
(2017) 03 NCDRC CK 0089

In the National Consumer Disputes Redressal Commission

Case No : 911 of 2014

STAR HEALTH & ALLIED INSURANCE CO. LTD.

APPELLANT

Vs

HARIDAS C.K.

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Citation : 2017 1 CPR 579

Hon'ble Judges : K.S. Chaudhari

Advocate : LAKSHMANAN T.J., Avanish Kumar

Judgement

1. This revision petition has been filed by the petitioner against the order dated 29.7.2013 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (in short, "the State Commission") in Appeal No. 932/2012 ? The Manager, Star Health and Allied Insurance Company Ltd. Vs. Haridas C.K. by which, appeal was dismissed.

2. Brief facts of the case are that Complainant/respondent obtained Family Health Optima Insurance Policy from OP/Petitioner for a sum of Rs. 2 lakhs w.e.f. 14.6.2011 and paid premium. Prior to issue of policy complainant and his wife undergone a medical checkup and the result was sent to the opposite party directly. On 10/02/12 the complainant was admitted in Baby Memorial Hospital, Kozhikode with chest pain and undergone angioplasty. He was discharged on 13/02/12. On 15/03/12 he made a claim to the opposite party for the reimbursement of the expenses to a tune of Rs.1,62,522/- which was rejected on 28/04/12, the reason for rejection is said to be on the basis of exclusion clause in the policy schedule. The complainant contented that there was no such condition while at the time of issuing the policy and receiving the premium. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP was proceeded ex-parte before District Forum and learned District Forum allowed complaint and directed OP to reimburse Rs. 1,62,522/- along with compensation of Rs. 1,000/-. Appeal filed by OP was dismissed by learned State Commission vide impugned order against which, this revision petition has been

filed along with application for condonation of delay.

3. Heard learned Counsel for the parties finally at admission stage and perused record.

4. Petitioner has filed application for condonation of delay in which it was mentioned that due to chickenpox to the counsel for the petitioner, delay of 92 days occurred which may be condoned whereas, as per office report, there was delay of 63 days in filing revision petition. Learned Counsel for the petitioner filed his affidavit in support of application in which it was mentioned that file was entrusted to him, but due to chickenpox, he could not prepare revision petition in time. In this application it has nowhere been mentioned that he was suffering from chickenpox from which period to which period and has also not filed medical documents to substantiate this fact and in circumstances, it cannot be presumed that only on account of chickenpox to the counsel for the petitioner, delay of 63 days occurred in filing revision petition in addition to 90 days allowed for filing revision petition. As there is inordinate delay of 63 days, this delay cannot be condoned in the light of the judgment passed by the Hon'ble Apex Court in (1) (2010) 5 SCC 459 ? Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Anr.; (2) (2012) 3 SCC 563 ? Office of The Chief Post Master General and Ors. Vs. Living Media India Ltd. and Anr. and (3) 2012 (2) CPC 3 (SC) ? Anshul Aggarwal Vs. New Okhla Industrial Development Authority.

5. Learned Counsel for the petitioner submitted that schedule attached with policy contained exclusion clause; even then, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside and complaint be dismissed. On the other hand, learned Counsel for the respondent submitted that as schedule was not supplied to the complainant, order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

6. Complainant specifically pleaded in the complaint that no exclusion clause was attached to his policy. OP remained ex-parte before District Forum and before State Commission inspite of opportunities given to the petitioner, copy of exclusion clause was not filed and application for taking exclusion clause on record was dismissed by this Commission vide order dated 21.10.2016. Once exclusion clause is not on record, order passed by learned State Commission dismissing appeal is in accordance with law, as there was no exclusion clause attached to the policy. Learned Counsel for petitioner has drawn my attention towards document A.1 shown in the order of District Forum but it does not contain any exclusion clause. Merely because it has been mentioned that insurance under the policy was subject to conditions, clauses, warranties, exclusion, etc. attached, in the absence of attaching aforesaid conditions, exclusion, etc., it cannot be presumed that expenses incurred in treatment of disease were excluded from the coverage.

7. In the light of aforesaid discussion, I do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

8. Consequently, revision petition filed by the petitioner is dismissed at admission stage with no order as to costs.