

(2011) 08 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

TARLOK CHAND KHANNA

APPELLANT

Vs

United India Insurance Co Ltd

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Citation : 2012 1 CPJ 84

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition allowed.

Judgement

1. THE present revision petition has been filed by Tarlok Chand Khanna (hereinafter referred to as the "Petitioner") being aggrieved by the order of the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the "State Commission") in favour of United India Insurance Co. Ltd. (hereinafter referred to as the "Respondent").

2. THE facts of the case, according to the Petitioner who was the original complainant before the District Forum, are that he had obtained a mediclaim insurance policy from the Respondent/Insurance Company from 1.1.2002 to 31.12.2002 for a sum of Rs. 1,50,000 for himself and his wife, Smt. Karuna Khanna. During the subsistence of this policy, Smt. Karuna Khanna suddenly developed pain in her knees. She had never suffered from any medical problems relating to her knees earlier. However, she went to the doctor who advised her to undergo surgery for knee replacement of both knees which she underwent on 15.9.2002 at a total cost of Rs. 1,78,945. Unfortunately, she died due to sudden cardiac arrest in the hospital on 29.9.2002. Requisite information regarding her admission into Nayyar Hospital, her subsequent treatment there and the relevant medical bills were forwarded to the Respondent/Insurance Company for settlement of the claim as per the policy but this was repudiated by the Respondent on the grounds that the claim was not covered as per Clause 4.8 of the policy as well as the Exclusion Clause 4.1 since it was a pre-existing disease. Since, the insuree did not have any pre-existing disease nor were she or the Petitioner ever made aware of the terms and conditions of the policy, Petitioner,

therefore, filed a complaint before the District Forum on grounds of deficiency in service for having wrongly repudiated the claim and requested that the Respondent be directed to pay the Petitioner Rs. 1,78,945 towards medical treatment of the deceased insuree with interest @ 12%, Rs. 10,000 as compensation as well as any other relief available under the law.

3. THE above contention was denied by the Respondent who stated that there was no doubt that the insuree had a pre-existing disease since it is medically well established that any problem which would require replacement of the knees cannot occur within days or months and in fact takes years for the knees to degenerate to a condition where total replacement is medically advised. Thus, under Clause 4.1 of the policy which is an exclusion Clause, any pre-existing disease even if it is without the knowledge of the insuree is excluded. Further, under Clause 4.8 also since degeneration of the knee is a physical weakness and not an illness per se again the insuree is not entitled to get any medical insurance benefit. In view of these circumstances, the Respondent was within its right not to indemnify the claim.

4. THE District Forum after hearing both parties dismissed the complaint on the grounds that the Petitioner had failed to prove the treatment for which the claim was sought. The relevant part of the order of the District Forum reads as under: "There is no affidavit of any doctor of Nayyar Hospital nor there is any death certificate issued by any cardiologist showing cause of death of the wife of the complainant as cardiac arrest on 29.9.2002. Photocopy the certificate purported to have been issued by Nayyar Hospital shows that Smt. Karuna Khanna wife of Sh. Tarlok Chand Khanna who was admitted to Nayyar Hospital on 15.9.2002 had sudden cardiac arrest and died on 29.9.2002. This document has not at all been proved on record by the complainant as a result of which no evidentiary value can be attached to this document. There is no evidence that Smt. Karuna Khanna had ever taken any treatment for cardiac trouble. There is also no evidence as to who was that Cardiologist who treated her and concluded that she had died of cardiac arrest. Repudiation letter issued by the opposite party dated 31.3.2003 creates further doubt that in this letter date of death is mentioned as 19.9.2002 and not 29.9.2002. Above discussion shows that there is not even an iota of evidence that the complainant was ever admitted for knee replacement and that she had died of cardiac arrest on 29.9.2002 as alleged by the complainant in his complaint. Mere affidavit of the complainant cannot be taken to be proving his entire version given in the complaint. It was incumbent upon the complainant to have produced and proved the ailment suffered by the complainant, its treatment and also name of the doctor who has treated her i.e. who has carried out her knee replacement surgery and doctor who has treated the alleged heart attack as discussed above. We absolutely have no option but to dismiss the present complaint for lack of evidence as allegations levelled by the complainant could not be proved in the absence of the evidence which was totally desirable to be produced on record by the complainant."

5. AGGRIEVED by this order, Petitioner filed an appeal before the State Commission which dismissed the appeal by making the following observations: "It takes sufficient long time before the doctor's advice for total knee replacement because of the deterioration of the knee bones which takes sufficiently long time for degeneration, in that case it had been observed that the mere fact that the knees had to be replaced would go to show that there was a pre-existing disease when the insurance policy was taken. It may further be observed that in case of a mediclaim policy the knowledge of the disease to the insured is not relevant; it is only the existence of the disease prior to the taking of the policy which is relevant consideration. Even if it is to be taken in this case that the first policy was in the year 1996 and, therefore, it had to be shown that the disease had been there prior to 1996 when the first policy was taken, we are of the view that apart from the fact that there is nothing on the record by way of expert evidence by the complainant that the disease which led to the total knee replacement had occurred after 1996. We can assume that it must have taken more than six years prior to the operation for the knees to get deteriorated to the extent that they required replacement by way of surgery. We find nothing wrong with the approach of the District Forum while dismissing the complaint of the complainant."

Hence, the present revision petition.

6. COUNSEL for both parties made oral submissions. Counsel for Petitioner reiterated that the claim was wrongly repudiated on the ground that the deceased had a pre-existing disease. According to the Counsel for Petitioner, the deceased/insuree did not have any medical complaint pertaining to her knees nor did she undergo any treatment and when she felt pain for the first time in September, 2002, she visited the doctor. In fact, the onus to prove that she had a pre-existing disease was on the Respondent who failed to file any expert medical or credible evidence in support of its case. Further, the deceased had been taking the mediclaim insurance policy from the Respondent right from 1996 and she had also, as per the practice, been examined by the doctor of the Respondent/Insurance Company who has nowhere recorded that she had any medical problems relating to the knees. Counsel for Petitioner further cited a judgment of this Commission in *National Insurance Co. Ltd. v. Raj Narain*, I (2008) CPJ 501 (NC)=2008 NCJ 559 (NC), wherein the Commission had, inter alia, observed as follows: "Most of the people are totally unaware of the symptoms of the disease that they suffer and hence they cannot be made liable to suffer because the Insurance Company relies on their Clause 4.1 of the policy in a mala fide manner to repudiate all the claims. No claim is payable under the mediclaim policy as every human being is born to die and diseases are perhaps pre-existing in the system totally unknown to him which he is genuinely unaware of them. Hindsight everyone relies much later that he should have known from some symptom. If this is so every person should do medical studies and further not take any insurance policy."

In view of the above facts, the Fora below erred in saying that claim was rightly repudiated.

7. COUNSEL for Respondent reiterated that it is medically well acknowledged that replacement of the knees is usually an age-related disorder due to the wear and tear of the joint with the progress of age and cannot develop overnight nor is it a silent disease where the patient is unaware of the symptoms till a very late and aggravated stage. Thus, the Petitioner's contention that she had no inkling about the situation because of lack of any symptoms, is not acceptable. Counsel for Respondent cited the medical opinion of Dr. Neel Kanth Sharma who had seen the deceased in hospital and had examined the medical record had opined that the replacement of knees is age related disorder due to wear and tear of the joint with the progress of age which does not fall within the coverage of mediclaim policy. Counsel for Respondent further stated that knowledge or lack of it cannot per se help the Petitioner's case since as per Section 4.1 of the insurance policy it is the fact of a pre-existing disease and not its knowledge which is a stipulation. Thus, the claim of the Petitioner was rightly repudiated.

8. WE have heard the learned Counsel for both parties and have gone through the evidence on record. The onus to prove that the Petitioner was suffering from a pre-existing disease as per settled law is on the Respondent. We note that the Respondent has not produced any credible documentary evidence/expert medical opinion in support of its case. The medical opinion dated 16.3.2003 of Dr. Neel Kanth Sharma cited in support is of little evidentiary value because he is not a medical expert being an M.B.B.S. doctor and on the panel of physicians of the Respondent/Insurance Company. His letter is also not backed by any affidavit nor was he ever cross-examined. Further, it is not disputed that the insuree had been taking mediclaim policy right from 1996 and nowhere has it been recorded that she had any medical condition including the problem of the knees, by the Respondent's doctor who examined her. Thus, there is no record produced by the Respondent to indicate that any such disease existed and that it was, therefore, pre-existing. Further, it is settled law that the onus to prove that the insuree had a pre-existing disease was on the Respondent which as stated above, it has failed to do. On the other hand, Petitioner has cited a ruling of this Commission in National Insurance Co. Ltd. (supra), which we feel has relevance to this case. In view of these facts, we are unable to conclude that the patient had any pre-existing disease which would justify repudiation of the claim.

9. FOR the reasons cited above and particularly in the absence of any credible documentary or other evidence by the Respondent on whom was the onus to prove the reasons for repudiation, we, therefore, allow the revision petition by setting aside the orders of the Fora below, Respondent/Insurance Company is directed to pay the Petitioner Rs. 1,78,945 along with interest @ 6% from the date of the claim and Rs. 1,000 as litigation cost within six weeks from the date of this order. Revision Petition allowed.