

(2011) 07 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

State Commission, Punjab New India Assurance Co. Ltd.

APPELLANT

Vs

Murari Lal Bhusri

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : 2011 0 NCDRC 403

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Advocate : Sushil Gupta , Neeraj Jain , Sushant

Judgement

1. IN this revision there is a challenge to the order dated 10th October, 2006 passed by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh (For short State Commission). State Commission vide impugned order, dismissed the appeal filed by the petitioner challenging order dated 15th November, 2006 passed by District Consumer Disputes Redressal Forum, Ferozepur (for short District Forum).

2. BRIEF facts are that respondent had been taking medi-claim policies right from the year 1993, details of which are as under:-- Sr. No. Policy No. Risk Period Insurers 1.48/01738 28.6.93 to 26.6.94 B.O. Fazilka 2.48/02005 25.6.94 to 24.6.95 - do 3.48/02296 27.6.95 to 26.6.96 - do 4.48/02671 01.8.96 to 31.7..97 - do 5.48/03025 06.8.97 to 05.8.98 - do

Respondent underwent bye-pass surgery in Escorts Heart Institute & Research Centre, New Delhi on 14th of February, 1998. In the discharge summary issued by Escorts Hospital, it was mentioned that CART was done on 31-01-1998 and it was found that there was a triple vessel disease EF 50%. Ultimately, bye-pass surgery was done and respondent submitted a claim for the sum of Rs.1,71,350/- as amount spent on his treatment.

This was repudiated by the petitioner, on the ground that the disease for which the treatment was done was pre-existing at the time the insurance policy was taken.

3. DISTRICT Forum vide order dated 15th November, 2000, allowed the

complaint with cost directing the petitioner to pay Rs.1,71,350/- with interest @ 18% p.a. from filing of the present complaint i.e. 30th November, 1999 till realization and also to pay Rs.500 as cost of litigation to the respondent within one month from the date of receipt of the copy of the order. It is argued by learned counsel for the petitioner that as per the insurance policy, the company is not liable to make any payment under this policy in respect of any expenses incurred by the insurer for those diseases which are pre existing.

4. THE other contention is that in the discharge summary of Escorts Hospital, it is clearly mentioned that respondent was suffering from coronary heart disease for the last six years and has undergone CART (Angiography) five years back which revealed DVD (Double Vessel Disease) and as such the impugned order is liable to be set aside. It is also contended that admittedly there was a gap of 35 days in issuance of the policy for the fourth year, which has been treated as a fresh policy. As such petitioner is not entitled to any claim and impugned order is liable to be set aside. On the other hand, it is contended by learned counsel for the respondent that there is no illegality in the impugned order passed by the State Commission. Petitioner, has examined Dr. Dinesh Dhir as their witness who in his cross examination has stated that he never examined the respondent/complainant till date and he never asked the petitioner to produce the patient/complainant for examination before submission of the report. Further, as per statement of this doctor, he has given opinion only on the basis of his experience as well as case history of Escort Hospital.

5. DISTRICT Forum in its order, observed:-- It is admitted case of the opposite party that the complainant got insured himself with the opposite party since 28-06-93. If the complainant was suffering from heart disease then why the opposite party issued mediclaim policies to the complainant. In our view if a person has knowledge that he is suffering from heart disease, he cannot take risk of his life for a long period for taking benefit of insurance policy. In the circumstances of the case it is clear that the complainant was not suffering from any heart disease prior to taking the mediclaim policy in question and he has not concealed any fact from the opposite party regarding his heart problem. As such he is entitled to the amount which was incurred by him for his treatment. No receipt/bill/ticket has been produced by the complainant to prove that he spent Rs.4000/- as traveling expenses from Fazilka to New Delhi for his treatment. As such the complainant is not entitled to claim the same from the opposite party. The opposite party has illegally repudiated the claim of the complainant and deprived the complainant from the use of the amount of claim for which the opposite party is liable to pay interest on the delayed payment. The complainant has to file the present complaint in order to get the amount of claim from the opposite party. As such he is also entitled to costs of litigation.

6. STATE Commission concurred with the findings of District Forum and observed:-- However, the facts reveal, which have been enumerated above, that the medical treatment was taken during the subsistence of the fifth policy, which

was taken on 6th of August, 1997 and was a continuous policy after the fourth policy had come to an end on 31st of July, 1997. The 5th policy was taken within one week of the expiry of the 4th policy. This is not being disputed by the learned counsel for the appellant that the 5th policy under the rules and regulations of the Insurance co. would be taken a continuous policy of the 4th policy. Even if we assume that there is a break in the policy i.e. 3rd and 4th then the appellant might succeed if he can show that the disease for which the treatment was taken existed prior to 1-8-1996. Let us examine the evidence on the record which, according to the learned counsel for the appellant, is a pointer that the complainant had the disease prior to 1-08-1996 for which he took treatment after getting admitted on 31-01-1998 (the operation was done on 14-02-1998). Learned counsel for the appellant referred to the discharge summary of the Escorts Hospital in the resume of history. It was mentioned as under:-- RESUME OF HISTORY Mr. Murari Lal Bhusri is a 62 years old pleasant gentleman who is hypertensive, diabetic, nonsmoker and has no family history of ischaemic heart disease. He underwent CART 5 years ago, which revealed DVD with normal LV function. Now for the last one month he has been having retrosternal burning sensation upon exertion, relieved by taking rest. No h/o CVA/TIA/Allergy in the past. He was admitted to this hospital for coronary angiography This resume, according to the learned counsel for the appellant, shows that 5 years ago the complainant had undergone CART, which revealed DVD with normal LV function. Therefore, the counsel argued that the complainant had the disease for which he took the treatment on 14th of February, 1998. Its further mentioned that the complainant had been having angina on exertion for the one moth. There is no history of myocardial action in the past. This was written after discharge on 20-02-1998. The question that arises for our consideration is : are the diseases, which have been mentioned above are the same for which the treatment was taken? Take for instance a person is having a particular disease in the eye prior to taking of the policy. After taking the policy he undergoes a cataract operation, can the claim be repudiated on the ground that the complainant had some eye disease prior to the taking of the policy and therefore, nothing is reimbursable so far as cataract operation is concerned. According to us, if it can be proved that the cataract was prior to the taking of the policy, perhaps, the claim can be repudiated. There is nothing on the record to show us that the disease for which the treatment was taken on 14-02-1998 the complainant was suffering from the same disease prior to the taking of the policy. Though in common parlance one may say that angina is not a disease but even if it is to be taken a disease of heart, it cannot certainly be said to be triple vessel disease for which treatment was undertaken by the complainant. In these circumstances, leaning towards the consumer, we will hold that the Insurance Co. was not legally right in repudiating the claim of the complainant. We agree with the approach of the District Forum when it allowed the complaint as aforesaid. As per record, Coronary artery bypass grafting of the respondent was done on 14th February, 1998. Relevant portion of discharge summary dated 20th February, 1998 of Escorts Heart Institute reads as under:--

Mr. Bhusri is a 62 year old gentleman who is known hypertensive, known diabetic, case of coronary artery disease with pleasing personality. He had been having angina on exertion for the last 6 years. There is no history of myocardial infarction in the past. He was advised further investigation.

As apparent from the above discharge summary, there is no history of myocardial infarction in the past and respondent was advised further investigation. Thus, there is no evidence on record to show that respondent was aware of any pre-existing disease at the time when the insurance policy was taken and accordingly there is no suppression of material facts.

7. IN Narsingh Singh through LR's & Ors. Vs. Shanti Devi through LR's & Ors. 2010 (115) DRJ 601. Delhi High Court observed; It is well settled that where two Courts below have given a concurrent findings of facts, this Court under Article 227 of the Constitution of India shall not disturb the findings even if there is some mistake committed in appreciation of some part of evidence. Under Article 227, this Court does not correct the mistakes of law or mistakes of facts. The intervention of the this Court under Article 227 has to be only in those exceptional cases where the fora below had either not exercised their jurisdiction or had acted beyond jurisdiction or had ignored the well-settled legal proposition and acted contrary to law. Supreme Court in *Mudigonda Chandra Mouli Sastry vs. Bhimanepalli Bikshalu and others*, (AIR 1999 (SC) 3095) observed; It was also not open to the High Court in exercise of its revisional jurisdiction to have indulged in a reassessment of evidence and thereby interfered with the finding of the facts recorded by the two Courts below.

8. RECENTLY, Supreme Court in *Rubi (Chandra) Dutta vs. United India Insurance Co.* 2011 (3) Scale 654 observed that; Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. IN this view of the matter, we are of the considered opinion that that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent finding of two fora. Since two Fora below have given detailed and reasoned orders which does not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction, present petition being without any legal merits, is hereby dismissed. Parties shall bear their own costs.