(2015) 07 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Case No : 1340 of 2008

UNITED INDIA INSURANCE CO LTD — APPELLANT

Vs

Dinaz Vervatwala And Ors — RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 07 NCDRC CK 0014

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Advocate : Petition dismissed

Judgement

1. THIS revision petition has been filed by petitioner Insurance Co. which was OP No.1 before the District Forum. Respondent No.1 is the original complainant and respondent No.2 was OP No.2 before the District Forum.

2. BRIEF facts of this case which have led to the filing of this revision petition are that the complainant/respondent No.1 who is a renowned physical fitness trainer took a credit card from the OP Bank/respondent No.2. Being a credit card holder of the OP Bank, the complainant was insured with the petitioner Insurance Co./ OP No.2 for accident benefit policy. The complainant met with a fire accident in her own house and got severely injured. She took treatment for her burn injuries and incurred an expenditure of Rs.5,25,000/ -. In view of the accident benefit policy cover available to her as a credit card holder of the OP Bank, she sent an application to the OPs for reimbursement of the amount incurred by her over the treatment of the burn injuries under the policy but she was informed by OP No.2/ petitioner Co. to submit her claim in the prescribed form along with FIR, entire medical record pertaining to treatment, disability certificate from a Government hospital and confirmation from the OP No.1/respondent No.2 Bank as to validity of the credit card as on the date of accident along with a copy of the credit card. As per the allegation, the complainant appeared before the Medical Board, Osmania General Hospital which issued a medical certificate certifying disability of 20% to 25%. Thereafter, she submitted her claim to the petitioner Insurance Co. but the OP Bank informed her that the accident insurance policy covers

compensation for partial/total disability arising out of accident and that hospitalization claim for credit card holders is not covered under the policy. In view of the repudiation of her claim, the complainant approached the District Forum by filing the consumer complaint in question praying for refund of an amount of Rs.5 lakhs under the accident insurance policy together with compensation of Rs.2 lakhs for mental agony with interest @ 24% p.a. and costs of Rs.5000/ -. On being noticed by the District Forum, OP Nos.1 and 2 contested the complaint and filed their replies. They denied the allegations and contended that the complainant suffered only 20% to 25% disability and according to the terms and conditions of the policy unless there is permanent/partial loss or damage at the time of accident, she was not entitled to get the insured amount and as such her claim had been repudiated. Denying any deficiency in service on their part, they prayed for dismissal of the complaint.

3. BASED on the evidence adduced and the pleadings put forward by the respective parties, the District Forum vide its order dated 9.7.2007 partly allowed the complaint directing OP Nos.1 and 2 jointly and severally to pay the amount of Rs.1 lakh to the complainant towards insurance claim and Rs.10,000/ - towards compensation along with cost of litigation of Rs.1,000/ -. Aggrieved of this order of the District Forum, OP No.2 /petitioner Insurance Co. challenged the same before the A.P. State Consumer Disputes Redressal Commission, Hyderabad by filing appeal bearing No.1494 of 2007. The State Commission vide its impugned order dated 7.12.2007 confirmed the order of the District Forum and dismissed the appeal of the OP Insurance Co. Aggrieved of the said order of the State Commission, the petitioner has now filed the present petition challenging the same before this Commission. Learned Shri V.S. Chopra, Advocate has argued the case on behalf of the petitioner Insurance Co. and learned Shri N.P. Gaur, Advocate has appeared for respondent No.2 Bank. None has appeared for respondent No.1/complainant and hence she has been proceeded ex parte.

4. THE main ground on which learned counsel would assail the impugned order is that the burn injury being only upto 20% to 25%, the complainant was not entitled to get her claim because there is no clause in the policy to cover 25% disability in the accident. He further contended that even this 25% disability was mostly cosmetic in nature and even after the accident, she is doing her business as usual. In view of this, learned counsel submitted that both the fora below went beyond their jurisdiction and the terms and conditions of the policy while passing the impugned orders by which the petitioner Insurance Co. and the OP Bank have been jointly and severally directed to pay the amount of Rs.1 lakh to the complainant towards the insurance claim along with compensation and litigation cost. The impugned orders, therefore, cannot be sustained in the eye of law and there is good case justifying interference with the impugned orders by this Commission by accepting this revision petition. Learned counsel has placed reliance on the following judgements of this Commission and the Hon''ble Supreme Court: - (i) The General Assurance Society Ltd. Vs. Chandmull Jain and

Anr., 1966 ACJ 267

(ii) United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal, 2005 ACJ 570

(iii) Vikram Greentech (I) Ltd. and Anr. Vs. New India Assurance Co. Ltd., 2009 2 CPJ 34 (SC)

(iv) Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. and Anr., 2010 4 CPJ 38 (SC)

(v) National Insurance Co. Ltd. Vs. Vinod Puri and Anr., 2014 1 CPJ 341

5. SUPPORTING the contentions raised by counsel for the petitioner Co., counsel for respondent Bank submitted that claim of the complainant has to be decided according to the terms and conditions of the policy and the fora below obviously went beyond their jurisdiction by accepting the complaint beyond the terms and conditions of the policy and as such the same are liable to be set aside.

6. WE have carefully considered the contentions raised by learned counsel for the petitioner as well as the respondent Bank. The main ground on which the impugned orders have been challenged is that according to learned counsel, the fora below have committed jurisdictional error in partly accepting the complaint of the complainant beyond the terms and conditions of the policy and as such the impugned orders were liable to be set aside keeping in view the law settled by the Apex Court as well as this Commission in a catena of judgements cited by learned counsel. There can be no doubt about or quarrel with the well - established positon in law to the effect that an insurance contract has to be construed like any other contract on the basis of its terms and conditions and outside aid for construction of an insurance policy is impermissible. This principle has been time and again reiterated by this Commission and by the Apex Court and to this limited extent, we entirely agree with the learned counsel for the petitioner. However, the main point which has arisen for our consideration in this case is as to whether the terms and conditions of the policy in question on which so much reliance has been placed by the petitioner Co. and the OP Bank were known to the complainant. Nothing has been placed before us to show that the OPs ever supplied the terms and conditions of the group personal accident policy in question to the notice of the complainant. In this context, the observations made by the District Forum in its order while partly accepting the complaint are quite relevant. They are produced thus: "In the circumstances stated above, we are of the opinion that the opp. Parties 1 and 2 entered into an agreement to cover the cardholders of opp. Parties no. 1with accident insurance policy of opp. Party no. 2and accordingly Ex. B1 was published and all the card holders believed that there will be accident policy claim for all of them. However, when the complainant applied for the same, she was shocked to receive the repudiation letter from the opp. Party no. 2 stating that according to their terms and conditions vide Ex. B14 she will not get any claim amount from the opp. Party. However, the complainant never received any terms and conditions such as Ex.B14 at the time of obtaining her card. Even Ex. B13 in the application

submitted by the complainant at the time of obtaining the opp. Party no. 1 bank credit card, nothing was mentioned about the severity of disability to the card holders to get the insurance claim amount. In such circumstances it amounts to unfair trade practice on the part of the opposite parties 1, 7 and 2 in not informing the card holders about these terms and conditions in proper way. Just by showing Ex. B -1 brochure, the opposite parties 1, 7 and 2 are enticing the customers to get the credit cards but when the same card holders are applying for the claim amounts from the insurance company, they are repudiating the same on some frivolous grounds which were not intimated to the card holders. Hence, this certainly amounts to unfair trade practice and also deficiency in service on the part of the opposite parties 1 and 2.

7. THE opposite party No.1 failed to publish the terms and conditions of opposite party No.2 in the brochure vide Ex. B1 nor did they supplied the terms and conditions of the insurance company vide Ex. B14 to the card holders. Hence, this amounts to deficiency in service. However, the complainant suffered only 20 to 25 percent of disability as per Ex.A1 and hence she cannot claim the total amount of Rs.5 lakhs from opposite parties 1 &2. As the disability is 20 percent, accordingly the claim amount to be fixed at Rs.1,00,000/ - along with some compensation and costs of this complaint. The compensation sought by the complainant is huge and she did not file any such documentary evidence to show that she incurred such loss in her business because all the negligence on the part of the opposite parties. So, we can grant only exemplary compensation of Rs.10,000/ - along with costs of the complaint."

8. THE State Commission confirmed the order of the District Forum and dismissed the appeal. We agree with the view taken by the State Commission while returning its concurrent finding with the District Forum. We have no hesitation in recording that the District Forum has passed a speaking and well - reasoned order fully justifying its part acceptance of the complaint. While both the OPs have tried to persuade the prospective customers to get the credit cards by giving publicity about the additional benefit of personal accident cover available to the credit card holders, they have miserably failed in supplying the terms and conditions of the said insurance over to the credit card holders. Thus, the District Forum has rightly held them liable for deficiency in service as also for the unfair trade practice. Thus, no fault could be found with the impugned order which has upheld the District Forum''s order. The judgements relied upon by learned counsel for the petitioners will not get attracted to the present case since the relief has been granted by the fora below on different ground which does not call for any interference. We, therefore, dismiss this meritless revision petition with the parties bearing their own costs for this stage of litigation.

