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(2000) 08 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited APPELLANT

Vs

Rajendra Kumar Gupta RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Citation : 2000 3 CPJ 381 : 2000 3 CPR 427 : 2001 1 CLT 473 : 2001 1 CPC 9

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal partly allowed

Judgement

1. THIS is an appeal against the judgment and order dated 4.1.1994 and 15.5.1994 passed by District Consumer Forum, Agra in Complaint Case No. 888/1992. A judgment was delivered by Sri Lokendra Nath Rai, President of the District Forum on 4.1.1994 by which he decreed the claim of the complainant for Rs. 30,628.50 alongwith interest at the rate of 18% per annum with effect from 1.4.1992 till the date of payment alongwith Rs. 720/- as cost of the notice and other expenses. It also directed for payment of interest at the rate of 24% per annum in case the compliance of the order is not made within 30 days period.

2. SMT. Shakuntala Sharma, Member by order dated 16.5.1994 by writing a separate judgment concurred with the opinion of the President and granted the same reliefs which were granted by the President. On the other hand, Sri Nathi Lal Thomar, Member of the District Forum vide his order dated 21.1.1994 dismissed the complaint. The Insurance Company has filed this complaint against the majority judgment by which the complaint has been decreed.

The facts of the case in brief are that the complainant Sri Rajendra Kumar Gupta, while going abroad, took a medi-claim policy on 3.3.1992 from Oriental Insurance Company Limited. On 6.3.1992 the complainant flew to America and after returning from his trip to America he put up a claim with the opposite party for a sum of US dollars 997 on the ground that on 12.3.1992 he suddenly fell ill and had to spend the above-mentioned amount in his treatment. The complainant also issued a notice and when nothing was done by the Insurance Company he filed the present complaint.

3. ACCORDING to the complainant on 12.3.1992 he had a severe pain in his right testicle and he consulted Elam Heart Centre in America. After examining him the doctors first got the tests done for which he had to spend 702 US dollars and thereafter he was told that the operation is necessary. In operation, which was done on 13.3.1992, he had to spent 295 US dollars. In this way the complainant has claimed Indian currency of a sum of Rs. 30,628.50 which was equivalent to 997 US dollars. The complainant had to spend Rs. 720/- on account of notice which also he has claimed. The complainant has also claimed a sum of Rs. 26,531/- as fare for going to USA, and Rs. 30,000/- on account of business loss. The opposite party in its written version has alleged that the District Forum has no jurisdiction to entertain the complaint. The complainant is not entitled to claim any amount according to the terms of the policy of the agreement. The complainant should have contacted Mercury Insurance Services Limited at America and should have got the treatment done in accordance with the terms of that Insurance Company. As the complainant had not done so, therefore, he is not entitled to any amount.

4. AFTER hearing the parties the learned District Forum as mentioned earlier by majority judgment decreed the claim of the complainant. Aggrieved against the order of the learned District Forum the Insurance Company has come in appeal and has challenged the correctness of the order passed by the Forum. We have heard the learned Counsel for the parties and have perused the evidence on record.

5. LEARNED Counsel for the appellant has argued that it is a Mediclaim Overseas Policy wherein certain terms and conditions have been given which are required to be applied before a claim can be settled. According to learned Counsel the complainant should have contacted the Mercury Insurance Services Limited at America he developed pain in his right testicle and should have got the treatment conducted in accordance with the directions of that company. On the other hand learned Counsel for the respondent has argued that no policy was given to the complainant before he left for America. He was handed over terms and conditions of the policy on his return to India and that policy is dated 13.3.1992. The appellant could not prove on record by cogent evidence that the terms and conditions of the policy were made available to the complainant before he left India. The terms and conditions unless they are known to a person cannot be applied by the Insurance Company. Unless it was told to the complainant before hand on falling ill he has to contact a certain company at America and the treatment has to be done under its supervision and the claim should be lodged there, it cannot be said that the complainant is at fault. There is no fault in this case on behalf of the complainant. Had the complainant been told of this condition, then he would have certainly contacted the Mercury Insurance Services Limited at America and would have got the treatment done and would have got the claim lodged. It could not be done on account of the deficiency on behalf of the Insurance Company in not supplying terms and conditions of the policy and moreover the name and address of the Insurance Company to whom

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he was to contact in the case of sudden illness at America should have been intimated by the Insurance Company and as such the arguments of the learned Counsel for the appellant that the complainant did not contact the company concerned falls to the ground.

6. THERE is no evidence in rebuttal on the side of the Insurance Company that the complainant did not suffer pain in the right testicle and was not got operated upon at America and he has spent a sum of 997 US dollars for which the present claim has been made. THEREfore, the deficiency in service on behalf of the Insurance Company is there as they illegally refused to entertain and decide the case of the complainant for which they have rightly saddled with the damage by the majority judgment of the District Forum. In the present case it was indicated at the time of arguments that the FDR has already been released for the amount and now only interest matter remains to be decided. Learned Counsel for the appellant has argued that the interest at the rate of 18% per annum is on the higher side. The learned Counsel has argued that the interest should be at the rate of 12% per annum. The Hon''ble Supreme Court in the case of United India Insurance Company Limited v. M/s. M.K.J. Corporation, III (1996) CPJ 8 (SC)=1996-1999 Consumer 4781 (NS), has held that the interest in the case of Insurance Company should be 12% per annum. The Hon''ble Supreme Court took into consideration the submissions made by the learned Counsel for the Insurance Company that as per terms of the directives of the Govt. of India, the Insurance Company has no option but to invest the money in securities specified by the Government of India under which the Insurance Company is securing interest on investment at the rate of 11.3% per annum. THEREfore, the rate of interest which has been granted by the District Forum at 18% per annum and in default at the rate of 24% per annum is reduced to 12% per annum. The appeal is, therefore, liable to be allowed with this modification. Order The appeal is partly allowed to the extent that the rate of interest awarded by the learned District Forum is reduced to 12% per annum. With the above modifications, the judgment and order of the learned District Forum concerned are confirmed. The appellant shall pay a sum of Rs. 2,000/- as cost of this appeal. Let compliance of this order be made within a period of six weeks from the date of this order. Let copy as per rules be made available to the parties. Appeal partly allowed.

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