(2006) 12 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Oriental Insurance Company Ltd. — APPELLANT

Vs

K. ANANDAM — RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Citation : 2007 3 CPJ 450

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition allowed

Judgement

1. THE short issue to be decided in this case is whether lapsed (due to dishonouring of the cheque issued by the insured) medi-claim policy which was renewed (after payment of the insurance premium in cash) after a gap of 9 days could be construed as a fresh policy or continuation of the existing policy.

2. THE simple answer to this question is that the policy issued after 9 days of lapse becomes a fresh policy with the fresh terms and conditions as the discontinuance was due to the lapse on the part of the insured. Brief facts of the case : The complainant Shri K. Anandam availed medi-claim insurance policy from the Oriental Insurance Company for the first time for the period from 13.1.2001 to 12.1.2002 by paying a sum of Rs. 14,099 as premium. He continued the policy by payment of premium for the next year which was valid until 12.1.2003. For renewal of the policy for subsequent year commencing from 13.1.2003 the complainant issued a cheque towards premium which was dishonoured. Thereafter, the policy was renewed for an year from 21.1.2003 to 20.1.2004 on receipt of premium by cash. It is the say of the complainant that unfortunately he suddenly developed chest pain and underwent by-pass surgery on 30.1.2003 at Narayana Hrudalaya, Bangalore. The Insurance Company was kept informed of the same by the daughter of the complainant. The claim for Rs. 1,60,000 spent towards medical treatment was dishonoured by the Insurance Company on flimsy grounds. Accordingly, the complainant filed a complaint before the District Forum to direct Insurance Company to reimburse a sum of Rs. 1,60,000 along with Rs. 50,000 towards compensation and cost. The District

Forum after going through the records of the case, evidence led by the parties and hearing the Counsel for the parties held that the opposite party/Insurance Company was deficient in rendering services to the complainant and, therefore, it directed the OP to reconsider the claim application. It further held that "If the claim application is to be allowed on merits, the amount to be reimbursed shall carry interest at 18% p.a. from the date of the claim application till payment. The OP in the circumstances shall pay a sum of Rs. 2,000 (Rupees two thousand only) to the complainant towards the costs incurred by the complainant in this proceeding.

Dissatisfied by the order of the District Forum the opposite party/Insurance Company filed an appeal before the State Commission of Karnataka. After hearing the parties the State Commission disposed of the appeal by modifying the order of the District Forum in the following manner : (1) The appellant-OP is directed to pay Rs. 1,60,000 to the complainant with interest at 9% per annum from the date of the claim application till realisation. (2) The costs awarded by the District Forum is kept undisturbed.

3. AGGRIEVED by the order of the State Commission the Oriental Insurance Company has filed this revision. Submissions of the learned Advocate for the revision petitioner : The learned Counsel for the petitioner invited our attention to the proposal as mentioned in the Annexure A which is to be completed by the proposer in case of adverse history in the proposal form in respect of applicable illness. Under the head diabetic questionnaire he has mentioned "he is suffering from diabetes since four years and he takes the drug Glynase 1.5.

4. IN the form completed by the consulting physician/surgeon in case of adverse medical history it is stated that ECG, is normal except Tachycardia. The insurance policy issued by the Oriental Insurance Company clearly states two pre-existing diseases as declared viz., diabetes and Tachycardia. He further submitted that "The medi-claim policy expired on account of dishonouring of the cheque on 12.1.2003 as the policy had not been renewed. The cash amount was remitted towards the premium on 21.1.2003 and a fresh policy was thus issued for the period from 21.1.2003 to 20.1.2004 because there was a lapse of 9 days. In view of the fresh policy he submitted that the respondent was not entitled to get the claim under Caluse 4.2 of the terms and conditions of the policy which reads as under : "4.2. Any disease other than those stated in Clause 4.3, contracted by the insurance person during the first 30 days from the commencement date of the policy. This condition 4.2 shall not however, apply in case of the insured person having been covered under this policy or Group Insurance Policy with any of the Indian Insurance Companies for a continuous period of preceding 12 months without any break. NOTE : These exclusions, 4.1 and 4.2 shall not however apply if, (a) In the opinion of a Medical Practitioner(s) appointed by TPA/ Company, the insured person could not have known of the existence of the disease or any symptoms or complainants thereof at the time of making the proposal for insurance to the company."

5. IN this case there was a clear cut gap of 9 days between the policy and the fresh policy and complainant was aware of the diseases of diabetes and Tachycardia which have been mentioned by the doctor who examined him and as the insured underwent heart surgery treatment for the heart ailment within a month of the fresh policy. Hence, the INsurance Company has rightly repudiated the claim. Submissions of the learned Counsel for the respondent :

6. THE learned Counsel for the respondent who was the complainant before the District Forum submitted that for the first two years during which policy was in currency the complainant did not suffer from any heart ailment. District Forum has clearly held that it is a renewal of the policy. He invited our attention to pages 5 and 6 of the District Forum''s order wherein the District Forum observed as follows : In the context, one important development as revealed in Exhibit R-5 cannot be lost sight off. Exhibit R-5 is a copy of the letter of intimation issued by the OP to the complainant touching the dishonour of the said cheque. In this letter among other things, there is a clear recital as hereunder : "Further, cover shall again commence from the date of receipt of fresh remittance of Rs. 9,365 including bank charges of Rs. 75 in case of bank draft in favour of the Oriental Insurance Company Limited, you are requested to surrender the original policy/ cover note receipt for our records."

From this recital, one can read the intention of the OP. When the very policy stands automatically cancelled, no sooner the premium cheque is dishonoured, there was no need for the OP to so recite. They could have simply brought the factum of dishonour to the knowledge of the complainant - insured and kept quiet. It was the option of the insured either to go for a fresh policy or keep quiet. When that is so; why such an advise was given as per the said recital. The recital that the cover shall again commence would go to show that OP had the idea of renewing the policy in mind.

7. ACCORDINGLY, the conclusions drawn by the District Forum and State Commission are in order. There is no jurisdictional error in the impugned judgment of the State Commission. The Insurance Company has repudiated the claim of the complainant on a hyper technical ground so as to the defeat the cost of public at large. He further submitted that Tachycardia is not a disease. Tachycardia means a fast heart rate and, therefore, he submitted that respondent could not be said to be suffering from any heart disease as long as his ECG was normal. Findings :

8. THE main issue to be decided in this case has been summarized by us in the first para of this order. Undisputed facts of the case are that the petitioner was covered by medi-claim insurance policy for two successive years till 12.1.2003. THE cheque issued by the complainant towards the premium for continuation of the policy for a further period of one year was dishonoured. Accordingly, the Insurance Company immediately informed the complainant about dishonouring of the cheque though its registered letter dated 16.1.2003 informing them the premium cheque has been dishonoured and the policy issued has been cancelled

and for the issue of the fresh policy the premium has to be paid in cash. THE complainant paid premium in cash thereafter and petitioner issued the policy for the period 21.1.2003 to 20.1.2004. From the documents we have observed that while issuing the fresh policy the respondent had filed the proposal form and in that the concerned doctor has specifically mentioned that the ECG is normal except Tachycardia. The petitioner in view of such a specific reference had issued the policy schedule mentioning that the respondent is suffering from pre-existing disease as Diabetes and Tachycardia and this fell within the exclusion clause under the medi-claim policy. Hence there is a clear cut lapse on the part of the insured by not renewing the policy in time to enable him to get the benefits which he claimed.

9. THE learned Counsel for the respondent also claimed that Tachycardia is not a disease if that is so it would not have been mentioned in the execution column along with the Diabetes by the Insurance Company and also would not have been mentioned by the examining doctor while commenting on the ECG report.

10. THE Butterworths Medical Dictionary, Second Edition has given an elaborate meaning and analysis of the word Tachycardia. "Tachycardia-Rapid action of the heart; there are wide limits of normality for adults, from 40 to 100 beats per minute. It may occur as a result of widespread influences which act upon the heart, e.g. exercise, fever, emotion, hypotension or increased metabolic rate (reflex Tachycardia); it may also result from primary disorders of the heart such as cardiac failure, and paroxysmal disorders of rhythm. It only becomes abnormal when it is outside the normal range for the individual under the circumstances in which it occurs."

The learned Counsel for the insured had quoted judgment of the Delhi High Court, 117 (2005) DLT 74, Mukut Lal Duggal v. United India Insurance Company Ltd., decided on 7.1.2005. The extracts of head note of this case is reproduced below : "Medical policy of petitioner liable to be renewed on same terms though for future it is open to respondent Insurance Company to load premium to limited extent in case of high payments for insurance cover but not ignoring that policy in question is joint policy and no claim made on behalf of petitioner No.2 : Writ of mandamus issued directing respondent Company to renew from date of its expiry on payment of renewal premium payable by petitioners under scheme and without excluding diseases that may have been contracted during period of policy : Petitioner compensated for delay in making payment @ 7% S.I."

In the above case the Insurance Company had refused the cheque for renewal of the policy and the reason for the same is stated to be the advice of the Divisional Manager of the Company that because of the high claim ratio the Company was unable to renew the policy.

11. THE above case is distinguishable from the case on hand because in this revision we are examining the issue of lapse of the policy due to dishonouring of the cheque resulting in a gap of 9 days from the expiry of the existing policy and

issue of a fresh policy. Accordingly, we cannot ignore the written observation of the examining doctor which is a part and parcel of the proposal for insurance and also the clear cut terms and conditions of the policy indicating the exclusions thereof. Therefore, we allow the revision petition, set aside the orders passed by Fora below and dismiss the complaint. There shall be no order as to cost. Revision Petition allowed.

