(2017) 09 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

Case No : 691 of 2013

SANGEETA KESARWANI — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. & ANR. — RESPONDENT

Date of Decision : 13-09-2017

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2017 4 CPR 177

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Dinesh Malik, Sushil Kr. Gupta, Vikas Negi

Judgement

1. This revision petition is filed under Section 21(b) of the Consumer Protection Act, 1986 against the order dated 04.10.2012 passed in First Appeal No. 413 of 2012 by Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, ''the State Commission'') whereby the State Commission accepted the appeal and set aside the order dated 9.2.2012 passed by District Consumer Disputes Redressal Forum, Sonepat (in short, ''the State Commission'').

2. The brief facts of the case are that the complainant was a Medi-claim policy holder since 25.4.2007 and regularly renewed upto period from 25.04.2009 to 24.04.2010. The sum assured was of Rs 3,30,000/- including Rs 30,000/- as Bonus amount. On 04.12.2009, the complainant visited Medanta Hospital and consulted Dr. Rajagopala for her complaints of pain in both the knees. On 17.12.2009, the complainant underwent Arthroplasty of both the knees. The complainant paid a sum of Rs 3,75,170/- for the treatment. After discharge, the complainant approached the OP for reimbursement of medical expenditure through Medi-claim policy. But OP repudiated the claim of the complainant on 23.12.2010 stating that as per exclusion clause 4.1 of the policy, the complainant had pre- existing disease. Therefore, against the alleged illegal repudiation, the complainant filed complaint before the District Consumer Redressal Forum, Sonipat. (herein after referred as District Forum).

3. The OP contested the complaint by filing written version. The OP denied that the patient was not having any joint pain at the time of purchase of policy on 25.4.2007, also denied that the complainant started knee joint problems in the month of June, 2009. As per the treatment record of Medanta Hospital, the complainant consulted Dr. Rajgopala, who after clinical examination and certain laboratory tests, diagnosed her as suffering from both knee joint pain. As per prescription slip and the X-ray report done in the year 2004, it was mentioned about ''Advanced Degenerative Disease''. Therefore, it was clear that the patient was suffering from knee pains since year 2004 i.e. prior to the insurance coverage. The claim was repudiated after taking the opinion from Company''s doctor. As per condition 4.1-Pre-existing disease of the policy, the claim of complainant was not payable, as she was having pre-existing disease in her both knees i.e. much prior to 2007.

4. Considering the pleadings and evidence, the District Forum vide order dated 09.02.2011allowed the complaint and directed the OP to pay an amount of Rs 3,00,000/- to the complainant along with interest @ 9% per annum from the date of filling of the complaint and also awarded Rs 1,000/- for mental agony and litigation expenses.

5. Being aggrieved by the order of District Forum, the complainant approached the State Commission by way of first Appeal. The Appeal was allowed vide order dated 4.10.2012 and consequently, the complaint was dismissed. The State Commission held that the Medi-claim policy was purchased by complainant in the year 2007 whereas the complainant has undergone knee replacement in the year 2009 i.e. within three years from the date of obtaining the policy. Therefore, under condition No. 4.3, serial no. 22 of the terms and conditions of the policy, the complainant was not entitled for Medi- claim benefits under the policy.

6. Aggrieved by the impugned order of State Commission, the complainant filed revision petition.

7. As per the treatment of Medanta Hospital certain tests were suggested to the Complainant and it was found that the complainant was suffering from knee joints pain and the x-ray report of the complainant of the year 2004 showed advance disease and the same is also found mentioned in the prescription issued by the said doctor on 4.12.2009 meaning thereby the complainant was suffering from knee pain since year 2004 i.e. much prior to her insurance policy which was started in the year 2007.

8. We have heard the learned counsel for both the parties. There was delay of 31 days in filing this revision petition. For the reasons stated in the application for condonation of delay, the delay is condoned. Coming to the merit of this case, the learned counsel for the petitioner/complainant submitted that the complainant was hale and hearty on 25.4.2007 without any disease. Since 2009 onwards the policy was regularly renewed. After third renewal, she felt pain in her both knees and it was increasing in nature. In December, 2009, Dr. Rajgopala

at Medanta Hospital found that the petitioner was suffering from "ADVANCED DEGENERTIVE JOINT DISEASE" of both knees. Therefore, bilateral total knee anthroplasty was performed on 18.12.2009 and the patient was discharged from the hospital on 24.12.2009. After discharge from the hospital, the complainant submitted all claims papers to the OP/company. Complainant''s husband many times visited the OP office but there was no avail. Vide a letter dated 23.12.2010, the OP company informed that as per condition No. 4.1-pre-existing disease, the claim was not reimbursable.

9. We have perused the policy, also the terms and conditions of the policy. Perused the medical record and prescriptions issued by Dr. Rajagopala at Medanta Hospital. It is pertinent to note that the hand written prescription of Dr. Rajagopala dated 4.12.2009 revealed that the X-ray of both knee joint was done in 2004 which resulted into ''Degenerative change''. Further, Dr. Rajagopala examined the patient and diagnosed it as "ADVANCED DEGENERATIVE JOINT DISEASE", both the knees which were stated by bilateral total Knee Orthoplasty. In our view, condition No. 4.1 i.e. pre-existing disease is not applicable here because mere writing as "degenerative change (2004)" does not signify the underlying disease. The patient was 58 years of age and obviously in 2004, the age related ''Degenerative changes'' are obvious. Hence, it is not construed as a pre-existing disease.

10. Secondly, we have perused the exclusion clause of the policy, which clealry states about '' Waiting period for specified disease/ailments/conditions''. Under this, condition No. 22 clearly states about ''Joint Replacements due to Degenerative Condition''. The waiting period is four years. Thus, considering the exclusion condition No. 4.3 (22), it is an admitted fact that the complainant took the policy in the year 2007 and after 3 rd renewal, she underwent knee replacement in 2009, which falls within three years from the inception of the policy. Therefore, the repudiation done by OP is legally correct.

11. Considering the entirety of the facts, in our view, there is no error apparent in the well reasoned of the State Commission. We do not find any merit in the instant revision petition. Hence, the revision petition is dismissed. Consequently, the complaint is dismissed.

