(1996) 05 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO.LTD — APPELLANT

Vs

SHANTILAL P.MALVANIYA — RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Citation : 1997 1 CPJ 235 : 1997 1 CPR 405

Hon'ble Judges : R.C.Mankad , Bala R.Thacker J.

Advocate : Judgment set aside

Final Decision : Judgment set aside

Judgement

1. THIS appeal by the United India Insurance Company Ltd. is directed against the judgment and order dated July 21,1995 passed by the District Consumer Disputes Redressal Forum (District Forum for short) in Complaint No. 172 of 1994. The respondent who is the original complainant had taken Mediclaim Insurance Policy from the appellant. The policy was valid for the period from 1992 to 1993. The respondent underwent byepass surgery in January, 1992. In May, 1992 when the respondent went to Bombay for routine check up he was advised angioplasty. Angioplasty was done at Hinduja Hospital where the respondent remained as indoor patient from May 30 to June 12,1992. The respondent claimed expenses for the said treatment from the appellant. The appellant, however, did not pay the expenses and, therefore, the respondent filed complaint being Complaint No. 74 of 1993 in the District Forum on June 2,1993. The District Forum partly allowed this complaint by judgment and order dated February 4,1994. It is not disputed that the respondent has received amount as directed by the District Forum.

2. THEREAFTER the respondent submitted form to the appellant for insurance coverage (Mediclaim) for 1993-94. The appellant issued insurance policy to the respondent. This policy contained an exclusion clause. According to the respondent, this exclusion clause was against the guidelines issued by the General Insurance Corporation and therefore it was illegal. When this last mentioned policy was about to expire respondent applied to the appellant to

renew Mediclaim policy without any exclusion clause. The appellant, however, refused to do so and therefore the respondent approached the District Forum by way of Complaint No. 172 of 1994 out of which the present appeal arises. The appellant resisted the complaint by written statement Exh. 9. Besides raising issue regarding jurisdiction of the District Forum, it was contended that the respondent could not compel the appellant to issue policy without exclusion clause. In other words, it was contended that the respondent had no right to dictate terms of the policy. It was further contended that prayer for declaration and issuance of policy without exclusion clause could not be sought under the Consumer Protection Act. It was a matter of contract between the parties and no demand could be made to impose any terms on the contracting parties. It was submitted that the appellant was within its right in refusing to issue policy in the manner sought by the respondent and therefore there was no deficiency of service on its part.

The District Forum by its impugned judgment and order, however, held to the effect that under the guidelines issued by the General Insurance Corporation, the appellant was required to issue Medicalim Insurance policy without exclusion clause in favour of the respondent. According to the District Forum, there was deficiency of service on the part of the appellant in (1) refusing to follow the guidelines issued by the General Insurance Corporation; and (2) in rejecting the proposal of respondent after considerable delay. In this view of the matter, the District Forum allowed the respondent''s complaint and directed the appellant to renew the Mediclaim Insurance Policy in favour of the respondent without exclusion clause and without any break for the period from March 31,1994 to March 30,1995. Being aggrieved by the decision of the District Forum, the appellant has preferred this appeal.

3. THIS Commission has held that guidelines/instructions which are issued by General Insurance Corporation to its subsidiaries do not confer any right on the insured. It is an interdepartmental matter with which the insured is not directly concerned. In any case, such guidelines do not confer any right on the insured and insured cannot claim any benefit or relief on the basis of such guidelines. If the guidelines are not followed it is a matter between the General Insurance Corporation and the concerned Insurance Company which is its subsidiary. The guidelines which are issued by the General Insurance Corporation on which reliance is placed by the District Forum are not placed on record. There is only an indirect evidence regarding such guidelines contained in the letter Exh. 40 written by Regional Manager of the Oriental Insurance Company Limited to its Divisional and Branch Offices. If the respondent wanted to rely on the guidelines issued by the General Insurance Corporation, it should have produced letter, circular or order issued by the General Insurance Corporation. Such guidelines cannot be proved by indirect evidence. But assuming for the sake of argument that General Insurance Corporation had issued guidelines as stated in letter Exh. 40, as observed above, such guidelines do not confer any right on the insured and he cannot, as a matter of right, claim issuance of policy in accordance with

such guidelines. As held by the Division Bench of the Gujarat High Court in Prabhudasbhai A. Parikh v. Union of India and Ors; Special Civil Application No. 3628 of 1995 decided on July 31,1995 an insurance is contract between two parties and Court cannot compel State or statutory authority to enter into contract unless and until by law they are required to do so. That was a case in which Court''s intervention was sought under Article 226 of the Constitution to extend facility of Mediclaim insurance to mentally retarded persons. The Court held that there is no legal provision which makes it obligatory on the concerned respondents to extend such facility. In the instant case what the respondent is seeking is to compel the appellant to issue Mediclaim Insurance Policy without exclusion clause. No legal provision has been pointed out to us which makes it obligatory on the appellant to issue such policy. Guidelines issued by General Insurance Corporation have no force of law and the appellant could not be compelled to issue insurance policy in accordance with these guidelines. If the appellant is not following the guidelines it is for the General Insurance Corporation to take appropriate action against it. But the respondent cannot base his claim on such guidelines and seek direction against the appellant to issue policy only on certain terms and conditions. If the appellant is not willing to accept the proposal of the respondent, there is no law which can compel it to do so. What in fact and substance the respondent has sought in his complaint is relief of declaration and mandatory direction against the appellant to issue Mediclaim Insurance Policy without exclusion clause and without break. In our opinion, such reliefs cannot be granted under Section 14 of the Consumer Protection Act.

4. IN the light of the above discussion, we hold that the District Forum was not right in granting reliefs to the respondent as stated above. The decision of the District Forum, therefore, deserves to be set aside. In the result, we set aside the impugned judgment and order of the District Forum and dismiss the respondent''s complaint. However, there will be no order as to costs. Judgment set aside.

