(2003) 08 NCDRC CK 0101

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited — APPELLANT

Vs

MADAN LAL JAIN — RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Citation : 2005 1 CPJ 44

Hon'ble Judges : Chowdhry , S.N.Mishra , S.Hansda J.

Final Decision : Appeal dismissed

Judgement

1. -THE Oriental Insurance Company appeals against the judgment and order dated 3.12.1997 passed by the District Forum, Hazaribagh whereby the appellant has been directed to pay a sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) to the complainant along with interest at the rate of 12% p.a. payable from 1.4.1995 till the date of realisation of the amount within the time mentioned in the order itself.

2. THIS relates to the Mediclaim in terms of the policy purchased by the insured for a sum of Rs. 1,50,000/-. The policy covers hospitalisation and domicilliary hospitalisation including personal accident claim. During the subsistence of the policy, the insured died on 7.9.2003 due to fall in the bathroom while she was hospitalised. Accordingly, a claim was preferred for Rs. 1,50,000/- which was repudiated by the Insurance Company on 30.3.1995 resulting filing of the instant complaint claiming compensation under the said Mediclaim Policy. On being noticed, the opposite party Insurance Company appeared and filed the show-cause stating, inter alia, that though the Mediclaim Policy was issued and during the subsistence of the policy, the insured died of operation but not due to accidental fall as claimed by the complainant. According to the opposite party the operation is not covered under the policy and hence the claim has been rightly repudiated. However, relying upon the materials on record including the medical certificate issued by the hospital the District Forum has allowed the claim as aforesaid.

As stated above, the only ground for repudiation of the claim is that the insured died because of the operation and not by fall which does not cover under the policy and hence the complainant is not entitled to any relief in terms of the Mediclaim Policy.

3. THE cardinal question arises as to whether the insured died because of the fall and/or due to operation. In order to show that the insured died due to accidental fall in the bath room various documents were produced by the complainant including the certificate issued by the Raj Hospital where the deceased was admitted initially for treatment which fact stands almost admitted. THE certificate issued by the Raj Hospital, Ranchi clearly indicates that insured was admitted with history of fall having paid in abdomen. She died on 17.9.1993 because of sudden cardiac respiratory arrest due to fall resulting vaginal haemorrhage. THE certificate issued by the Raj Hospital, Ranchi, further goes to show that the insured was admitted with history of fall and at the point of time she was carrying a pregnancy of 3 months. THE complainant, filed various vouchers on affidavit showing the expenses incurred by him for the treatment of the insured. It is relevant to mention here that at the time of taking Mediclaim Policy, she was not pregnant. Even if it is assumed for a moment that the abortion occurred due to accidental fall in the bathroom on account of vaginal haemorrhage, the same will not come under the exclusion clause of the policy. The abortion was caused due to accidental fall in the bathroom and supported by the Surveyor deputed by the Insurance Company, who after thorough investigation, came to the conclusion that the sudden fall in the bathroom has caused the abortion due to excessive veginal bleeding. The Insurance Company has not produced any evidence in support of its contention to the effect that the insured died because of the abortion whereas the papers produced from the hospital including the Surveyor''s report fully supports the case of the complainant.

4. IT has been well established by now that the rightful claim of the insured cannot be thwarted on any technical ground when the material available on record including the various certificates issued by the hospital and the attending physicians including Surveyor''s report clearly established the fact that the main cause of the abortion was due to accidental fall in the bathroom resulting excessive vaginal bleeding. In such circumstances, the Insurance Company has illegally repudiated the valid claim under the Mediclaim Policy. The District Forum has considered all aspects of the matter and the findings recorded are all based upon the correct appraisal and appreciation on the materials available on record. Accordingly, we do not find any illegality and/or infirmity in the order impugned. In the result, this appeal is dismissed. Since the insured has been compelled to approach the Consumer Forum right from 1995, he is further entitled to the cost of this appeal which is assessed at Rs. 5,000/- (Rupees five thousand only). Before parting with this case, we direct the appellant-Insurance Company to comply with the order within three weeks from the date of receipt and/or production of copy of this order failing which, the complainant will be at liberty to execute the order in accordance with law including remedies available under Section 27 of the Consumer Protection Act. However, in that event, he will be

entitled to further interest at the rate of 18% from the date of this order till the date of realisation. Let a copy of this order be sent to the parties and/or their respective Counsels forthwith for needful. Appeal dismissed.

