(2003) 01 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

SHANTILAL P.MALVANIA APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Citation : 2003 2 CLT 545 : 2003 2 CPJ 9 : 2003 2 CPR 198

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Revision Petition allowed

Judgement

1. THIS revision petition arises out of the order of the State Consumer Disputes Redressal Commission, Gujarat, whereby the State Commission set aside the order of District Forum and allowed the appeal.

2. THE facts in brief which led the complainant to approach the District Forum for is under : The complainant took a mediclaim policy on 23rd March, 1992, covering the period 31.3.1992 to 30.3.1993. During the validity of the policy had undergone bypass surgery. Since the opposite party Insurance Company refused to reimburse the expenses incurred by the complainant on account of the bypass surgery, the complainant approached the District Forum. The District Forum partially allowed the claim. Thereafter the complainant applied for the renewal of the policy which the Insurance Company did by excluding the heart ailment from the coverage of the policy. This had resulted in filing the complaint before the District Forum with a prayer that the Insurance Company be directed to renew the policy without excluding the heart ailment from the coverage of the policy. The District Forum relying upon the guidelines issued by the General Insurance Corporation allowed the appeal and directed the Insurance Company to renew the mediclaim policy of the complainant for the period between 31.3.1994 to 30.3.1995 without any break and without any exclusion clause as proposed by the opposite party Insurance Company.

Feeling aggrieved by the order of the District Forum the complainant went in appeal to the State Commission. The State Commission upon hearing both sides set aside the order of the District Forum while holding that the guildelines/

instructions which are issued by the General Insurance Corporation to its subsidiaries do not confer any right on the insured, which is an inter-departmental matter with which the insured is not directly concerned and the insured cannot claim any benefit or relief on the basis of such guidelines.

3. NOW, it is the complainant who is petitioner before us. The stand taken by the complainant is that the guidelines issued by the General Insurance Corporation is binding on the United India Insurance Co. Ltd. and in the present case according to the guidelines prevalent during 1988 the respondent Insurance Company could not refuse to extend the benefit. Vide our order dated 24th July, 2002 we had directed the learned Counsel for the Insurance Company to bring on record the guildelines which were in force during 1988 according to which provision the Insurance Company cannot deprive the insured from getting the benefit of renewal of the policy with exclusion and the matter was adjourned to 12th August, 2002. The learned Counsel for the Insurance Company did not submit any such information for the reasons best known to him. One can expect that Government undertakings like the Insurance Companies to keep the guidelines and non-production thereof amounts to suppression of facts. In our order dated 12.8.2002 we had noticed the provisions of Clause 13 of the Guidelines of 2002 of G.I.C. which reads as under : "In case renewal has been agreed then the illness for which expenses have been paid in the previous year''s policy are not to be excluded. The policy has to be renewed on the existing terms and conditions."

Moreover, the learned Counsel for the petitioner, during the course of arguments, to substatiate his argument that the Insurance Company is bound to renew the policy without applying any exclusion clause, has filed the case of one Mr. Kothari Harish R., in whose case the Insurance Company renewed the policy without any exclusion of the illness. It may be mentioned here that the Insurance Company renewed the policy in the case of Mr. Kothari in the year 2001-2002. The learned Counsel for the Insurance Company, when these papers were shown, was not able to justify the different treatment given to the insured from the one given to Mr. Kothari. Having not produced the 1988 Guildelines without any valid cause the presumption would be that the document if produced would have gone against the respondent. We, therefore, hold that even the earlier guidelines would be having such provision as quoted hereinabove. In view of the above discussion we cannot but come to the conclusion that the Insurance Company was deficient in rendering service by wrongfully denying the legitimate claim of the insured by excluding the coverage of heart ailment from the policy and direct the Insurance Company to give the petitioner herein the continuity of the insurance policy without any exclusion clause subject to payment of existing premium rates for such cases, as per the guidelines. Under the aforesaid guidelines such exclusion cannot be resorted to if it is agreed to renew the policy. It would, however, be open to Insurance Company not to agree to renew the policy. But, having agreed to renew, it is not open to them to exclude any such illness from the policy. G.I.C. being the apex body of all general insurance companies in public sector, it cannot be argued that the guidelines issued by it are not binding on the respondent company.

4. IN the circumstances, the revision petition is allowed, the order of the State Commission is set aside and that passed by the District Forum is upheld. IN the facts and circumstances of the case, there will be no order as to costs. Revision Petition allowed.

