
(2011) 01 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

Tata AIG General Insurance Company Ltd.

APPELLANT

Vs

Pooja Gupta, D/o Shri J.M.Gupta

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : 2011 0 NCDRC 27 : 2011 1 CPJ 209

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Advocate : Anjali Bansal , Ashish Chopra , Rupa Pathaia

Judgement

1. COMPLAINANT Pooja Gupta, Respondent in the present Revision Petition was enrolled for one-year management course in France. For this she was reportedly required to have health insurance cover as a mandatory visa condition. This insurance cover was taken from M/s. Tata AIG Insurance Company, the Revision Petitioner in the present proceedings. The policy cover was for a period of 90 days from 27.7.2004 to 24.10.2004. The policy was taken through the Chandigarh branch of M/s. Tata AIG, impleaded as OP-2 in the proceedings before the District Forum.

2. UPON expiry of the above policy, further insurance cover was taken for 270 days duration from 06.11.2004 to 02.08.2005. It is referred to as renewal of the existing policy by the Complainant/Respondent and new policy by the Revision Petitioner/OP-1. The case of the complainant is that during the middle of the tenure of this Insurance Policy, the Complainant fell seriously ill in Paris and was shifted to the nearest hospital called Embroise Pare. For this, the Complainants sister, who lived in the U.S.A., called the Executive of the Insurance Company, who registered the claim and advised that the Complainant be shifted to the hospital. This hospitalization was for a period of 17 days during which another sister of the Complainant visited her in the hospital from Mumbai.

On her return to India, the Complainant filed a claim for 11,824.74 Euros on account of expenses of hospitalization. The claim was repudiated by the Insurance Company through their letter of 24.03.2005. Two grounds given for this repudiation were that: (1) the treatment undergone was for Gastro Intestinal

Bleeding, which was a pre-existing medical condition for which she was undergoing treatment in India prior to the date of the policy. (2) In the policy under which this claim was preferred, sickness benefit cover was not opted. Therefore, reimbursement of the medical and sickness expenses did not fall in the scope of the Policy. On further follow up by the Complainant, the Insurance Co. allowed only a sum of Rs.28,320/- towards the travel expenses of the Complainants sister from Mumbai.

3. THE District Forum came to a conclusion that the claim had been preferred under the policy without Plan A relating to Accident and Sickness Medical Expenses. For this reason, the Complaint did not fall within the meaning of Section 2 (1) (d) (ii). It also held that the condition which the Complainant suffered from was pre-existing and incorrect particulars were given by the Complainant while seeking new policy after the lapse of the first one. THE claim petition of the Complainant was therefore, rejected. In appeal against the above order, the State Commission came to a conclusion that, in this case, emergency evacuation and sickness relating to it, are both covered under the policy plan taken by the Complainant. This conclusion was reached by comparison of the terms of the two policy documents i.e. the first one for the period 27.07.2004 to 24.10.2004, i.e. the first 90 days of her one year program of stay in France and the subsequent one for 270 days from 06.11.2004 to 02.08.2005.

4. ON the second ground for repudiation namely, question of pre-existing condition, the State Commission noted that in the policy, the term pre-existing condition is defined as a disease which was contracted within two years preceding the commencement of coverage under the policy, for which advice was recommended from a Physician or a condition which required hospitalization or surgery within a period of five years preceding the date of commencement of coverage under the policy. In the record submitted by the father of the Complainant, it was mentioned that the Complainant was suffering from HBP since 1981 and from PAN since 1982. The record of the hospital in France clearly indicated that final diagnosis was that she had suffered from NSAID- induced GI bleeding and that a relapse of PAN was considered unlikely. The State Commission has also observed that mere statement that the Complainant had suffered from a pre-existing ailment is not enough to repudiate the claim. The onus lies on the insurer to prove firstly that the insured knowingly concealed this material fact from the insurer and secondly that the pre-existing condition has nexus with the medical condition eventually suffered by the insured for which the claim has been raised. The State Commission took a view that the affidavit of Dr. George Oommen says that the complication in the case of the Complainant arose due to on going treatment of a pre-existing disease, but the Insurance Company has produced no supporting medical evidence to substantiate the claim of this doctor. In the Revision Petition before us, this question of pre-existing medical condition has been agitated again. A reference has been made to the hospitalization of the Complainant in August 2003 i.e. before the relevant policy was taken. On this point, we find from the records of this case that documents

relating to treatment of the Complainant subsequent to 1981 had been made available to the Insurance Company. Therefore, the State Commission has rightly come to the conclusion that there was no concealment of any material fact relating to medical condition of the Complainant. We also agree with the State Commission on the ground for rejecting the opinion of Dr. George Oommen. A perusal of his affidavit shows that Dr. Oommen has merely referred to his perusal of the case papers of Pooja Gupta and observed that she had suffered from G.I. bleeding on 18.2.2005 and to the treatment prior to it. But, no medical evidence has been enclosed with his report as observed by State Commission. Yet, surprisingly, he has gone on to recommend that the claim may be rejected on the grounds of complications arising due to on going treatment of pre-existing disease. While the role of a medical expert is limited to giving his opinion with reference to the pre-existing medical condition, he has traveled beyond it to recommend rejection of the insurance claim itself. He should have confined his opinion to the area of his professional expertise. Another point raised by the Revision Petitioner is that the emergency evacuation clause had not been triggered in this case. This point was also argued at length by counsel for the Revision Petitioner with reference to the relevant part in the policy document. The section on Emergency Medical Evacuation reads: we will pay the Reasonable and Customary Charges up to the maximum shown in the Policy Schedule for covered expenses incurred if injury or Sickness results in Your necessary Emergency Evacuation. An Emergency Evacuation must be ordered by the Assistance Company or a Physician who certifies that the severity or nature of Your Injury or Sickness warrants Your Emergency Evacuation.

5. IT is argued that the Assistant Company, who was informed by the sister of the Complainant about her sudden illness merely registered the claim. As per the Revision Petition, the caller was advised that respondent should self pay and file her claim directly with the Petitioner and no such permission was granted to the respondent. Significantly, neither in the Revision Petition, nor during the course of the arguments by counsel for the Revision Petitioner, any attempt has been made to clarify as to what else was required to be done on behalf of the Complainant when she was suddenly taken ill and needed emergency medical evacuation. In so far as the Complainant is concerned, the executive of the Insurance Company was informed before her actual evacuation to the hospital. Therefore, we agree with the State Commission that the attendant hospitalization expenses of Rs.680868.53 should be reimbursed to the Complainant.

6. FOR the reasons above, we do not find any ground for interference with the Order of the State Commission in Appeal No.640 of 2006.