(2005) 12 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

MADHUSUDHAN SHARMA RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Citation : 2006 1 CPJ 494 : 2006 2 CPR 242

Hon'ble Judges : J.D.Kapoor , Mahesh Chandra J.

Final Decision : Appeal partly allowed

Judgement

1. THOUGH as many as four complaints against Mediclaim Insurance Policy were decided by the impugned order dated 18.2.2003, the appellant has filed appeal only in respect of Case No. 366/2002 as in this case the appellant alone was the opposite party whereas in other cases different companies were opposite parties.

2. VIDE impugned order the appellant has been directed to pay Rs. 51,551 with 9% interest towards mediclaim expenses incurred by the respondent on treatment of Diabetes Mellitious and Hypertension and problem of Asthma and Rs. 5,000 as compensation and Rs. 500 as cost of litigation. The solitary defence raised by the appellant before the District Forum was that the respondent had concealed the factum that she had a long history of Diabetes Mellitious and Hypertension for about 10 years and also problem of Asthama while taking the mediclaim insurance policy and therefore disentitled herself by virtue of exclusion clause of the policy providing that any concealment of material fact would vitiate the policy itself. However, the appellant failed to produce the proposal form.

The medical record shows that respondent was admitted with congestive heart failure and her Echo cardiograph revealed dilated all four chambers and she was put on decongestive therapy and showed signs of improvement. Opinion of the nephrologist was taken and he diagnosed to have early diabetic nephropathy and opinion of gynaecologist was also taken and diagnosed to have rectococlo and advised perineorrhapy and accordingly surgery was performed.

3. WE have taken a view in large number of cases that diseases like hypertension

diabetes etc. , are so common and are always controllable and unless and until patient has undergone long treatment including hospitalisation and remain in hospital for days and undergoes operation etc. in the near proximity of taking the policy cannot be accused of concealment of material fact. WE have also taken a view that insurance companies are also expected and supposed to subject the insured to medical examination in order to rule out those diseases which are common and half of population is suffering from such diseases and they are no more known as diseases to rule out the possibility of availing wrongful claim against medical insurance policy. In the given facts and circumstances of the case we do not find any material to interfere with the impugned order so far as refund of Rs. 51,551 is concerned but feel inclined to set aside the order of awarding interest as in such cases interest is not awardable. Interest is awardable only in those cases where a term of contract is there between the parties in this regard and otherwise in terms of Section 14(1) of the Consumer Protection Act an amount of compensation is awardable as to the loss or injury suffered by the consumer due to the negligence of the opposite party.

4. TAKING over all view of the matter we partly allow the appeal by substituting cost of litigation, compensation and interest awarded by the District Forum to an amount of Rs. 20,000 in addition to the actual expenses incurred by the respondent to the tune of Rs. 51,551. The aforesaid payment shall be made within one month. Bank Guarantee/FDR, if any, furnished by the appellant be returned forthwith.

5. A copy of this order as per the statutory requirements, be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record Room. Appeal partly allowed.

