(2013) 08 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

SBI LIFE INSURANCE CO. LTD. — APPELLANT

Vs

Ashwani Kumar Juneja — RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 612

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : RAKESH MALHOTRA , P.D.TIWARI

Judgement

1. THIS revision is directed against the order of the State Commission, Punjab, Chandigarh dated 27.12.2004 by which the State Commission dismissed the appeal preferred by the petitioner / opposite party with cost of Rs.5000/- against the order of the District Forum to the following effect: "So in view of the above noted facts, the present complaint is allowed and the opposite party is directed to pay to the complainant the sum assured i.e. Rs.1,00,000/- (Rupees one lac only) alongwith interest at the rate of 6% per annum from the date of complaint i.e. 24.06.2009 till realization. The opposite party is further directed to pay to the complainant a sum of Rs.1000/- (Rupees One Thousand only) as litigation expenses. Orders be complied within a period of thirty days from the date of receipt of a copy of this order. File be consigned to record room ".

2. THE relevant facts for the disposal of this revision petition are that complainant / respondent Ashwani Kumar filed a consumer complaint under 12 of the Consumer Protection Act, 1986 against the petitioner alleging that he obtained SBI Life Insurance Policy from the petitioner commencing from 08.11.2004. The date of the maturity was 08.11.2019. As per the terms and conditions of the policy, the respondent / complainant was provided basic life cover for Rs.1.00 lac besides the critical illness rider and accidental death and accident total disability rider for Rs.1.00 each. The critical illness rider also included the risk benefit from heart attack. It is alleged that the respondent suffered a heart attack in January 2009 and angiography was done on 05.01.2009 which confirmed 95 % & 50% blockage in Left Axis Deviation (LAD)

and Left Circumflex Artery (LCX). Thus, on the advice of the doctors, the respondent underwent coronary angioplasty on 09.01.2009. He spent a sum of Rs.3.00 lac on the treatment. The respondent filed the claim for Rs.1.00 lac under critical illness clause of the insurance policy. The claim was repudiated by the petitioner on the ground that angioplasty and / or any other intra-arterial procedures were excluded from the insurance cover. Claiming the repudiation to be deficient in service, the petitioner approached the District Forum. The petitioner in its written reply claimed that there was no deficiency in service and insurance claim of the respondent / complainant was rightly repudiated.

3. THE District Forum on consideration of evidence took the view that angioplasty treatment taken by the respondent / complainant was covered under the critical illness clause of the insurance policy. As such, holding the petitioner to be deficient in service, allowed the complaint and passed the above noted order.

4. BEING aggrieved of the order of the District Forum, the petitioner preferred an appeal before the State Commission Chandigarh. The State Commission concurred with the order of the District Forum and dismissed the appeal with the following observations: "We have considered this submission also, but we are not in agreement with the argument of the learned counsel for the appellant, because critical illness rider was obtained by the respondent vide proposal Ex.C-5 and at the time of accepting the proposal, no such condition was mentioned in the proposal and the District Forum has rightly observed that the critical illness of heart attack and other diseases are covered and not the procedure. The procedure to be adopted to cure a particular disease is the judgment of the doctor and not of the patient or the assured. The Coronary Artery Bypass Surgery is also one of the methods to remove the blockage and Angioplasty is also one of the methods to remove the blockage by introducing the stent. A prudent man will not understand the medical procedures to be followed by the doctor at the time of taking the policy, but the policy is taken to cover critical illness which as per the policy, included kidney problems, cancer etc., including the heart attack. The respondent in the present case suffered heart attack and took treatment from the hospital, having specialization to cure this illness and the procedure is not covered under the policy, but it is the disease. In case, the appellant insurance company wanted to take the benefit of the clause of procedures, then it was incumbent upon the appellant to minutely explain the details of the policy and the procedures which are excluded, but there is no such evidence that the procedures were also explained. A prudent man takes the policy and pays the premium, believing that in the event of any critical illness, he will be covered and the medical expenses will be borne by the insurance company, but the insurance company, on technical and inhuman grounds, tried to repudiate the claim by taking shelter of one clause or the other, which amounts to cheating the innocent public under the garb of insurance cover ".

Shri Rakesh Malhotra, Advocate, learned counsel for the petitioner has contended that the orders of the fora below are not sustainable in law because the orders

are based on wrong reading of the insurance contract between the parties. Expanding on the argument, learned counsel for the petitioner has taken us through the critical illness benefit clause dealing with the heart disease and submitted that the aforesaid clause specifically exclude the angioplasty and / or any other intrA arterial procedure from the insurance cover. It is argued that since the angioplasty procedure is specifically excluded from the insurance cover, both the foras below have exceeded their jurisdiction in allowing the complaint of the respondent.

5. SHRI R.K.Tripathi, learned counsel for the respondent on the contrary has argued in support of the impugned order and contended that the approach adopted by the State Commission in the above noted observations cannot be faulted. He has thus urged us to dismiss the revision petition.

6. THE controversy which needs determination in this revision petition is whether or not the claim of the complainant / respondent is covered under the critical illness rider of the insurance policy?. In order to find answer to the above question, it would be useful to have a look on relevant critical illness rider clause in the insurance policy which is reproduced thus " "Critical Illness Benefits: The following benefit is available provided Critical Illness Rider is opted for and this rider is in force: If at any time after six months from the Date of Commencement of Risk and before the expiry of the rider term and the Life Assured is diagnosed by any of the Critical Illness /Diseases as defined below, and the same is proved to the satisfaction of the Company, the Company agrees to pay the Sum Assured under this rider. Upon payment of the rider Sum Assured, the liability of the Company to the policy holder shall extinguish all other rights, benefits and interests to the policy holder or whomsoever it may belong under the Policy in respect of Critical Illness. There is no benefit payable in case of any event other than the one mentioned above. Once a claim under this rider is accepted the Life Assured exists from all other riders (viz. term assurance rider, accidental death and TPD rider and premium waiver benefit rider) which she / he has availed. Critical Illness / disease: b. Coronary Artery (Bypass) Surgery: The actual undergoing of open chest surgery for the correction of two or more coronary arteries, which are narrowed or blocked, by coronary artery bypass graft. The surgery must have been proven to be necessary by means of coronary angiography. Angioplasty and / or any other intro-arterial procedure are excluded from the cover.

On reading of the above, we find that as per the insurance contract between the parties, Coronary Artery Bypass surgery forms part of the critical illness / diseases covered under the insurance policy. However, on careful reading of the clause under the heading ''critical illness / diseases (b) '', we find that angioplasty and / or any other intra-arterial procedure are specifically excluded from the cover. Admittedly, in the instant case, the respondent / complainant had undergone angioplasty which is excluded from the insurance cover. Therefore, in our view, the impugned order of the fora below in favour of the complainant /

respondent are based upon the incorrect reading of the relevant condition of the insurance contract. Thus, we are of the view that fora below have exceeded their jurisdiction in allowing the complaint by misreading the contract. Accordingly, the impugned order of the State Commission as also the order of the District Forum cannot be sustained. Revision petition, is, therefore accepted and orders of the fora below are set aside and the complaint filed by the respondent is dismissed. No order as to costs.

