(2016) 09 NCDRC CK 0128

In the National Consumer Disputes Redressal Commission

Case No : 1984 of 2016

SENIOR DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD.	APPELLANT
Vs	
DR. DEBABRATA MAJUMDAR & ORS.	RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Citation : 2016 4 CPR 165

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : K.K. BHAT, Kalyankumar Deb

Final Decision : Petition Disposed

Judgement

1. Mr.Kalyankumar Deb, Advocate has put in appearance on behalf of the Complainants, Respondents No.1 and 2 in the Petition. Since Notice to Respondent No.3, i.e. Medicare TPA Services, was not considered necessary, we have heard learned counsel for the contesting parties.

2. Challenge in this Revision Petition, by the New India Assurance Co. Ltd. (for short "the Insurance Company"), is to the order dated 19.5.2016, passed by the State Consumer Disputes Redressal Commission, West Bengal at Kolkata (for short "the State Commission") in First Appeal No.A/1276/2014. By the impugned order, while reversing the order dated 17.10.2014, passed by the District Consumer Disputes Redressal Forum, Kolkata, Unit-II in C.C. No.178/2014, whereby the Complaint was dismissed on contest, the State Commission has directed the Insurance Company to reimburse to the Complainants a sum of 14,922/-, the amount expended by them for medical treatment and claimed under the Mediclaim Policy issued by it, along with interest at the rate of 12% p.a. from November 2012 and litigation costs quantified at 10,000/-, with a default stipulation to the effect that if the said amount is not paid within a period of 40 days from the date of its order, it shall carry interest at the rate of 8% p.a. till full realization. Additionally, the State Commission has also directed the Insurance Company to pay a sum of 5,00,000/- as punitive damages, out of

which 50,000/- is to be paid to the Complainants and the remaining amount is to be deposited in the State Consumer Welfare Fund, West Bengal.

3. On 15.7.2016, when the Revision Petition came up for motion hearing, notice issued to the Complainants was confined to the question of award of the afore-noted punitive damages. Ad interim stay in respect of the said amount was granted on the condition that the Insurance Company shall pay to the Complainants all other amounts, as directed in the impugned order.

4. It is stated by learned counsel appearing for the Insurance Company that the aforesaid order has already been complied with, which fact is confirmed by the Complainants, who are present in person along with their counsel.

5. Thus, the short question surviving for consideration is as to whether the facts of the case warrant levy of punitive damages amounting to 5,00,000/-.

6. We have heard learned counsel for the parties. Having examined the issue in the light of the stipulation in the Mediclaim policy, though we are in agreement with the interpretation of these clauses by the State Commission but at the same time, we are of the view that in the absence of any prayer by the Complainants in this behalf, the said direction is unsustainable. Moreover, the said direction also stands vitiated on the touchstone of the recent decision, rendered by the Hon''ble Supreme Court in General Motors (India) Pvt. Ltd. vs. Ashok Ramnik Lal Tolat & Anr. - (2015) 1 SCC 429. While disapproving the award of punitive damages in favour of the Complainant in that case, the Hon''ble Court has observed thus : "We have already set out the relief sought in the complaint. Neither there is any averment in the complaint about the suffering of punitive damages by the other consumers nor was the Appellant aware that any such claim is to be met by it. Normally, punitive damages are awarded against a conscious wrongdoing unrelated to the actual loss suffered. Such a claim has to be specially pleaded. The Respondent complainant was satisfied with the order of the District Forum and did not approach the State Commission. He only approached the National Commission after the State Commission set aside the relief granted by the District Forum. The National Commission in exercise of revisional jurisdiction was only concerned about the correctness or otherwise of the order of the State Commission setting aside the relief given by the District Forum and to pass such order as the State Commission ought to have passed. However, the National Commission has gone much beyond its jurisdiction in awarding the relief which was neither sought in the complaint nor before the State Commission. We are thus, of the view that to this extent the order of the National Commission cannot be sustained. We make it clear that we have not gone into the merits of the direction but the aspect that in absence of such a claim being made before the National Commission and the Appellant having no notice of such a claim, the said order is contrary to principles of fair procedure and natural justice. We also make it clear that this order will not stand in the way of any aggrieved party raising a claim before an appropriate forum in accordance with law."

7. In light of the said authoritative pronouncement and the fact that in the present case also, no such relief was sought by the Complainants, the award of punitive damages by the State Commission is set aside. Nevertheless, it can be safely inferred from the impugned order that while directing that out of the said sum of 5,00,000/-, a sum of 50,000/- shall be paid to the Complainants, the State Commission had taken into consideration the prayer made by the Complainants for award of compensation of 25,200/- for the harassment and mental agony they had suffered on account of delay in reimbursement of the claim in question by the Insurance Company. Since we have set aside the award of punitive damages, out of which a sum of 50,000/- had to be paid to the Complainants, but have otherwise affirmed the view taken by the State Commission on the merits of the claim, we modify the impugned order to the extent that instead of the afore-noted amount of 50,000/-, a sum of 25,000/- shall be paid by the Insurance Company to the Complainants as compensation for the harassment and mental agony caused to them.

8. In the result, the Revision Petition is partly allowed to the extent indicated above.

9. It goes without saying that we have not expressed any opinion on the merits of the other grounds urged by the Insurance Company in the Revision Petition. The same are kept open, to be decided in an appropriate case.

10. The amount due in terms of this order shall be remitted by the Insurance Company to the Complainants within four weeks from the date of receipt of a copy of this order.

11. The Revision Petition stands disposed of in the above terms with no order as to costs.

