(2016) 03 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

Case No : 279 of 2011

R. VENKATA KRISHNA APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. & ORS. RESPONDENT

Date of Decision : 07-03-2016

Acts Referred:

Citation : 2016 2 CPR 353

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : K. Maruthi Rao, A.K. De

Judgement

1. This revision is directed against the order of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (in short, "the State

Commission) dated 10.11.2010 whereby the State Commission allowed the appeal preferred by the respondent/opposite party against the order of the District Forum, set aside the order of the District Forum and dismissed the complaint.

2. Briefly put facts relevant for the disposal of the revision petition are that the petitioner filed a consumer complaint in the District Forum alleging that he had purchased an overseas medi-claim policy valid w.e.f. 17.8.2006 to 6.9.2006. The policy promised reimbursement for expenses on treatment and illness etc. It is alleged that the petitioner reached U.S.A. on 18.8.2006. On the same day the petitioner while having a shower bath fell down and sustained injury. He was immediately taken to the hospital where he was given treatment as an inpatient for a day and was discharged on 19.8.2006. The medical expenses incurred by the petitioner were to the tune of US dollars 14,965/- equivalent to Rs.5,99,979.20P. The petitioner submitted insurance claim with agent of opposite party No.1 insurance company. The insurance claim was, however, repudiated on the ground that as the injury had occurred as a direct result of past history of ailment of the petitioner, in view of the exclusion clause the claim for expenses incurred on treatment was not payable. Being aggrieved of the repudiation of the claim the petitioner raised a consumer dispute before the District Forum-II,

Hyderabad which was contested by the opposite party.

3. The District Forum on consideration of the pleadings and the evidence held the respondent/insurance company to be deficient in service and directed as under: -

" In view of our clear finding on point No.1 the complainant successfully proved deficiency of service on part of the opposite parties 1 to 3. Hence, we are opined that the opposite parties 1 to 3 are jointly and severally liable to pay Medi Claim amount USD 14,965/- @ 1=40.08.

Rs.5,99,979.20P (rupees five lakhs ninety nine thousand nine hundred and seventy nine rupees twenty paise only) and compensation of Rs.5,000/- (rupees five thousand only) and cost of the complaint Rs.1,000/- (rupees one thousand only) to the complainant.

In the result we direct that opposite parties 1 to 3 are jointly and severally liable to pay Medi Claim amount USD 14,956/- @ 1=40.08. Rs.5,99,979.20P (five lakhs ninety nine thousand nine hundred and seventy nine rupees twenty paise only) and compensation of Rs.5,000/- (rupees five thousand only) and cost of the complaint Rs.1,000/- (rupees one thousand only).

Dictated to Steno, transcribed and typed by her, pronounced by us on this the 23 day of January, 2009." rd

4. Being aggrieved of the order of the District Forum, the opposite party/ insurance company preferred an appeal and the State Commission vide impugned order allowed the appeal, set aside the order of the District Forum and dismissed the complaint. This has led to filing of the revision petition.

5. Learned Shri K. Maruthi Rao, Advocate for the petitioner has taken us through the proposal form as also the consultation prescription of Saint Barnabas Medical Center under the signatures of consulting physician Mr.Louis Rizio, MD and submitted that as per the aforesaid document the past medical history was non-contributory to the ailment of the petitioner and as such the repudiation of insurance claim is not justified. It is further contended that the State Commission has failed to consider the above-said document as such the impugned order is not sustainable.

6. Learned Shri A.K. De, Advocate for the respondents has argued in support of the impugned order.

7. We have considered the rival contentions and perused the record. On perusal of record we find that the petitioner has placed on record copy of his discharge summary prepared by the attending Physician Shri Maninder Abraham, MD. The relevant portion of the discharge summary dealing with the history of the illness including the medical history is reproduced as under: -

" ATTENDING PHYSICIAN: MANINDER ABRAHAM, MD HISTORY OF PRESENT ILLNESS: The patient is a 54-year-old male with past medical history significant for alcohol abuse, hypertension, diabetes, who had a witnessed generalized tonicclonic seizure in the morning. The patient had just arrived on a flight from India and had not had any alcohol in the last 24 hours. He experienced loss of consciousness and the tonic- clonic movements which resolved in 1 to 2 minutes. The patient fell and hit his head during the episode. He had another episode of seizure on arrival to the emergency room. The patient was given Ativan and Dilantin in the emergency room.

PAST MEDICAL HISTORYS: Significant for hypertension, diabetes and alcohol abuse.

MEDICATION: He was on some medications from India which included Lisinopril."

8. On reading of the above, it is clear that the petitioner had past medical history of alcohol abuse, hyper tension & diabetes.

9. Petitioner has placed on record copy of the terms and conditions of the insurance policy. Clause 2 of the insurance policy under the heading GENERAL EXCLUSION APPLICABLE TO ALL SECTIONS provides as under: -

" No claim will be paid arising from suicide, attempted suicide or willfully self-inflicted injury or illness, mental disorder, anxiety, stress or depression, venereal disease, alcoholism, drunkenness or the abuse of the drugs, or any loss arising directly or indirectly from any injury, illness, death, loss, expenses, or other liability attributable to HIV (Human Immunodeficiency Virus) and/or any HIV related illness including AIDS (Acquired Immune Deficiency Syndrome) and/or any mutant derivative or variation thereof however caused."

10. On reading of the above, it is clear that insurance company is not liable to pay any claim arising out of any alcoholism, drunkenness or abuse of drugs either directly or indirectly. On careful perusal of the discharge summary it is clear that ailment suffered by the petitioner was because of the withdrawal symptoms of non-consumption of alcohol for 24 hours which is indirect result of alcohol abuse and, therefore, the State Commission was justified in holding that the repudiation of insurance claim was justified.

11. There is another aspect of this case. From the discharge summary it is clear that the petitioner had past history of hyper tension, diabetes and alcohol abuse. He, however, in his proposal form has concealed this fact in answer to question No.1 pertaining to medical history whereby the petitioner was asked whether he was in good health and free from physical and mental disease or infirmity to which the petitioner has answered in affirmative, meaning thereby that the petitioner has concealed that he was suffering from hyper tension, diabetes and alcohol abuse. As the petitioner had concealed the material information regarding his past ailment from the opposite party, the contract of insurance itself is void. Reference is made to the judgments of Hon''ble Supreme Court in the case of Satwant Kaur Sandhu vs. New India Insurance Co. Ltd. (2009) 8 SCC 316 and P.C. Chako vs. & Anr. vs. Chairman, LIC of India (2008) 1 SSC 321 .Therefore also the repudiation of claim is justified.

12. In view of the discussion above, we do not find any infirmity in the impugned order which may call for interference in exercise of revisional jurisdiction.

13. Revision petition is, therefore, dismissed.

