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(1996) 02 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO LTD — APPELLANT

Vs

MANILAL BHAGVANDAS GANDHI — RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Citation : 1996 2 CPR 325 : 1996 3 CPJ 357

Hon'ble Judges : R.C.Mankad , Jatin P.Vaidya J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal by the Oriental Insurance Company Limited is directed against the judgment and order dated May 19, 1995 passed by the District Consumer Disputes Redressal Forum, Bharuch (District Forum for short) in complaint No. 222 of 1992.

2. FACTS leading to this appeal are as follows. The respondent who is the original complainant had taken Mediclaim policy from the appellant which was valid for the period from January 31,1991 to January 30,1992. On September 22,1992 the respondent fell ill and had pain on the left side of this abdomen. He was removed to the hospital of Dr. Gautam Patel. Dr. Patel after examining the respondent advised immediate operation for strangulated hernia. The respondent was operated by Dr. Patel and he remained in the hospital as indoor patient from September 27 to October 3,1991. The respondent incurred total expenses of Rs. 2,506.20 for the medical treatment he had to take. He made claim for the said amount alongwith supporting documents before the appellant. The appellant, however, repudiated the claim on the ground that the treatment which the appellant had taken for hernia fell within the exclusion clause and therefore the appellant was not liable to reimburse or indemnify the respondent for the medical expenses incurred by him. The respondent therefore approached the District Forum by way of the aforesaid complaint. The complaint was resisted by the appellant by filing written statement. It denied the allegations made by the complainant and contended that treatment for hernia was excluded under the insurance policy. In other words, the same contention on which the claim was

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rejected was raised. According to the appellant it was not liable to reimburse the respondent under the terms of the policy. The District Forum by its impugned judgment and order held to the effect that the exclusion clause was applicable only for treatment of hernia and operation for strangulated hernia could not be said to be treatment for hernia. According to the District Forum, the exclusion clause was applicable only in case where treatment was given by medication. In this view of the matter, it held that the appellant was liable to pay Rs. 2,506.20 to the respondent together with 12% interest. The District Forum also awarded Rs. 100/- as compensation in lieu of cost to the respondent. The appellant has, therefore, filed this appeal.

Now, we find from record that the appellant had issued "Prospectus" in respect of Mediclaim i.e. Hospitalisation and Domiciliary Hospitalisation Benefit policy. It is in this prospectus that while stating details of Mediclaim Insurance exclusions are mentioned in paragraph or clause 4. The relevant portion of Clause 4 on which reliance is placed reads as follows : "4.0 EXCLUSIONS : 4.1 The company shall not be liable to make any payment under this policy in respect of any expenses whatsoever incurred by any insured person in connection with or in respect of.. xxxxxx 4.12. Exclusion for 1st year of policy for treatment of cataract, benign prostatichypertrophy, hysterectomy for menorrhagia or fibromyoma, hernia, hydrocele, congenital internal diseases, fistula in anus, piles, sinusitis and related disorders unless such diseases are excluded as pre-existing."

It is submitted that the aforesaid clause 4.12 clearly and specifically excludes treatment of hernia and, therefore, the appellant is no liable to make payment of any expenses incurred by the respondent. The policy which is issued to the respondent does not make any reference to the prospectus nor is there any exclusion clause in the policy itself. In other words, there is no term in the policy which excludes the liability of the appellant for making payment of expenses incurred for treatment of hernia. Prospectus issued by the appellant cannot be read as part of the policy unless the policy itself specifically says so. Contract of insurance is what is contained in the policy which is issued to the respondent and this policy consisted only of a schedule wherein no mention is made about the terms and conditions on which the policy is issued. In our opinion, therefore, it is not open to the appellant to invoke para/clause 4.12 of the prospectus.

3. APART from the observations made above, even assuming for the sake of argument that prospectus giving deails of mediclaim insurance form part of the insurance policy, in our opinion, clause or para 4.12 cannot be invoked by the appellant for denying the respondent''s claim. Clause 4.12 reproduced above clearly shows that exclusion is only for the first year of policy. It would therefore appear that this clause is applicable only in case where the policy is issued for a period of more than one year. The question of first year would arise only when the policy is for a period of more than one year. In the instant case, the policy is only for one year from January 31,1991 to January 30,1992. Therefore there is no question of first year involved in this policy. The term or clause for exclusion

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has to be strictly construed and it should be so read as not to deny benefits to the insured unless there is specific provision for exclusion applicable to the insured under the policy. In our opinion, therefore, in the instant case, clause 4.12 is not attracted at all even if it is considered to be part of the policy issued to the respondent. In the light of the above discussion, we do not see any reason to interfere with the order passed by the District Forum. In the result, this appeal fails and is dismissed. However, there will be no order as to costs. Appeal dismissed.

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