(2013) 09 NCDRC CK 0101

In the National Consumer Disputes Redressal Commission

Pinki Devi Sharma APPELLANT

Vs

SAHARA INDIA , M/S National Insurance Company Limited RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 634 : 2013 4 CPJ 177 : 2013 4 CPR 238

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Judgement

1. THAT the present petition has been filed for setting aside the order dated 30.07.2012 of the State Consumer Disputes Redressal Commission, (herein after, ''State Commission '') Circuit Bench No. 3 Rajasthan which held that the Heart Valve Operation is not included in the Coronary Artery Surgery and for confirming the order dated 10.06.2010 passed by the District Consumer Redressal Forum (Jhunjhunu) Rajasthan which held that the Heart Valve Operation is included in the Coronary Artery Surgery.

2. FACTS in brief: That the Complainant had deposited Rs.22,538/- in a term account under the Sahara Silver Labh Yojna Scheme of Respondents/OP under which depositor was covered from any critical illness expenses on treatment. For this petitioner took a policy cover from National Insurance Company. National Insurance Company had issued a Special Contingency Policy No. 451500/9500024/2003, through which employees, agents, associates, journalists, Sanchar Sathis of this Company were covered under Section 1 and depositors / investors were covered under Section 2 details of which is mentioned in Annexure-2. Details of critical illness are mentioned in Annexure-3. During the subsistence of her account there was Heart Valve Operation of the Complainant in Mumbai Hospital, Mumbai for which about Rs.48,000/- were spent. Her claim for reimbursement of expenses was rejected by OP on the ground that Heart Valve Operation is not included in the list of critical illness of insurance company. Therefore, alleging the deficiency in service Complainant filed a complaint before District Forum.

The District Forum after considering the facts allowed the complaint by concluding that the Complainant had undergone surgery for mitral valve replacement which is a coronary (artery) surgery and therefore, her medical condition was very much covered under the purview of critical illness declared in the said Scheme. The District Forum directed the OP to pay Rs.48224.50 with interest @ 9% p.a. from 18/10/2004 and cost of Rs.3000/-

3. THE OP preferred an appeal No. 1395/2010 before State Commission which was allowed vide its order dated 30.07.2012 holding that in the list of ''critical illness '' Heart Valve Operation is not included. However, it was admitted the ''Coronary Artery Surgery '' was included in the said list. It was also observed that Angioplasty and/or any other intra-arterial procedures are excluded from this definition. It has been further observed by the Ld. State Commission in the impugned order as under: i) Heart Valve Operation comes under that category of critical illness in the list issued by Life Insurance Company. ii) In the list as per Annexure-3 issued by National Insurance Company, Heart Valve Operation is not included. It only includes Coronary Artery Surgery. Angioplasty and/or any other intra-arterial procedures are excluded from this definition. iii) Such amount is not payable for any other heard disease except Coronary Artery Surgery. "

4. AGGRIEVED by the order of State Commission the Petitioner/complainant filed this revision. We have heard the counsels of the both parties who argued vehemently. The petitioner brought our attention to the decisions on similar issue have been fully settled by this Commission in the following cases: i. R.P. No. 1588/2010 titled LIC of India Vs. Dajadu Sitaram Mahale decided on 22.09.2011. ii. R.P. No. 2835/2007 titled LIC of India and Ors. Vs. Pathivada Mrutyunjaya Rao decided on 21.10.2011. iii. R.P. No. 4259 of 2007 titled The Branch Manager, Sahara India and Anr. Vs. Smt. Rekha Dey decided on 04.04.2012.

5. WE have perused the evidence on file, the records like policy, terms and conditions. Therefore, we are of considered view that Mitral Valve Operation for the replacement or for repair of the same definitely comes under the broader category of critical illness and specific category of Coronary Artery Surgery. The present case similar facts and is made against the same party in Rekha Day ''s case; it has been categorically held that the surgery for mitral valve replacement is a critical illness under the provisions of the scheme.

6. THAT according to Insurance Company under Sl. No. 10 of ''Critical Illness Rider '' repair or transplant of Heart Valve Operation is accepted to be critical illness. As per the Special Contingency Policy Schedule Annexure -2 , in present case the petitioner is covered under Section II- For Registered Depo /Investors. Advance Booking holders for Housing and various services of Sahara India. The petitioner deposited Rs.22538/- ; as per Section II mentioned above petitioner ''s critical illness cover is up to Rs.100000/- .

7. IT is also clear from the Annexure 1-the copy of Insurance Policy issued by OP-2 ; under caption Compensation for Coronary Artery Surgery which states : as " The compensation for coronary Artery Surgery shall be limited to 20% of lint

of indemnity mentioned in schedule ".

8. CONSIDERING the above condition as per Annexure 1, the complainant is entitled for 20% of Rs.100000/- i.e. Rs.20000/- only. But, the Consumer Protection Act 1986 (in short CP Act) is a social act, therefore very stringent approach towards Complainant ''s prayer will defeat the purpose of CP Act. At this juncture we cannot ignore the entire circumstances and sufferings of Complainant in this case. Therefore, we set aside the order of State Commission and modify the order of District Forum as; The Revision Petition is partly allowed. The OPs are directed to pay Rs.20,000/- along with interest @ 9% p.a. from 18/10/2004. We impose punitive cost of Rs.20,000/- (Rs.10,000/- for each OP) should be paid to the Complainant. This entire order should be complied within 45 days otherwise it will carry further interest of 9% p.a. till realization.

