(2016) 09 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

Case No : 3821 of 2010

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

UMRAO CHAND DAGA & ORS. — RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Citation : 2016 3 CPR 732 : 2016 4 CPR 251

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : MAIBAN SINGH, NIMIT MATHUR

Judgement

1. The present revision Petition no. 3821 of 2010 has been filed in Appeal no. 1552 of 2009 in complaint case no. 62 of 2006, R P no. 3822 of 2010 has been filed in Appeal no. 1551 of 2009 in complaint case no. 61 of 2007 and RP no. 3823 of 2009 has been filed in Appeal no. 1550 of 2009 in complaint case no. 63 of 2007 against the judgment dated 06.07.2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (''the State Commission''). The State Commission has passed a common order in these appeals. Hence, we also propose to pass a common order in these revision petitions.

2. The brief facts of the case as per the respondent/ complainant are that the respondent deceased had filed a complaint against the petitioner as well as respondent no.2/ OP no. 2 before the District Forum, Jaipur 1 st on 04.01.2007 inter alia stating that he had taken medi-claim policy from the petitioner Insurance company since 31.12.1990 and the same was renewed from time to time and the details of the policies are as follows-

S.no. Date Cover note/ Policy no. Period from to Category/ sum insured Amount premium

1 31.12.90 140301/600/3863/90 31.12.90 to 30.12.90 B Ist 2340

2 30.12.91 140300/48/II/200/91 31.12.91 to 30.12.92 B Ist 2340

3 22.12.92 140300/48/16/289/92 31.12.92 to 30.12.93 A Ist 2700

4 21.12.93 352412 31.12.93 to 30.12.94 A Ist 2700

5 12/12/94 111759 31.12.94 to 30.12.95 A Ist 2835

6 11/12/95 140300/48/7469/95-96 31.12.95 to 30.12.96 A Ist 2835

7 20.12.96 140300/48/16/8919/96 31.12.96 to 30.12.97 3 Lakh 5661

8 23.12.97 323076 31.12.97 to 30.12.98 3 Lakh 5661

9 28.12.98 140300/48/1409/98 31.12.98 to 30.12.99 3 Lakh 5661

10 24.12.99 561690 31.12.99 to 30.12.2000 2 Lakh 5408

11 28.12.2000 676716 31.12.2000 to 30.12.01 2 Lakh 5408

12 29.12.01 140300/48/01/02585 31.12.01 to 30.12.02 2 Lakh 5408

13 23.12.02 140300/48/02/02087 31.12.02 to 30.12.03 2 Lakh 7452

14 23.12.03 140300/48/03/01878 31.12.03 to 30.12.04 2 Lakh 7665

15 27.12.04 140300/48/04/02007 31.12.04 to 30.12.05 2 Lakh 7378

16 28.12.05 140300/48/05/02312 31.12.05 to 30.12.06 2 Lakh 7378

3. The respondent deceased had fell ill on 08.08.2004 and was admitted in the Tongia Hospital, Jaipur and for getting the treatment he had spent a sum of Rs.2,27,542/-. Thereafter the respondent deceased had preferred a claim with the petitioner Insurance company as well as respondent no.2 which is an administrator of the petitioner Insurance company but that claim was repudiated by the respondent no.2 on behalf of the insurance company through a letter dated 20.10.2004 in the following manner- " Patient has admitted with recurrent episodes of retrosternal pain on 8.8.04. Patient is a known case of hypertension, CAD and patient underwent CABG in the year 1999. Patient has policy from 31.12.2000. Hence, it comes under pre-existing disease . Therefore, this case stands repudiated under clause 4.1 of the policy."

4. Thereafter the present complaint no. 62 was filed by the complainant.

5. As per complaint no. 61 of 2007, the complainant fell ill on 17 th March 2005, and was admitted to Santokba Dulabhji Hospital and was discharged on 20.03.2005. On 20.03.2005, he was admitted in Escorts Hospital, New Delhi, where he remained till 31.03.2005. He spent an amount of Rs.3,97,526.97 for his treatment. He lodged a claim for the same with the opposite party, but the opposite party rejected the claim on the grounds of pre-existing disease. Therefore he prayed for a sum of Rs.3,97,526.97 along with interest @ 12% per annum, sum of Rs.50,000/- as damages and Rs.11,000/- as cost for legal proceedings.

6. In complaint no. 63 of 2007, the complainant has stated that he fell ill on 30.06.2005 and was admitted to Tongia Hospital from where he was discharged

on 04.07.2005. He spent a sum of Rs.25,070/-. He lodged a claim for the same with the opposite party, but the opposite party rejected the claim on the ground that the claim related to pre-existing disease and already two claims have been rejected on the same ground. Therefore, he prayed for a sum of Rs.25,070/- along with interest @ 12% per annum, a sum of Rs.25,000/- as damages and Rs.5,500/- as cost for legal proceedings.

7. The petitioner Insurance company before the District Forum in all three complaints took the same plea which were taken by them in the repudiation letter dated 20.10.2004. Apart from that it was stated in the reply that the respondent deceased was a heart patient prior to 1990 and further he had undergone heart surgery on 16.07.1990 in Escorts Hospital, New Delhi and he was further got admitted in the Escorts Hospital, New Delhi for the period 27.06.2000 to 28.06.2000 and the claim for the amount incurred in the hospital was preferred by the respondent deceased and that claim was repudiated by the insurance company through letter dated 10.08.2001.

8. The respondent deceased had also remained admitted in Tongia Hospital, Jaipur from 28.09.2000 to 01.10.2000 and thus the fact that he was a patient of heart prior to 31.12.2003 was well established and thus the claim of the respondent deceased was rightly repudiated by the Insurance Company through letter dated 20.10.2004 and it was prayed that complaint be dismissed.

9. The District Consumer Disputes Redressal Forum - I, Jaipur (''the District Forum'') vide its order dated 29.10.2009 had allowed the complaint NO. 62 and given the following order: "Therefore, the opposite parties jointly liable to pay a sum of Rs.2,00,000/- on account of the money spent by the complainant along with interest @ 8% from the date of rejection of claim, i.e., 20.10.2004 till the date of payment. The complainant is also entitled for a sum of Rs.2,000/- as costs of complaint. The order be complied within one month otherwise the complainant shall be liable to pay interest @ 12% per annum from the date of the order".

10. Aggrieved by the order of the District Forum, the petitioner/ opposite party filed an appeal no. 1552 of 2009 before the State Commission. The State Commission while upholding and modifying the order of the District Forum observed as under: "24. In this case it is very much clear that the policy of the complainant deceased was renewed by the appellant Insurance Co. from time to time w.e.f. 31.12.1990 upto 30.12.2006 and not only this since the complainant deceased had taken the treatment of heart prior to 30.12.2004 and as per reply of the appellant Insurance Company the claim of the complainant deceased for taking the treatment in Escort Hospital, New Delhi for the period 27.06.2000 to 28.06.2000 was repudiated through letter dated 10.8.01 and this fact clearly reveals that the appellant Insurance Co. was aware of the fact that the complainant deceased was a patient of heart and in-spite of that fact the policy was renewed thereafter by the appellant from time to time. .

25. During the course of arguments a question was asked from the counsel for the appellant Insurance Co. on the point that when the policy in question was renewed from time to time, whether a fresh declaration regarding health was taken from the complainant deceased or not and on that point it was answered that at the time of renewal of the policy no fresh declaration was taken from the complainant deceased.

26. When this being the position, from every point of view it could not be said that the deceased had suppressed the disease of heart at the time of renewal of the policy from time to time and the present case could not be said to be a case of fraud or misrepresentation on the part of the complainant deceased.

27. Further when the policy in question was renewed by the appellant from time to time knowing the fact that the deceased had earlier taken the treatment for heart disease, therefore, for all purposes, in the present case repudiation of claim of the complainant deceased on the ground of pre-existing disease could not be justified at all.

28. Further the exclusion clause 4.1 of the policy reads as follows-

"4.1 All diseases/ injuries which are pre-existing when the cover incepts for the first time, for the purpose of applying theis condition, the date of inception of the initial medi-claim policy taken from any of the Indian Insurance Companies shall be taken, provided the renewals have been continuous and without any break."

29. A bare perusal of clause 4.1 of the policy also reveals the fact that pre-existing disease means a disease which had incepted for the first time when the policy in question was issued for the first time; meaning thereby if for the sake of arguments the complainant deceased was a patient of heart prior to 31.12.90, the date on which the first policy was taken by the complainant deceased, the disease of heart could be said to be a pre-existing disease but for subsequent policies which were renewed from time to time knowing the fact that the complainant deceased was a patient of heart, the disease of heart could not be said to be a pre-existing disease.

30. It may further be stated here that since in this case the policy had been renewed without excluding any disease including the disease of heart, therefore, from that point of view also to say that the claim for the amount incurred by the complainant deceased for the treatment of heart disease was not payable could not be justified.

31. Considering all facts and circumstances of the case, this Commission is of the view that the appellant Insurance Co. is not entitled to the benefit of exclusion clause for the reasons mentioned above and further the LRs of the complainant deceased are entitled to claim re-imbursement from the appellant Insurance Company for the expenditure incurred by the complainant deceased for the treatment in his life time.

32. For the reasons stated above, appellant Insurance Co. was not justified in

repudiating the claim of the complainant deceased and the findings recorded by the District Forum by which claim of the complainant respondent was allowed are liable to be confirmed one as they are based on correct appreciation of entire materials available on record and they do not suffer from any basic infirmity or illegality or perversity and hence, no interference is called for with the same and this appeal on merits deserves to be dismissed.

On point of rate of interest

33. In this case the District Forum has awarded interest @ 8% per annum and if the amount was not paid within one month the rate of interest would be 12% p.a.

34. In our considered opinion, the rate of interest awarded by the District Forum appears to be on a higher side and looking to the entire facts and circumstances of the case, we deem it proper to award interest at the rate of 9% p.a. instead of 12% per annum and to that extent, the impugned order of the District Forum is liable to be modified.

Accordingly, this appeal filed by the appellant on merits is dismissed. However, , the LRs of the complainant deceased would get interest on the decretal amount at the rate of 9% p.a. instead of 12% p.a. and to the above extent on point of rate of interest, the impugned order of the District Forum, Jaipur 1 st dated 29.10.09 stands modified accordingly.

In appeal no. 1551 of 2009, the State Commission held that :

35. This appeal has been filed by the appellant Insurance Co. which was opposite party no.1 before the District Forum against order dated 29.10.09 passed by the District Forum, Jaipur Ist in complaint no. 61/2007 by which the complaint of the complainant/respondent no.1 Umrao Chand Daga who had died during the pendency of the complaint and his LRs were taken on record (hereinafter referred to "complainant deceased") was allowed in the manner that the appellant was directed to pay a sum of Rs.2.00 lakh along with interest @ 8% p.a. w.e.f. 22.8.05 , the date on which claim was repudiated and further to pay a sum of Rs.2,000/- as cost of litigation and if the above amount was not paid within one month the rate of interest would be 12 % per annum in place of 8% per annum.

36. It may be stated here that the complainant deceased had preferred a claim in respect of policy no. 140300/48/04/02007 which was for the period from 31.12.04 to 30.12.05 for a sum of Rs.2.00 lakhs and the same is quoted above at serial no. 15 of the details of the policies, before the appellant Insurance Co. for the amount incurred for the treatment taken by him from Escorts Hospital, New Delhi where he remained admitted for the period 20.3.05 to 31.3.05 and he spent a sum of Rs. 3,97,526.97 and the claim of the complainant was repudiated by the appellant Insurance Co. through letter dated 22.8.05 on ground of pre-existing disease.

37. It may be stated here that since while deciding appeal no. 1552/2009,

repudiation of claim of the complainant deceased on ground of pre-existing disease was not found justified, therefore, in this case on the same reasoning repudiation of claim of the complainant deceased was not justified and thus the present case is squarely covered by the decision of appeal no. 1552/2009.

Accordingly, this appeal filed by the appellant on merits is dismissed. However, the LRs of the complainant deceased would get interest on the decretal amount at the rate of 9% p.a. instead of 12% p.a. and to the above extent on point of rate of interest , the impugned order of the District Forum, Jaipur Ist dated 29.10.09 stands modified accordingly.

In Appeal no. 1550 of 2009, the State Commission held that :

38. This appeal has been filed by the appellant Insurance Co. which was opposite party no.1 before the District Forum against order dated 29.10.09 passed by the District Forum, Jaipur Ist in complaint no. 63/2007 by which the complaint of the complainant respondent no.1 Umrao Chand Daga who had died during the pendency of the complaint and his LRs were taken on record (hereinafter referred to "complainant deceased") was allowed in the manner that the appellant was directed to pay a sum of Rs.25,070/- along with interest @ 8% p.a. w.e.f. 22.8.05, the date on which claim was repudiated and further to pay a sum of Rs.2,000/- as cost of litigation and if the above amount was not paid within one month the rate of interest would be 12 % p.a. in place of 8% per annum.

39. It may be stated here that the complainant deceased had preferred a claim in respect of policy no. 140300/48/04/02007 which was for the period from 31.12.04 to 30.12.05 for a sum of Rs.2.00 lakhs and the same is quoted above at serial no. 15 of the details of the policies , before the appellant Insurance Co. for the amount incurred for the treatment taken by him from Tongia Hospital, Jaipur where he remained admitted for the period 30.6.05 to 4.7.05 and he spent a sum of Rs.25,070/- and the claim of the complainant was repudiated by the appellant Insurance Co. through letter dated 22.8.05 on ground of pre-existing disease.

40. It may be stated here that since while deciding appeal no. 1552/2009, repudiation of claim of the complainant deceased on ground of pre-existing disease was not found justified, therefore, in this case on the same reasoning repudiation of claim of the complainant deceased was not justified and present case is squarely covered by the decision of appeal no. 1552/2009.

Accordingly, this appeal filed by the appellant on merits is dismissed. However, , the LRs of the complainant deceased would get interest on the decretal amount at the rate of 9% p.a. instead of 12% p.a. and to the above extent on point of rate of interest, the impugned order of the District Forum, Jaipur 1 st dated 29.10.09 stands modified accordingly".

11. Hence the present revision petitions.

12. We have heard the learned counsel for the parties. The entire dispute in the above-noted revision petitions revolves around interpretation of the terms and conditions of the policy between the parties. Counsel for the petitioner has contended that the impugned orders should be set aside because the State Commission has failed to appreciate that the respondent no. 1/ complainant had undergone an ''open heart surgery'' on 16.07.1990 in Escorts Hospital, Delhi and he was called for ''post-operative cardiac evaluation and this fact was never disclosed by the respondent no.1/ complainant at the time of taking the first policy for the period from 31.12.1990 to 30.12.1991, and as such it was a pre-existing disease, therefore, the claim was rightly rejected.

13. The State Commission has failed to appreciate that the renewal of the policy does not condone the pre-existing disease. In this case the open heart surgery carried prior to taking of the policy and prior ailment shall always remained excluded from the policy as pre-existing disease.

14. The State Commission has committed an illegality in observing that heart disease was not specifically excluded from the policy after 10.08.2001. The State Commission failed to appreciate that pre-existing disease would mean any disease which existed earlier to 31.12.1990 i.e., the date of inception of 1 st policy. The respondent no. 1 concealed the material facts from the company, therefore, he was guilty of suppressing the material facts.

15. Counsel for the respondent argued in favour of the impugned order and stated that order of the State Commission is based on the correct appreciation of facts and circumstances of the terms and conditions of the policy.

16. We have gone through the record. During the course of argument, we observed that the petitioner had filed different sets of terms and conditions in the two sets meant for the Members of the Bench. Therefore, the petitioner was directed to place on record the correct true copy of the terms and conditions of the insurance policy applicable, pertaining to the respective case along with supporting affidavit. On reading of the affidavit it is seen that till the year 2003 to 2004 clause 4.1 reads as under: "4.1 All diseases/ injuries which are pre-existing when the cover incepts for the first time. For the purpose of applying this condition, the date of inception of the initial medi-claim policy taken from any of the India Insurance Companies shall be taken, provided the renewals have been continues and without any break".

17. During the period of insurance 31.12.2004 to 30.12.2005 clause 4.1 was modified to read as under: "4.1 All diseases/ injuries which are pre-existing when the cover incepts for the first time. This exclusion will be deleted after three consecutive continuous claims free policy years provided, there was no hospitalization for the pre-existing ailment during these three years of insurance".

18. As per clause 4.1, prior to modification, all disease / injuries which are pre-existing when the cover incepts for the first time, for the purpose of applying this condition, the date of inception of the initial medi-claim policy taken from any of

the insurance company shall be taken provided that renewals have been continuous and without any break. Admittedly, the date of inception of initial medi-claim policy in this case was 31.12.1990. It is also an admitted fact that renewal was continuous and without any break. It is also an admitted fact that as per the documents on record of the insured, Umrao Chand Daga had undergone an open heart surgery at Escorts Heart Institute and Research Centre on 16.07.1990 prior to the date of inception of the policy and hence, the petitioners were right in concluding that he was a heart patient prior to the inception of the policy and hence, there was a pre-existing disease. Hence, they had rightly repudiated the claim of the respondent for the period 29.09.2000 to 01.10.2000 for which he did not agitate in any court. On the same analogy the petitioner cannot be stated to be deficient in service for rejecting the claim for the period 08.08.2004 to 27.08.2004. In the facts and circumstances of the case mentioned-above, the petitioners were justified in repudiating the claim of Rs.2.00 lakhs for which the respondent had taken treatment at Tongia Hospital, Jaipur.

19. Hence, the impugned order in appeal no. 1552 of 2009 is set aside as also the order of the District Forum in CC No. 62 of 2006 and the complaint is dismissed.

20. In revision petition no. 3822 of 2010 as mentioned earlier, the wording in paragraph 4.1 was modified in the year 2004-2005. Though the learned counsel for the petitioner argued that it cannot be applied with retrospective effect, the fact remains that the terms and conditions of the insurance policy were given to the respondent for the period 31.12.2004 to 30.12.2005. As per the modified clause 4.1 while the company shall not be liable to any payment under the policy in respect of any expenses whatsoever incurred by the insured person in connection with or in respect of all diseases/ injuries which are pre-existing when the cover incepts for the first time, however, this exclusion will be deleted after three consecutive claims free policy years provided that there was no hospitalization for the pre-existing ailment during these three years of insurance. The counsel for the petitioner admitted at bar that in the instant case, the relevant years would be 31.12.1990 to 30.12.1991, 31.12.1991, 30.12.1992 and 31.12.1992 to 30.12.1993. During this period, admittedly, the insured was not hospitalized nor did he make any claim for hospitalization for the pre-existing ailment of heart disease. Hence, this exclusion with regard to heart disease, even if it was pre-existing when the cover incepted for the first time, would stand deleted after 30.12.1993.

21. Hence, in view of the above, we find no irregularity or illegality in the order of the State Commission in Appeal nos. 1551 and 1550 of 2009.

22. Hence, in view of the above discussion, RP no. 3821 of 2010 is allowed and State Commission''s order in appeal no. 1552 of 2009 as also the order of the District Forum are set aside and complaint no. 62 is dismissed. We dismiss the revision petition nos. 3822 and 3823 of 2010 and uphold the order of the District Forum as modified by the State Commission in Appeal nos. 1551 and 1550 of

2009.

