(2007) 04 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

SURESH KUMAR TIBREWAL RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Citation : 2007 3 CPJ 426

Hon'ble Judges : Subash Mahtab , Basanti Devi J.

Final Decision : Appeal dismissed

Judgement

1. THE opposite party in C.D. Case No. 160 of 2001 of the District Forum, Sambalpur has filed this appeal against the insured complainant challenging the orders dated 3.12.2002 of the District Forum directing appellant to pay to the respondent the insured amount of Rs. 2 lakh with 10% interest from the date of repudiation of claim and compensation of Rs. 1,000 and cost of proceeding.

2. THE undisputed facts out of which this appeal arise in brief are that the complainant/respondent was a tax practitioner at Sambalpur. He insured himself and his wife and entered into Mediclaim Policy under the appellant covering risk up to Rs. 2 lakh each, for the period from 25.8.2000 to 24.8.2001 and appellant realized Rs. 3646 towards premium vide M.R. No. 565013 dated 25.8.2000. THE complainant made mediclaim of about Rs. 3,36,355 on 14.3.2001 before the appellant/opposite party in respect to the expenditure made for transplantation of kidney and supplied necessary documents and information required by the opposite party. But, the opposite party vide its letter dated 24.8.2001 denied its liability to grant mediclaim on the ground of suppression of pre-existing renal disease at the time of mediclaim policy by the complainant. THE opposite party also did not reconsider to grant mediclaim even after the complainant again requested in writing dated 10.9.2001. THErefore, complainant filed the C.D. case alleging deficiency in service in respect to mediclaim insurance policy against the opposite party. It is the specific case of the complainant as per the complaint petition that the disease in respect to which mediclaim is claimed was unknown to him when he entered into mediclaim policy. Suddenly, on 27.9.2000 he started

suffering from fever and related problems and had consulted Dr. A.K. Singh, M.D. As per his advice, pathological tests were conducted and was treated as an indoor patient from 4.10.2000 to 7.10.2000 in the Healing Touches Hospital. As his condition was not improved, he was referred to the Department of Nephrology, V.S.S. Medical College and Hospital, Burla where he was treated by Dr. Chitaranjan Kar, M.D. (Med.) D.M. (Nephro). He suspected that the patient is suffering from Kidney related ailment and advised to avail treatment from better and higher Health Centre. Therefore, complainant was admitted in the Devki Hospital Limited, Chennai on 18.12.2000 where there was renal plantation on 19.12.2000. Complainant later on had availed periodical checkup at the said Hospital as was advised at the time of discharge. Complainant made expenditure of about Rs. 3,26,353 for undergoing treatment and for pre and post checkup as aforesaid. Therefore, he filed the C.D. case with all xerox copies of documents and letters and certificates claiming aforesaid amount with interest @ 12% per annum from 14.3.2001 and compensation and cost of litigation against the opposite party.

The case of the opposite party as per its written version in brief is that the diagnosis about the ailment relating to kidney of the complainant was made only in between 4.10.2000 and 7.10.2000 and subsequent treatment as have been claimed by the complainant, is not true. The transplanation of the kidney of the complainant was made at the final stage of renal disease. The mediclaim policy was subject to the terms, conditions and exclusion clause of the policy condition which is binding to the complainant. The renal disease was pre-existing. As per the exclusion clause 4.1 of the policy condition, the opposite party is not liable to pay for the expenditure whatsoever incurred in respect to the diseases which are pre-existing when the risk was covered under this policy. Opposite party claims that after thorough investigation of the case of the complainant and obtaining expert opinion from its consultant physician Dr. Krishna Kumar and on proper application of mind, the opposite party has repudiated the claim as the disease was pre-existing to the policy. Dr. Krushna Kumar has opined that the patient (complainant) had chronic renal failure and the disease was pre-existing to the policy for which at the final stage of renal disorder he underwent renal transplantation with known hypertension. Accordingly, the opposite party claimed for dismissal of the C.D. case he having not caused deficiency in service to the complainant.

3. THE District Forum took into consideration the certificates/opinions dated 27.9.2000 and dated 12.6.2002 of Dr. A.K. Singh and Dr. Chitaranjan Kar of Sambalpur and V.S.S. Medical College, Burla respectively who had treated the complainant giving clear indication that the disease was not pre-existing to policy. THE District Forum held that these reports cannot be kept aside from consideration in view of the opinion dated 9.9.2002 of Dr. C.B. Krushna Kumar who has opined that a person viz., complainant, cannot develop CRF and 90 for renal transplantation within three months from the date of policy unless the disease was pre-existing because Dr. Krishna Kumar has not given scientific

reason in respect to his such opinion and rather, his said opinion is based only on securitization of certificates/opinion produced by the complainant. District Forum also found that opposite party has not kept any condition to conduct health check or to obtain understanding in respect to no pre-existing disease from the insured before he entered into mediclaim policy, even though an exclusion clause is there in the policy condition. No other documents or proof in support of pre-existence of this disease have been filed by the opposite party. Possibility of such a disease all on a sudden is not impossible in view of the District Forum. In these end of the view, the District Forum held opposite party liable for causing deficiency in service on repudiating the claim on flimsy ground though the opposite party had given assurance of security and safety to the complainant through mediclaim policy. Accordingly, the District Forum passed the aforesaid impugned orders. This orders of the District Forum has been seriously challenged as illegal and arbitrary in filing this appeal. We have heard the learned Counsel from both sides and perused the policy, Doctor''s certificate which are filed in original and true xerox copies and xerox copies of other Doctor''s certificates, Discharge Summary of Devki Hospital Limited and other documents filed from both sides.

4. IT is contended on behalf of the appellant that the complainant was suffering from renal disease by the time the mediclaim insurance policy was entered into on 25.8.2000. As the suffering was at the last stage, complainant underwent kidney transplantation only within three months of the policy. Therefore, as this disease was pre-existing when the cover incepts for the first time whether he knew it at the time of policy or not, the complainant is not entitled to get any amount under the policy in view of exclusion Clause 4.1 of the policy condition. The District Forum has failed to apply its mind properly in this respect. As a matter of fact, in view of this policy condition i.e., Clause 4.1, no such policy holder is entitled to any amount under policy in respect to pre-existing disease/ injuries. The District Forum has found out assigning reason that the renal disease of the complainant was not pre-existing. Let this be examined by us. The policy was entered into 25.8.2000 which was valid till 24.8.2001. Complainant complained relating to his health on 27.9.2000 for the first time and underwent different test check-up and treatment by local doctor Dr. A.K. Singh of Sambalpur and Chitaranjan Kar - the D.M. of Nephrology, V.S.S. Medical College, Burla till he was advised for better treatment by competent Diagnostic Centres according to the complainant. Then complainant was admitted on 18.12.2000. His renal transplantation was done on 19.12.2000 and who was discharged on 30.12.2000. The appellant urged that the history of Discharge Summary of this Hospital clearly mentions about pre-existence of renal disease of the complainant which also finds corroboration from the report dated 9.9.2001 of Dr. K. Krishnakumar. We verified the Discharge Summary and found that nowhere directly or indirectly it has been pointed about the beginning or period of suffering of renal disease of the complainant. Complainant was found to be a hypertensive patient since October, 2000 and have CRF on 10.10.2000 but not a known case of DM/1HD patient as per the case history of the Discharge

Summary. Thus the aforesaid stand of the appellant does not find support from the Discharge Summary. Moreover, the complainant has not developed any other problem either at the time of stant removal after six weeks as was advised in the Discharge Summary or as on today. Therefore, it seems that the complainant started suffering relating to his kidney for the first time on 27.9.2000. Further, the report dated 9.9.2001 of Dr. K. Krishnakumar is self-explanatory that without physical test and examination and in absence of personal knowledge, the Doctor has given the report long after the illness and transplantation of kidney that the renal disease was pre-existing and at the final stage of the disease the kidney has been transplanted. The reason assigned by him is that had the disease was not pre-existed, the kidney would not having been transplanted within three months of the policy. But, being a consultant physician of the appellant he has not given scientific reason in respect to his aforesaid opinion. On the other hand, Dr. A.K. Singh in the month of October, 2000 does not opine about pre-existence of renal disease of the complainant. Dr. Chitaranjan Kar, the D.M. of Nephrology, V.S.S. Medical College, Burla, who had advised complainant on examination in the month of October, 2000 for better facility to higher centre apprehending renal failure within a week, has opined clearly in writing dated 12.6.2002 that the renal disease was not pre-existing. The appellant has not produced an expert opinion or any documents and proofs that the disease which complainant was suffering was existing prior to the mediclaim policy and transplantation of kidney is required to be done in case of renal disease suffered for more than three months. Therefore, the District Forum has committed no mistake in holding that possibility of such a disease all of a sudden is not impossible. Moreover, view of exclusion Clause 4.1, the opposite party has not obtained declaration from the complainant in respect to no pre-existing disease or injuries and has not made any inquiry in this respect before the policy was entered into. In this end of the view, our considered finding is that the opposite party has committed gross illegality in repudiating the claim of the complainant in view of exclusion Clause 4.1 of the policy. We are agreeable with the finding of the District Forum that the opposite party/appellant has caused deficiency in service to the complainant in repudiating his claim. District Forum''s finding in other respect is very sound and reasonable.

5. THEREFORE, we dismiss the appeal on contest without costs. The impugned orders of the District Forum is hereby confirmed. Records received from the District Forum may be sent back forthwith. Appeal dismissed.