(2015) 07 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

Case No : 319 of 2000

Padmavathy Venkatesh APPELLANT

Vs

Oriental Insurance Company Ltd. And Ors. RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 07 NCDRC CK 0058

Hon'ble Judges : AJIT BHARIHOKE J.

Final Decision : Consumer complaint allowed

Judgement

1. M /s. Padmavathy Venkatesh has filed this consumer complaint alleging that she alongwith her husband Shri K.G. Venkatesh (since deceased) and her daughter Selvi Vaishnavi Venkatesh planned a holiday in USA. They all obtained overseas medi -claim policies from the opposite party insurance company under plan ''G''. The complainant and her family departed from Chennai to New York on 5.3.1998. As per the travel plan the complainant''s family initially stayed at New York. Thereafter they reached Los Angeles where they stayed with their cousin. During the stay at Los Angeles Shri K.G. Venkatesh developed fever and complaint of tiredness. Despite of medication, there was no improvement. Shri K.G. Venkatesh thus consulted Dr. J.A. Jaidu who on 16.3.1998 suggested blood test. Shri K.G. Venkatesh gave blood sample in Unilab, Los Angeles. The blood test report dated 18 March, 1998 disclosed as under: - "The report of the above -said blood test was received by the deceased from M/s. Unilab which disclosed "Leukocytosis, Significant Left Shift and Cellular Atypia of neutrophilic Cells, suggestive of myeloproliferative disorder." At this point of time, on the basis of the above said report, Dr. J.A. Jaidu suspected the possibility of the initial stage of Leukemia. Hence, he advised the deceased to undergo chromosome analysis test of the deceased."

2. ON the basis of above report, Dr. Jaidu suspected possibility of Leukemia and advised to undergo chromosome analysis test. Shri K.G. Venkatesh underwent said test and the test confirmed chronic Myelogenous Leukemia. The second

opinion was also sought and ultimately on consultation with the experts, Shri K.G. Venkatesh decided to undergo bone marrow transplant at Westchester Medical Centre, New York. On 19.5.1998 Shri K.G. Venkatesh underwent bone marrow transplant surgery. However, after the surgery Shri K.G. Venkatesh started developing problems and ultimately he died on 12.7.1998. According to the complainant, her insurance claim for the expenditure on treatment of Shri K.G. Venkatesh repudiated by the opposite party insurance company. Being aggrieved of the repudiation of claim instant complaint was filed seeking following reliefs: - "This Honorable Commission may be pleased to direct opposite party to pay the claim amount of Rs. 1,20,00,000 only representing the value of the Medical expenses incurred, interest, compensation for mental agony and torture suffered by the complainant in a foreign soil and in her home land due to the negligence of the opposite party as provided under Section 21 of the Consumer Protection Act."

The opposite party in its written statement admitted that Shri K.G. Venkatesh had taken overseas medi -claim policy and that he was treated at USA and underwent bone marrow transplant. The opposite party, however, took the plea that her insurance claim was rightly repudiated because Shri K.G. Venkatesh had taken the insurance policy by concealment of vital fact about his previous ailment.

3. IN order to prove the claim, complainant filed her own affidavit whereas the opposite party filed affidavit of Sh. Masood Wahab, Chief Manager as also affidavit of Shri K.K. Dogra, Proprietor of M/s. Omniscient, who at the instance of the opposite party inspected the insurance claim preferred by the complainant.

4. LEARNED Shri S. Ravi Shankar, Advocate for the complainant has taken us through the record and submitted that there is no evidence on record to suggest that insured K G Venkatesh at the time of submitting proposal form for obtaining overseas medi -claim policy was aware that he was suffering from Leukemia. On the contrary, there is sufficient evidence on record to show that on reaching Los Angeles, the insured suffered complaint of fever and tiredness and when the said complaint could not be cured by ordinary medication, he was subjected to pathological test which revealed that insured was a patient of Leukemia. Learned counsel has contended that in view of the above, there was no justification for repudiation of claim particularly when despite of thorough investigation by the investigating agency M/s. Omniscient it could not be established that Shri Venkatesh had taken treatment for Leukemia or was found suffering from Leukemia before the submission of the proposal form. Mr. Vishnu Mehra, Advocate for the opposite party on the contrary has contended that there is no deficiency in service on the part of the opposite party. The insurance claim of the complainant was rightly repudiated because the medi -claim insurance policy was obtained by the insured late K.G. Venkatesh by concealing that he was suffering from Leukemia. Expanding on the argument, learned counsel for the opposite party has contended that conduct of the complainant throughout has been fraudulent. It is argued that the complaint is vague and information regarding

some material aspects has been suppressed. It is further contended that complainant in order to mislead the Bench has deliberately failed to produce the admission notes of the concerned hospital where the insured was admitted for bone marrow treatment and this has been done in order to suppress the past history given by the patient/attendance at the time of admission in the hospital. Learned counsel has taken us through the copy of the patient information form annexure P -5 wherein the name of the insurance company and its address has been left blank. It is contended that this has been done deliberately with a view to keep the insurance company in dark, and had this information been given, the insurance company would have come to know about the admission of the insured in the hospital and would have immediately verified the facts pertaining to misinformation given in the proposal form.

5. IN order to properly appreciate the submissions made on behalf of the parties, it is necessary to have a careful look on the facts of the case. Admittedly, insurance policy was obtained by the complainant before leaving for USA on 5.3.1998. It is undisputed that Shri K.G. Venkatesh developed fever and complaint of tiredness when he was at Los Angeles, therefore, he was subjected to blood and other pathological tests which revealed that he was suffering from Leukemia. It was also undisputed that the insured underwent bone marrow transplant for treatment of Leukemia but unfortunately due to some post - operative complications he died. The opposite party has repudiated the claim solely on the ground that insurance policy was obtained by concealment of the previous ailment. As the opposite party has taken shelter under the plea of misrepresentation and concealment of material fact, onus to prove misrepresentation or concealment lies on the opposite party. In order to discharge said onus the opposite party is relying upon the testimony of Shri K.K. Dogra, Proprietor of M/s. Omniscient, who was appointed by the opposite party to investigate into the claim pertaining to the death of Shri K.G. Venkatesh. Shri K.K. Dogra in his affidavit evidence has averred that during the course of his investigation he came to across following: - "1. Mr. K.G Venkatesh met with an accident earlier to 1996 and was treated upon in abroad.

2. He was patient of Sinus, Spondylitis (Refer Registration ++++).

3. He got registered in Apollo Hospital as a out patient under Dr. Sajan Hegde Spinal Surgeon and no clinical information has been recorded.

4. He got registered in Malar Hospital, but the relevant file is not traceable.

5. As per verbal statement of Dr. G. Sundhar Krishnan Mr. K.G. Venkatesh was in possession of Laboratory test on the prescription of some other Doctor for blood count.

6. Mr. K.G. Venkatesh was treated upon in abroad for Chronic Myeloid Leukemia.

OBSERVATION

From our enquiries based upon statements (written and verbal) documents and hospital record, we have observed that Mr. G.K. Venkatesh (deceased) has given wrong information in the proposal form of the subject policy, Mrs. Padma Venkatesh has not come forward with clean hands (it was un -aware of her husband''s attending any Hospital or clinic while his visit to Hospital has been proved.)

Mr. K.G. Venkatesh who has a clinical report on blood count and was treated upon abroad for Chronic Myeloid Leukemia and expired and his wife is not coming forward with clean hands to pass on relevant information. The Manager of Metal Forms (P) Ltd. verbally has stated that Mr. K.G. Venkatesh consulted Apollo Cancer Hospital. It has further been corroborated by the verbal statement of Dr. G Sundhar Krishnan. It is crystal clear to conclude that Mr. KG Venkatesh had a past medical history which is not disclosed on obvious reasons.

7. I say that our report dated 26 -03 -1999 is correct."

6. ON reading of the above testimony of Shri K.K. Dogra as also his investigation report, we find that the report of Investigation falls short of proof to establish concealment or misrepresentation of facts pertaining to previous ailment of the insured deceased. On perusal of the report of the Investigator we find that the Investigator visited Apollo Cancer Hospital, Nandam Teynampet, Chennai, Apollo Hospital, Greams Lane, Cancer Institute Idyar, Malar Hospital Ltd., Gandhi Nagar, Devki Hospital, Church Road, Chennai, Isaball Hospital, Olival Road, Chennai, Apollo Medical Centre, 105, G.N. Chetty Street, T. Nagar, Madras, Lister Laboratory, 1 -A, Jagnnathan Road but the Investigator could not find any cogent evidence which may suggest that Shri K.G. Venkatesh before obtaining the medi -claim policy was suffering from Leukemia or any other serious disease. On the contrary, the discharge summary of Shri K.G. Venkatesh (insured) issued by Westchester Medical Centre goes to show that Shri K.G. Venkatesh was a newly diagnosed case of CMM in chronic phase. The relevant portion of discharge summary is reproduced as under: - "HISTORY OF PRESENT ILLNESS:

The patient is a 36 -year -old man with newly diagnosed CML in chronic phase admitted for allogeneic bone marrow transplant from a fully matched sibling. The patient actually began his transplant as an outpatient. He received busalfan 16 mg/kg beginning on 5/12/98. He was admitted on 5/15/98 with nausea and inability to take p.o."

In absence of any cogent evidence to establish concealment of misrepresentation, we find no reason to disbelieve the observations made in the discharge summary and we are of the opinion that the opposite party has failed to establish that Shri K.G. Venkatesh had obtained overseas medi -claim insurance policy by concealing his previous ailment. Thus, the repudiation of insurance claim in our considered view is unjustified and amounts to deficiency in service.

7. NOW , the question arises as to what amount the complainant is entitled against the insurance claim? Admittedly, Shri K.G. Venkatesh had taken overseas

medi -claim policy under plan ''G''. On perusal of the insurance policy, we find that the insurance policy provides that in case of the insurance obtained with medical examination plan "G'' accident cover of USD 5 Lakh for illness and USD 5 Lakhs for accident. However, in case of the insurance cover without medical examination the amount of cover for illness is USD 10,000/ - only whereas the cover in case of accident is USD 5 Lakhs. Since the claim pertains to the expenses incurred on the treatment of illness, it is necessary to see whether the insurance cover was obtained with medical examination or without medical examination. There is no clue in the pleadings about the amount of insurance cover for illness nor about the fact whether the insurance cover was obtained with or without medical examination. However, on careful perusal of the insurance policy, we find that against the column of original physician report and certificate attached the word ''Nil'' is mentioned which makes it clear that Shri K.G. Venkatesh obtained overseas medi -claim policy under plan ''G'' without medical examination. Otherwise, the reference of the medical examination report would have been there in the insurance policy. Further on perusal of the proposal form also we find that part II -B of the proposal form which is required to be completed by the Doctor is blank. From this also it is evident that the insurance cover was obtained without medical examination. Thus, in our view as per the terms of the insurance policy, the illness of the insured was covered to the extent of USD 10,000/ -. Although the complainant has not specified the exact amount spent on the treatment of Shri K.G. Venkatesh but the complainant during the pendency of the complaint, filed medical record pertaining to the treatment of the deceased Shri K.G. Venkatesh which includes the copies of the receipt of sum of USD 80,400/ - and USD 1000/ - at Westchester Medical Centre, Valhalla, New York. Thus, it is established on record that more than USD 10,000/ - were spent on the treatment of Shri K.G. Venkatesh. Thus, in our considered view the insurance company is under obligation to pay the aforesaid amount to the complainant.

8. IN view of the discussion above, we are of the opinion that the repudiation of the insurance claim of the complainant on the plea of concealment of fact is not justified and it amounts to deficiency in service. We, therefore, direct the opposite party to pay to the complainant a sum equivalent of USD 10,000/ - in rupee alongwith 9% interest thereon from the date of filing of the complaint till realization of amount.

