

(2014) 12 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

Reena Kansal

APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2014) 12 NCDRC CK 0040

Hon'ble Judges : AJIT BHARIHOKE J.

Final Decision : Petition dismissed

Judgement

1. THIS revision is directed against the order of the Punjab State Consumer Disputes Redressal Commission in First Appeal No. 1194 of 2008 whereby the State Commission concurred with the decision of the District Forum Ludhiana and dismissed the appeal resulting in dismissal of the complaint of the petitioner complainant.

2. BRIEFLY stated facts relevant for the disposal of the revision petition are that the petitioner obtained a mediclaim policy from respondent No. 1 insurance company effective for the period 19.09.2006 to 18.09.2007. During the subsistence of the insurance policy, the petitioner underwent surgery for knee implant replacement at Beach Candy Hospital Trust Mumbai. The cost of surgery implant was Rs. 6,26,062/ -. The petitioner filed an insurance claim but her claim was repudiated on the ground that petitioner obtained the insurance policy by concealment of material facts that she got one lateral total knee replacement (TKR) in the year 1990. As such, the insurance contract having been obtained on the basis of concealment was invalid. The District Forum Ludhiana on consideration of the pleadings and evidence dismissed the consumer complaint vide order dated 04.09.2008.

3. AGGRIEVED by the order of the District Forum, the petitioner approached the State Commission in appeal and the State Commission dismissed the appeal on two counts, namely, that the insurance contract was invalid because the petitioner had obtained the insurance policy by concealing the material facts relating to her previous knee transplant and secondly on the ground that she was

not entitled to any claim in view of exclusion clause 4.1 of the insurance policy.

4. MR . J.S Bhola has assailed the impugned order on the ground that both the foras below have ignored the material factual aspects of the case. In support of this contention, learned counsel for the petitioner has drawn our attention to a letter addressed by doctor of Rapid Diagnostic Lab to the Senior Manager, United India Insurance Company informing that he has examined patient Reena Kansal 53 yrs./F on 16.09.2003 regarding past history : knee replacement 13 years back both legs, now in left leg again. In the aforesaid letter, it is clear that the information regarding the past knee replacement surgery undergone by the petitioner was within the knowledge of the respondent insurance company at the time of issue of first insurance policy from 19.09.2003 to 18.09.2004. Therefore, it cannot be said that the respondent/insurance company was misled due to some incorrect information in the proposal form while issuing the mediclaim insurance policy. It is further contended that the foras below have committed an error in declining the insurance claim to the complainant in view of clause 4.1 of the latest insurance policy valid from 19.09.2006 to 18.09.2007. It is contended that the foras below have failed to appreciate that from 2003 onwards, the petitioner was continuously renewing the mediclaim policy from year to year. Therefore, she would be governed by the terms and conditions of the first policy under which exclusion clause 4.1 was not there.

5. SO far as the repudiation of the claim on the ground of concealment of material fact is concerned, it is undisputed that first mediclaim policy was obtained by the petitioner in September 2003 and, thereafter she continued to get the insurance policy renewed on year to year basis. On perusal of the copy of the proposal form submitted at the time of obtaining the insurance policy, it transpires that respondent answered in the affirmative to Question 12 (a) which reads as under: "Are you a good health and free from physical and mental disease or infirmity or medical complaints? Yes."

Further, the petitioner responded in the negative to question 12 (e) which is reproduced as under:

"Any disease of the bones or joints including rheumatic disease? No. "

6. ADMITTEDLY , the petitioner has undergone knee transplant surgery in the year 1990. Thus, at the time of filling of proposal form, the petitioner was not in good physical health and she had a medical complaint of knee problem and she also had the disease of the knee joint. Thus, it is obvious that in the proposal form, the petitioner had given wrong information concealing her actual physical condition. Now the question arises whether the concealment of this vital information vitiates contract act? In this regard counsel for the petitioner has relied upon the letter of Rapid Diagnostic Lab intimating the Senior Manager, United India Insurance Company Ltd. that they had examined the petitioner Reena Kansal on 16.09.2003 who had past history of knee replacement of both the legs. It is contended by the petitioner that from this letter it is clear that

before issuing mediclaim policy, the respondent/insurance company was aware of the knee replacement surgery of the petitioner. As such, now the respondent cannot say that it was misled by the petitioner to enter into the insurance contract. The argument of the petitioner appears to be attractive but the question is whether this information was conveyed to the insurance company prior to the issue of mediclaim policy. The letter relied upon by the petitioner is not dated. Therefore, it cannot be said that it was available to respondent when they issued the mediclaim policy in the first instance. Thus, the petitioner has failed to establish that the respondent issued mediclaim policy having knowledge of her earlier knee transplant surgery. As the petitioner had obtained the insurance policy by concealment of the material fact regarding her earlier knee transplant, the insurance contract is invalid. As such, the finding of the foras below dismissing the complaint cannot be faulted.

7. COMING to the second limb of the argument of the petitioner. Perusal of the relevant insurance policy issued in September 2006, we find that this policy contains exclusion clause 4.1 which reads as under." "Exclusions:

"The company shall not be liable to make any payment under this policy in respect of any expenses whatsoever incurred by any Insured person in connection with or in respect of:

4.1 All disease/injuries which are pre -existing when the cover incepts for the first time. For the purpose of applying this condition, the date of inception of the initial mediclaim policy taken from any of the Indian Insurance Companies shall be taken, provided the renewals have been continuous and without any break".

8. ON reading of the above, it is clear that as per this condition, the insurance company is not liable to make any payment under the policy in respect of any expenditure incurred by the insured in respect of all diseases or injuries which are pre -existing at the time of first mediclaim insurance cover taken by the insured. Admittedly in this case at the time of first mediclaim policy, the petitioner had knee ailment and she had already undergone transplant surgery. Thus, for the said pre - existing condition, which required transplant in view of clause 4.1, the respondent is not liable to make any payment for the expenses incurred by the petitioner. Thus the orders of the foras below cannot be faulted on this count also. Learned counsel for the petitioner has contended that this exclusion clause was not there at the time of first insurance cover. Therefore, the respondent by introducing this clause in the subsequent contract cannot take advantage of the same. We do not find merit in this contention for the reason that mediclaim insurance contract are issued by the insurance company on year to year basis and the contract was renewed on yearly basis. In the relevant contract i.e. insurance policy under question, exclusion clause 4.1 has been incorporated. Therefore, it is binding on the parties. If the petitioner was not agreeable to the said exclusion clause, she could have opted out of the contract by seeking refund of the annual premium paid by her. Otherwise also, the purpose of medical insurance is to reimburse the insured for treatment of any

disease or ailment during the period of insurance policy. In the instant case, the petitioner is seeking reimbursement in respect of the replacement of artificial knee implant, which by no stretch of imagination can be said to be covered under the medical insurance contract.

9. IN view of the discussion above, we do not find any infirmity or jurisdictional error in the impugned order, which may call for interference by this Commission in exercise of the revisional jurisdiction. Revision petition is, therefore, dismissed.