(2015) 04 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO LTD APPELLANT

Vs

SUNIL GUPTA RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : 2015 2 CPR 635

Hon'ble Judges : V.K.JAIN J.

Advocate : SIDHARTH SINGH , ROHIT JAIN , SAGAR SAXENA , Mukesh Kumar Gill

Judgement

1. THE complainant/respondent obtained a mediclaim policy namely Health Insurance Policy -Gold from the petitioner United India Insurance Co. Ltd. for the period from 01 -12 -2007 to 30 -11 -2008. Since the complainant was suffering from morbid obesity, diabetes mellitus, etc., his weight being 164.6 kg., he consulted the doctors in Sir Ganga Ram Hospital who advised bariatric surgery to him. On the advice of the doctors he was admitted to the aforesaid hospital on 22 -06 -2008 and subjected to Laparoscopic Roux -en -y Gastric Bypass surgery, a surgical procedure for treating morbid obesity and was discharged on 26 -06 -2008. The complainant paid a sum of Rs.1,84,688/ - for the aforesaid surgery and related procedures. The complainant, thereafter, submitted a claim to the petitioner company, seeking reimbursement in terms of the mediclaim policy taken by him. Vide letter dated 01 -04 -2009 the insurance company rejected the claim in terms of clause 4.5(b) of the mediclaim policy taken by the complainant. Being aggrieved from the rejection of his claim the complainant approached the concerned District Forum seeking a direction to the insurance company to pay the aforesaid amount of Rs.1,84,688/ - to him along with interest at the rate of 24% per annum. He also sought compensation amounting to Rs.3,00,000/ - and cost of litigation amounting to Rs.15,000/ -.

2. THE complaint was opposed by the insurance company primarily on the ground that the treatment taken by the complainant was excluded under clause 4.5(b) of the policy taken by him and, therefore, it had rightly been repudiated

by the company.

3. VIDE its order dated 19 -07 -2012 the District Forum issued the following direction to the petitioner company: a. pay to the complainant a sum of Rs.1,84,688/ - along with interest @10% per annum from the date of filing of this complaint i.e.20 -04 -2009 till payment,

b. pay to the complainant a sum of Rs.25,000/ - towards compensation for pain and agony suffered by him and

c. pay to the complainant a sum of Rs.5,000/ - as the cost of litigation.

Being aggrieved from the order passed by the District Forum the petitioner company approached the concerned State Commission by way of an appeal. Since there was a delay of 80 days in filing the appeal an application seeking condonation of the said delay was also filed by the petitioner. Vide order dated 08 -09 -2014 the State Commission dismissed the application seeking condonation of delay and consequently rejected the appeal as barred by limitation. Being aggrieved from rejection of its appeal the insurance company is before this Commission by way of this revision petition.

4. CLAUSE 4.5 (b) of the mediclaim policy, on which reliance is placed by the insurance company for repudiating the claim reads as under: "Exclusions: - The company shall not be liable to make any payment under this policy in respect of any expenses whatsoever incurred by any Insured Person in connection with or in respect of:

"vaccination or inoculation or change of life or cosmetic or aesthetic treatment of any description."

5. THEREFORE , the question which arises for consideration in this petition is as to whether the procedure undergone by the complainant is covered under clause 4.5(b) extracted hereinabove. Admittedly the complainant had not undergone vaccination or inoculation. Therefore, what we have to examine in this petition is as to whether he had undergone a procedure in connection with or in respect of change of life or which can be said to be cosmetic or aesthetic. The change of life or even lifestyle is not involved in a surgical procedure for treatment of morbid obesity. Hence, the issue to be examined is as to whether the aforesaid procedure can be said to be a cosmetic or aesthetic procedure. The word ''cosmetic'' has been defined as under in Oxford Advance Learner''s Dictionary (8th edition): "noun a substance that you put on your face or body to make it more attractive. Adj. 1.improving only the outside appearance of sth and not its basic character: These reforms are not merely cosmetic. 2. connected with medical treatment that is intended to improve a person''s appearance: cosmetic surgery."

It would, thus, be seen that a treatment which is taken primarily for improving the physical appearance is termed as cosmetic procedure. In medical parlance it would mean a medical treatment which is intended to improve the appearance of a person.

6. THE word ''aesthetic'' has been defined as under in the aforesaid dictionary: "Adj. - 1. concerned with beauty and art and the understanding of beautiful things. 2. Made in an artistic way and beautiful to look at. Noun. -1.the aesthetic qualities and ideas of sth.2. the branch of philosophy that studies the principles of beauty, especially in art."

The aesthetic treatment, therefore, would mean a treatment which enhances beauty of a person.

7. THE certificate issued by Dr. Pradeep Chowbey, Chairman, Minimal Access and Bariatric Surgery Centre, Sir Ganga Ram Hospital to the complainant reads as under: "This is to certify that Mr. Sunil Gupta, 44 years male, Registration No.0397989 was admitted in Sir Ganga Ram Hospital on 22nd June 2008 and underwent Laparoscopic Roux -en -y -Gastric Bypass on 23rd June 2008, a surgical procedure for treating morbid obesity. Morbid obesity is a serious disease that may be associated with severe complications, many of which are life threatening. It is now accepted worldwide that the best treatment option for morbid obesity is Bariatric surgery, wherein Laparoscopic Roux -en -y Gastric Bypass is a treatment option. Laparoscopic Roux -en -y Gastric Bypass surgery is a potentially life saving surgery and not a cosmetic surgery."

It has been clearly certified by Dr. Chowbey who is otherwise a renowned surgeon, that morbid obesity, the ailment from which the complainant was suffering is a serious disease which at times can have implications which can prove to be life threatening. In the opinion of Dr. Chowbey, the procedure undergone by the complainant is a life saving surgery and not a cosmetic surgery. No medical opinion or literature has been produced by the petitioner company to controvert the aforesaid opinion given by Dr. Pradeep Chowbey. Therefore, it would be difficult to accept the case of the petitioner that bariatric surgery for morbid obesity is a cosmetic or aesthetic treatment which is excluded under clause 4.5(b) of the insurance policy issued to the complainant. It was not aimed at improving the physical appearance of the complainant or to enhance his beauty. It was aimed at ensuring that he does not develop complications which may later prove to be life threatening.

8. FOR the reasons stated hereinabove, the view taken by the District Forum, as regards the nature of the treatment taken by the complainant cannot be faulted with. Consequently, I have no hesitation in holding that the insurance company was not justified in rejecting the claim relying upon clause 4.5 (b) of the insurance policy taken by the complainant.

9. SINCE the order passed by the District Forum is fully justified on merits, no useful purpose will be served from condoning the delay, setting aside the order passed by the State Commission and remanding the matter back to the State Commission for deciding the appeal on merits. However, in the facts and circumstances of the case, I find no justification for grant of compensation or

cost of litigation to the complainant. Accordingly the order passed by the State Commission is modified to the extent that the petitioner company is directed to pay the amount of Rs.1,84,688/ - along with interest on that amount at the rate of 10% per annum to the complainant from the date of filing of the complaint till the date of payment.

