
(2012) 12 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

R.W.H. Ghyaz Ahmed

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Citation : 2012 0 NCDRC 860 : 2013 1 CPJ 23

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Revision Petition dismissed

Judgement

1. R .W.H. Ghyaz Ahmed, the complainant/petitioner obtained a Mediclaim Policy from New India Assurance Co. Ltd./OP 1, for a sum of Rs. 1,00,000. Respondent Nos. 2, 3 are its agents. The Complainant was hospitalised for treatment of viral fever, dental injury and he submitted a claim for a sum of Rs. 1,03,550, on 27.9.2006. The OPs settled the claim for a sum of Rs. 2,550 and repudiated the remaining claim. The complaint was filed before the District Forum with the prayer the respondents be directed to pay Rs. 1,10,000 as per mediclaim policy along with interest @ 24% p.a. for the inordinate delay caused, from the date of mediclaim, i.e. from 27.9.2006, till the date of realization, amounting to Rs. 50,000, and they also be directed to pay compensation in the sum of Rs. 1,00,000.

2. THE District Forum, vide its order, dated 4.8.2008 dismissed the complaint. The State Commission vide its order dated 20.3.2012, affirmed the order passed by the District Forum. Thereafter, this revision petition was filed. We have heard the learned Counsel for the petitioner. He has invited our attention towards the Clauses 2.2, 2.3, 4, 4.0 and 4.7 of the policy, which are reproduced as follows: "2.2. "Surgical Operation ", means manual and/or operative procedure for correction of deformities and defects, repair of injuries, diagnosis and cure of diseases, relief of suffering and prolongation of life. 2.3. Expenses on hospitalisations for a minimum period of 24 hours are admissible. However this time limit will not apply for specific treat-ment, i.e. Dialysis, Chemotherapy, Radiotherapy, Eye Surgery, Dental Surgery, Lithotripsy (kidney stone removal)

Tonsillectomy, D&C, taken in the Hospital/ Nursing Home and the Insured is discharged on the same day, the treatment will be considered to be taken under Hospitalisations Benefit. "4. Exclusions 4.0. 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 to 4.6 xxxxx 4.7 Any dental Treatment or Surgery which is corrective, cosmetic or an aesthetic procedure including wear and tear, unless arising from disease or injury and which requires hospitalization for treatment ".

3. THE learned Counsel for the petitioner opined that this case is also covered by the above clauses.

4. THE argument advanced by the learned Counsel for the petitioner lacks conviction. The above said clauses clearly go to show that his case does not fall within the above said clauses. It must be borne in mind that the expenses related to the treatment taken as "out-patient ", for dental problems, falls outside the scope of the policy, under Exclusion Clause 4.7. Consequently, the claim was rightly repudiated.

5. IN the Ex. A-1, the date of admission into the hospital was shown as 16.9.2006 and the date of discharge was shown as 17.9.2006. This also stands proved that between 16.9.2006 and 17.9.2006, the complainant was admitted for fever, body pains and joint pains, and the dental treatment was availed by the complainant on an OPD basis.

6. THE State Commission was pleased to observe as follows: "7. As stated above, admittedly the appellant/complainant was not hospitalized as an in-patient and he is not entitled to claim under the policy for dental treatment, in view of the Exclusion Clause 4.7 of the policy. Therefore, we hold that there is no deficiency in service on the part of the opposite parties.

Clause 2.3 will come into play only if the petitioner can show that he was hospitalized for dental surgery. In Harchand Rai Chandan Lal 's case, IV (2004) CPJ 15 (SC)=V (2004) SLT 876=2005 ACJ 570 (SC), the Apex Court held that "the Terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever, liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended.

7. IN Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd. and Anr., IV (2010) CPJ 38 (SC)=VIII (2010) SLT 375=IV (2010) ACC 653 (SC)=the Hon 'ble Apex Court held: "24.Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the

endeavour of the Court should always be to interpret the words in which the contract is expressed by the parties. "

8. IN *General Assurance Society Ltd. v. Chandmull Jain*, 1966 ACJ 267 (SC), a Constitutional Bench of the Apex Court observed that: "In interpreting documents relating to a contract of insurance, the duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however, reasonable, if the parties have not made it themselves. "

The revision petition, being meritless, is hereby dismissed. Revision Petition dismissed.