(2008) 05 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

PALVINDER KAUR — APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY Limited — RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Citation : 2008 4 CPJ 383

Hon'ble Judges : Irshad Hussain , C.C.Pant J.

Advocate : S.K.Agarwal

Judgement

1. THIS appeal arises out of complaint based on Mediclaim policy.

2. FACTS relevant are that, a Mediclaim policy for sum of Rs. 2,00,000 was taken by Sh. Kuldeep Singh on 7. 7. 1998 from the respondent-Insurance Company. The said insured had filed consumer complaint No. 13 of 2000 before the District Forum, Udham Singh Nagar for award of compensation with the allegations that he went to Amritsar (Punjab) on 25. 7. 1998 to participate in the marriage ceremony of one of his relatives and there on 29. 7. 1998, suddenly experienced severe pain in his chest. The next day, on 30. 7. 1998, he got himself checked up in Ramsaran Das Kishori Lal Charitable Trust Hospital, Amritsar and on complete medical examination, was told by Dr. Harsharan Singh that his kidney had been damaged and that the medical option available to him, was to go for kidney transplant. A donor was arranged and required transplant of kidney was done, in connection of which, he remained admitted in the hospital from 30. 7. 1998 to 14. 10. 1998. During the pendency of the said complaint, insured Sh. Kuldeep Singh expired and his legal representatives, namely, his widow and two minor children, were substituted in the case. This complaint was ultimately dismissed on 14. 10. 2003 as being premature on account of the fact that the claim with the Insurance Company had not been preferred. It was directed that a proper claim shall be filed within one month, which shall be disposed of by the Insurance Company within a period of four months. The claim having not been paid, fresh consumer complaint No. 102 of 2004 was filed by the legal representatives of the insured on 9. 7. 2004.

The District Forum on an appreciation of the material on record, dismissed the complaint by order dated 26. 7. 2007, by observing that Sh. Kuldeep Singh was suffering from pre-existing kidney disease and had concealed this fact at the time of purchasing the Mediclaim policy on 7. 7. 1998. Aggrieved, the legal representatives of the deceased-insured filed this appeal.

3. THE only contention raised in the appeal is, that the District Forum fell in error in coming to the conclusion that Sh. Kuldeep Singh was suffering from pre-existing disease and knew about it at the time of taking the Mediclaim policy. Having carefully considered the material on record in the light of the contentions raised, we see no merit in this appeal and the same is, therefore, liable to be dismissed. The reasons are that it could not be safely disputed that complete damage of a kidney is on account of long drawn ailment relating to this vital and sensitive part of the body and generally on account of chronic renal failure as well as severe diabetic conditions. Sh. Kuldeep Singh had purchased the Mediclaim policy for the first time on 7. 7. 1998 and in the face of this peculiar fact, it does not stand to reason that in less than a month from taking the policy, he suddenly came to be informed on 30. 7. 1998 that his kidney had been damaged and require transplant of the same. Sh. Kuldeep Singh was a resident of a small village of District Udham Singh Nagar, where better medical facilities were not available and this appears to be the reason that he was initially taking treatment at Bareilly and Moradabad, the well known big districts having up-to-date and adequate medical facilities. Out-patient card of Vivekanand Hospital and Research Centre, Moradabad (Paper No. 27/13 of the original record), clearly reveals that the said insured got himself examined there on 27. 5. 1998 and was then also diagnosed kidney ailment, referred to as NIDDM and was advised regular treatment as well as Haemodialysis. Insured''s out-patient ticket of Postgraduate Institute of Medical Education and Research, Chandigarh (Paper No. 27/14), also indicates that he was examined there on 18. 5. 1998 and his ailment was then referred to as IDDM and his disease was found related to nephropathy and he was referred to renal clinic of the institute. In the written submission filed on behalf of the appellants, admissibility of these documents was questioned, but considering the authenticity of these institutes and medical centres and these documents having been submitted by the widow of the insured under her signatures, to the investigator Sh. A. B. Sharma, whose detailed report is on record (Paper Nos. 27/1 to 27/5), sufficiently establish their veracity and prove that insured knew about his kidney ailment from before taking the Mediclaim policy and was receiving treatment from super specialty research centre, PGI, Chandigarh.

4. APART from the above reliable documentary evidence, there is also on record, renal clinic file (Paper No. 27/12) of PGI, Chandigarh relating to the insured and the history of the insured recorded therein further confirm that the insured had been made aware of serious kidney disease in the month of March, 1998 while being treated at Bareilly. The history further reveals that the insured was on insulin and other drugs, which was indicative of serious kidney disease of the

insured and it was then also confirmed that his case was that of IDDM Nephropathy and dialysis was also recommended, if found necessary from time-to-time. We may further refer to the statement of insured''s widow Smt. Palvinder Kaur (Paper No. 27/6), as has been given to the said investigator and wherein, the widow had categorically averred that the kidney of her husband was damaged even 9 or 10 months before the operation in the month of September, 1998 and further that her husband used to remain sick since the year 1993. The investigator has taken note of all these facts and the documents in arriving to the opinion and rightly so that insured was suffering from pre-existing kidney disease, which was known to him and everyone in his family and the Mediclaim policy was taken on 7. 7. 1998 by concealing the fact of pre-existing disease. In spite of the overwhelming evidence on record, an attempt was made on behalf of the appellants that the report of the investigator, in the absence of his affidavit to prove the same, was not liable to be taken into account and made admissible in evidence by the District Forum and that, therefore, the inference drawn by the District Forum suffers from legal infirmity. It is well settled that in deciding the disputes between a consumer and service provider, a rational approach and not a technical approach is the mandate of law and further that the orders are required to be passed in accordance with justice and equity on the basis of the material available on record. There can be no gainsaying that the documentary evidence of renowned PGI, Chandigarh, having been found credible and reliable and so is also the case with regard to other documents referred above, the inference drawn by the District Forum, cannot be said to be infirm merely for want of any affidavit of the investigator of the Insurance Company. In our considered view, the material on record being such as warrants implicit reliance on it, leads to the only conclusion that the insured Sh. Kuldeep Singh - deceased was suffering from pre-existing kidney disease and concealed the fact at the time of taking the Mediclaim policy in the month of July, 1998. Therefore, the District Forum was fully justified in holding that the Insurance Company was not legally obliged to sustain the claim preferred under the Mediclaim policy and award compensation thereunder to the claimants. In other words, the order impugned in the appeal is fit to be upheld and the appeal is liable to be dismissed. For the reasons aforesaid, the appeal is hereby dismissed. No order as to cost. Appeal dismissed.

