(2012) 07 NCDRC CK 0164

In the National Consumer Disputes Redressal Commission

Nimai Chandra Bhattacherjee Son Of Late Kumud Nath Bhattacharjee — APPELLANT

Vs

SENIOR DIVISIONAL MANAGER — RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 307

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : Sushil Kumar Gupta

Judgement

1. THIS revision petition is against the order dated 29.10.2008 of the Bihar State Consumer Disputes Redressal Commission, Patna (in short, ''the State Commission'') in First Appeal no. 266 of 2007. By this order, the State Commission affirmed the order dated 22.01.2007 passed by the District Consumer Disputes Redressal Forum, Gaya (in short, ''the District Forum''), by which the District Forum had dismissed the complaint of the petitioner.

2. THE petitioner/complainant had obtained a mediclaim policy from the respondent insurance company for his wife and himself for the period 31.03.2003 to 30.03.2004. He underwent surgery for Benign Prostatic Hypertrophy (BPH) on 23.03.2004 at a Hospital in Kolkata and was discharged on 27.03.2004. He sent a claim for reimbursement of the expenditure of Rs.46,890/- incurred by him on this surgery on 14.05.2004. The insurance company, however, repudiated the claim by its letter dated 09.07.2004. Against this repudiation, the petitioner represented to the Insurance Ombudsman at Kolkata. Though a copy of the Ombudsman''s final order has not been produced by the petitioner along with this revision petition, it would appear that by communication dated 16.02.2006, the Ombudsman dismissed the complaint of the petitioner holding that repudiation of the claim by the insurance company was justified. Thereafter, the complainant filed a complaint on 13.10.2006 with the District Forum.

3. THE complainant''s case before the District Forum was that copy of the terms and conditions of the policy had not been supplied to him when he filled in the

proposal form for the said policy. As such, he was not aware of clause 4.3 under which expenses incurred by the insured for the treatment of certain diseases like Cataract, BPH, etc., within the first year of operation of the policy were not payable. Moreover, he urged that he wrote to the local office of the Insurance Company on 27.01.2004 as well as on 17.03.2003 informing the latter of his disease and the urgent need of having to undergo the requisite surgery. There was, however, no response to these letters from the insurance company and as such he assumed that expenses on the surgery of BPH were payable under the mediclaim policy.

4. ON the other hand, before the District Forum, the respondent insurance company opposed the complaint both on the grounds of limitation and on merits. In particular, it contended that according to clause 4.3 of the exclusion clause of the policy, expenses on the treatment of certain diseases, including BPH were not reimbursable. In view of the fact that the complainant underwent surgery on 22.03.2004 (i.e., within one year of commencement of the policy on 31.03.2003), the claim was not payable and hence, repudiated.

5. ON consideration of the pleadings, evidence and documents brought on record, the District Forum held that there was no reason or evidence to conclude that the complainant was not aware of the terms and conditions of the policy as detailed in the prospectus, because he had filled in the proposal form in which it was clearly mentioned that he had read and accepted the terms and conditions in the policy prospectus. In reaching its findings, the District Forum also drew support from the order dated 16.02.2006 of the Insurance Ombudsman in which the latter had held that the complainant had signed the proposal form after understanding and accepting the general terms and conditions of the insurance policy detailed in the prospectus.

6. AS noticed, the State Commission concurred with the findings of the District Forum or facts and law and dismissed the petitioner''s appeal.

7. WE have heard the petitioner/complainant in person and Dr. Sushil Kumar Gupta, learned counsel for the respondent and considered the documents produced on record. Before us, the petitioner urged that in the document of "Hospitalisation and Domiciliary Hospitalisation Benefit Policy - Individual Medi-claim" (copy at page 19 of the paperbook), in the column with the heading, "Subject to the exclusion of", the printed remarks were, "NONE". This would, according to him, clearly show that no exclusion was applicable in the mediclaim policy obtained by him and, therefore, both the Fora below had erred in holding to the contrary.

8. ON the other hand, Dr. Gupta pointed out that the column heading in question had a double asterisk mark (**) and, at the bottom of the policy document, it was written against the ** mark, "This insurance shall not extend to pay any expenses incurred relating to the disease/sickness/injury mentioned in this column and for consequences attributable thereto or accelerated thereby or

arising therefrom". From this, Dr. Gupta submitted that the word ''NONE'' under this column only meant that the policy did not exclude any specific disease/ sickness/injury from its coverage, in addition to those excluded by the general terms and conditions. Hence, this provision could not be read to as to artificially expand the scope of coverage of the policy, negating all exclusions. The claim was thus subject to the general exclusions mentioned in the policy prospectus.

9. ON careful consideration of the submissions as well as the evidence and documents, we are inclined to agree with Dr. Gupta''s argument that the meaning of the word, "NONE" now being canvassed by the petitioner at the stage of revision petition in support of his contentions is not acceptable. Moreover, we cannot overlook that both the Consumer Fora below have come to concurrent findings of facts and law. In his revision petition, the petitioner has not been able to show any material irregularity, legal infirmity or jurisdictional error in the impugned order of the State Commission which could20warrant intervention under section 21 (b) of the Consumer Protection Act, 1986.

10. AS a result, the revision petition is dismissed, leaving the parties to bear their own cost.

