioner that the case of the complainants fal under the ''Exclusion Clause'' which is reproduced as under: (i) Any illness/disease which was existing at the time of inception of cover for the first time; (ii) Any illness/disease contracted within 30 days from commencement of cover.

4. LEARNED Counsel for the petitioner further submitted that the assured had a pre-existing disease of irritation of throat which he did not reveal while taking the policy. Hence, the claim was rejected by the Insurance Company as per the terms of the policy. Learned Counsel for the petitioner further submitted that the State Commission erred in holding that the Insurance Company did not at all place any materials on record to the effect that the instant case is covered by the ''Exclusion Clause''. It is submitted by the learned Counsel for the petitioner that the averments made by the complainant in his complaint (Annexure P-2) and discharge summary dated 31.12.1995 (Annexure P-3) were sufficient material to show that the case was covered by the ''Exclusion Clause''. It is vehemently argued that the insured concealed the illness of continued throat ailment although the Apollo Hospital''s report on 2.11.2004 reveals that the malignant tumour is of "moderately differentiated grade II to III squamous cell carcinoma, biopsy nasopharynx." It is contended that the insured must have been suffering from the said disease while taking the policy and hence covered under Exclusion Clause (i) as given above. It is further contended that under Clause (ii) as the disease was contracted within 30 days from the date of commencement of the cover that is 1.10.1994 and biopsy was taken on 1.11.1994, the respondent cannot claim benefit under the policy. Heard both the parties and perused the record. Both the parties relied on the evidence produced on record on page 65 of Dr. M. Balasubramanian''s (Consultant Physician) letter dated 19.4.1996 which is reproduced hereunder: " Mr. Irwin Govias who is my patient for the past 7 years was diagnosed to have squamous cell carcinoma of nasopharynx after a biopsy done on 1.11.94. He did have severe dry cough on and off for three months prior to the diagnosis and was treated as allergic pharynqitis. He was seen by an ENT Surgeon for this complaint and underwent an indirect larynqoscopy examination and was cleared of any growth. Since the cough persisted he was referred to

another ENT Surgeon who on suspicion recommended a biopsy which was immediately done and the diagnosis was established. So the nasopharyngeal cancer was diagnosed only on 2.11.94."

5. IT is contended by the complainants/respondents that this letter clearly shows that Dr. Balasubramanian was under the belief that IT is a cough coupled wITh some allergic reaction till 2.11.1994. If the treating doctor himself is unaware that the insured was suffering from cancer or any serious disease, how would the insured know that he has a serious disease? This clearly reveals that the insured did not know of cancer at the time of taking the policy/commencement of the policy and also had no knowledge of the same till 2.11.1994. A mere finding that the test was done on 1.11.1994 which is wIThin 30 days from the commencement of the policy cannot be construed to be that IT was wIThin the knowledge of the insured.

6. IN view of the foregoing discussions, we are unable to appreciate the arguments put forth by the learned Counsel for the petitioner. Firstly, a normal cough which was treated by a Doctor over a couple of months cannot be construed to be a known pre-existing disease by any standard. The family Doctor Subramanian referred to Dr. Ganpathy, ENT Surgeon only after he received the report on 2.11.1994 who did further tests later. Both the Exclusion Clauses relied upon by the petitioner are not applicable in the present case because both the doctors and the patient were unaware of existence of any disease, whatsoever, to allege that there was a suppression of material facts in the proposal form of the policy. No evidence is led by any one to show as to when the cancer started; whether it was within 30 days of the cover of the policy; and, whether it was pre-existing at the time when the policy was taken. We see no force in this contention of the INsurance Company that the deceased was aware of the pre-existing disease, and reject the same. Hence, there is a clear deficiency in service by the petitioner in repudiating a valid claim of the respondents. Learned Counsel for the petitioner further contended that the respondents are entitled to a sum of only Rs. 45,853 and not Rs. 80,014 as the documents filed by the petitioner show only a sum of Rs. 47,353. In the grounds of the petition, he stated that the sum would be Rs. 47,353.50 whereas the documents which he has produced and relied upon in this petition add upto an amount of Rs. 55,000. Learned Counsel for the petitioner admitted that there was some lapse in adding amounts mentioned in the bill. We are not very clear as to what were the documents shown before the District Forum/State Commission and whether all of them have been annexed in this petition. As far as the benefits under Plan 6 scheme as per the insurance policy, Respondents are entitled to Rs. 85,850-as per Exhibit No. B-2 which has been produced before the State Commission. The State Commission after perusing the same quantified a sum of Rs. 80,014.65 as covered by the bills, etc. issued by the Apollo Cancer Hospital. Further the State Commission also clarified that the original bills have been submitted to the Insurance Company along with the claim form and the Insurance Company never denied this averment earlier. We cannot rely on the argument made by the

Petitioner that the amount claimed by the respondents does not tally with the actual amount spent by them. There is a discrepancy in their statement and documents which go against them and there is no reason for us to disbelieve the statement made by the respondents.

In view of the above discussion, the revision petition is dismissed. The petitioner is directed to pay Rs. 80,014.65 with interest at the rate of 12% p.a. as directed by the State Commission. Revision Petition dismissed.

