(2009) 02 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

Patel Kirtikumar Prehladbhai — APPELLANT

Vs

NATIONAL INSURANCE COMPANY LTD. — RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Citation : 2009 3 CPJ 199

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint has been filed by Mr. Patel Kirtikumar Prehladbhai against the opposite party National Insurance Co. Ltd., for deficiency in service for repudiating his mediclaim after issuing a valid Overseas Mediclaim Insurance Policy.

2. BRIEF facts of the case are: The complainant had taken an Overseas Mediclaim Policy Standard Cover (Business and Holidays) and "Videsh Yatra Mitra" policy on 17.6.1998 for a period of 90 days for visiting the countries of United States of America and Canada covering a sum of US $ 5 lakh for illness. It was alleged that the complainant was absolutely in good health at the time of going abroad and the proposal form was filled up and duly accepted by the opposite party after receiving the required premium of Rs. 7,710. The complainant was 48 years old at the time of travelling and as on the date of the proposed journey, which was on 25.6.1998. When he was in U.S. complainant developed chest pain and visited a doctor on 10.7.1998 and as per the medical advice he got admitted in the hospital on 16.7.1998 at St. Elizabeth Medical Centre, New York, United States. He spent 46,875 Sterling Pounds which are equivalent to Rs. 32,77,850 for the treatment. He intimated and registered a claim with the agent of opposite party, M/s. Mercury International Assistance and Claims Limited as per the policy condition. All the documents pertaining to treatment taken had been provided to the Insurance Company in support of the claim. Aggrieved by the inaction of the opposite party, who did not respond to the claim process and non -payment of claim despite various written reminders,

the present complaint has been filed before this Commission for a relief on the grounds of deficiency in service against the opposite party. The complainant prayed for the directions to be given to the opposite party to pay Rs. 32,77,850 being the expenses incurred, Rs. 1 lakh for mental agony and Rs. 50,000 as litigation cost totalling to Rs. 34,27,850.

3. AS against this, opposite party, in its written statement contended that this policy excludes pre -existing condition of the disease which reads as under: "Pre - existing exclusion: This policy is not designated to provide an indemnity in respect of medical services, the need for which arises out of a pre -existing condition."

It was alleged that M/s. Mercury International Assistance and Claims Ltd. acts as claim handler for National Insurance Co. Ltd., who has investigated the treatment taken by the complainant in United States and after verifyihg the record it came to the conclusion that the disease was pre -existing. It was stated that M/s. Mercury International Assistance and Claims Ltd. vide letter dated 25.6.1999 informed the complainant their regret to accept the claim. The relevant extract of the said letter dated 25.6.1999 reads as under: "It is clear from the report that we have received that in accordance with the medical record received from the United States you have pre -existing diabetes, hypertension and high cholesterol, none of which were revealed at the time of taking out this insurance. This is, therefore, a clear non -disclosure of material facts and, as such, would render your policy null and void. We regret, therefore, that we are unable to make any payment in respect of the treatment that you have received in the USA and are advising the providers accordingly."

4. IT was pleaded that the insured suppressed the material fact as he was already suffering with hypertension, diabetes and high cholesterol, which is excluded from the terms of the policy.

5. IN this case the relevant documents pertaining to terms of the policy, proposal form, medical treatment taken in United States, reports of the medical treatment, reports of M/s. Mercury International Assistance and Claims Ltd. and the correspondence exchanged between the parties have been made as part of the record. It is complainant''s case that he never received the repudiation letter dated 25.6.1999 as alleged by the opposite party. It is averred that the complainant had taken medical test reports and ECG prior to travel and after perusing these reports, the policy was issued after being satisfied with these reports. It was submitted that, in the past, complainant submitted that although had been insured from the year 1998 to 2000, he never made any claim during the validity period of the policies and the defence of a pre -existing disease at the time of payment of claim is nothing but unfair trade practice and also deficiency in service.

6. THE main question for consideration is whether the complainant was suffering from pre -existing disease or not.

7. IN our considered view, the complainant was suffering from pre -existing diseases, which he was aware of but did not disclose to the opposite party at the time of taking the Overseas Mediclaim Policy. His own admission that he was being treated on Insulin, etc., at the time of treatment in U.S. shows that he concealed the same in the proposal form. Suffice to say that there is no deficiency in service on the part of the opposite party in repudiating the claim. This decision arises out of the documents, which are on record, which have been admitted and relied on by both the parties. On 10.7.1998, it has been noted by the Cardiologist Dr. Ashok R. Patel of Central New York Cardiology PC, who noted that the "patient has had similar symptoms in the past, approximately two to three weeks ago. He does not recollect the detailed event. At that time, the pain lasted 30 -35 minutes. In view of recurrent symptoms, the patient underwent baseline EKG which showed evidence of Q -wave in 2, 3, aVF, V4 -V6." The patient underwent stress test, which showed strong positive and cardiac catheterization was recommended. Regarding coronary risk factors doctor noted that the patient "quit smoking in1986. There is a history of hypertension and diabetes. His cholesterol level has been elevated in the past." On 13.7.1998, Dr. Paul D. Hapton of Cardiac Surgery Associates, P.C. Consult, to whom the complainant was referred to for evaluation of coronary artery bypass surgery has made the following noting at the time of consultation: IMPRESSION: 48 -year -old male with multiple risk factors for coronary artery disease including Insulin dependent diabetes who has a strongly positive stress test, irreversible ischemia, as well as severe two vessel .coronary artery disease and impaired left ventricular function.

8. MERCURY International Assistance and Claims Ltd. in turn, appointed Vasu Associates, of Chennai, India, as their investigators.Vasu Associates informed the same to the complainant by letter dated 18.4.1999 asking him to furnish all the details. On 21.5.1999, Vasu Associates sent an investigation report. From this report it is seen that when Vasu Associates were trying to reach the insured to find out whether he received their earlier letter and to ensure of the same they called on a number and the people who took up the phone after knowing from where the call is being coming from, they would just disconnect the phone. A telegram had been sent through a common friend to insure that the telegram would reach to the insured and an appointment was made in his house. Finally they met the insured and he was asked regarding his ailments, he admitted that he was under medication for diabetes and hypertension even before he left India. Although it is not as long period as it is mentioned in his report. It is further mentioned that he does not understand English and hence did not try to correct the doctors abroad when the report was being made. Vasu Associates concluded that the insured was telling lies because he told that his GP was not in town as he has gone abroad not realizing the fact that Vasu Associates spoke to his GP in the morning and fixed an appointment for the meeting. Regarding the reports, surgery details and discharge summary he concocted many stories and finally said that he left all the papers with one of his friends in U.S. i.e., Dr. Atul G.

Patel. When a Divisional Office of National Insurance Co. Ltd. conducted investigations, Dr. Atul G. Patel admitted that he was not insured''s regular GP and he came to him only for getting the proposal cleared for Overseas Medical Policy and that the insured suppressed major multiple risk factors and that he did not disclose the risk factors to him also. These papers were obtained by investigators and in the operative notes of St. Elizabeth Medical Center, New York, it is noted in the Preoperative Diagnosis "three -vessel coronary artery disease in diabetic patient". Vasu Associates also made a noting that the insured claimed chest pain testing for 20 to 30 minutes, two -three weeks before first reference to hospital on 10.7.1998, which means prior to leaving for United States he had myocardial infarction.

9. IN our opinion, the records and the investigations show that the complainant has manipulated medical reports in India and showed in the proposal form that he is in good health and with a view to get treated he went to United States. He was in the knowledge of existing diseases he was suffering from, which are otherwise excluded in the Mediclaim policy. The letter dated 25.2.1999 repudiating the claim by Mercury International Assistance and Claims Ltd. was sent both by post and also by fax communicating that the claim has been declined and the complainant is aware of the repudiation of the claim. In our view, the complainant/insured has preplanned the overseas trip and showed the record in such a manner that blood, sugar, etc., were normal by manipulating the record in India and showing falsely in the proposal form before getting the insurance policy. The report of Vasu Associates notes that the complainant is a big industrialist in Ahmedabad and in the business of manufacturing bidis with a turnover of 400 to 500 crores per annum.

10. WE reiterate that under Consumer Protection Act, 1986, the objective is to help the consumers when they suffer from deficiency in service by service providers but cannot lend support to those who file false complaints with concocted records to make unlawful gains. This is one such a case where the complainant in his affidavit alleged not only deficiency in service but also unfair trade practice adopted by the. Insurance Company, but on the other hand, it is he who withheld truth and concocted stories.

11. IN view of the aforesaid discussions, there is no merit in this complaint and hence dismissed with costs of Rs. 10,000.

