(2002) 06 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

VALERIAN S.J. LOBO — APPELLANT

Vs

Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 20-06-2002

Acts Referred:

Citation : 2002 2 CPJ 375 : 2002 2 CPR 367 : 2002 3 CLT 20

Hon'ble Judges : T.Jayarama Chouta , Abdul Perwads J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint is filed by one Valerian S.J. Lobo of Cooke Town, Bangalore, against two opposite parties namely, the Oriental Insurance Co. Ltd., Church Street, Bangalore, and Mercury International Assistance and Claims Ltd., Brighton, England, for deficiency in service.

2. THE factual matrix of the case relevant of the disposal of this complaint are that the complainant obtained a overseas mediclaim policy from opposite party-1 for the period from 2.4.1997 to 28.9.1997 before proceeding to USA on a private visit, on payment of a premium of Rs. 20,066/- on 25.3.1997, under receipt No. 4/0430914. It is stated that even though he had no previous history of any disorder, he was hospitalised on 7.4.1997 at USA and was discharged four days later, though at that time the nature of ailment was not determined. Shortly afterwards, that is, on 20.4.1997, he was hospitalised again for treatment as a cardiac emergency and underwent on emergent rescue angeo-plasty with a stent implantation. He was thereafter discharged on 25.4.1997. It is stated that as per directions contained in the policy, he informed Mercury International, Brighton, England, about this incident on telephone, but they informed him that as the policy had been issued by O.P. 1, all the claims are to be preferred with them in India since the quantum of the claim would exceed 500 US dollars. In view of such advice, the complainant assured the hospital authorities in USA that the medical expenses incurred by him would be reimbursed by opposite party-1 for which the complainant''s children stood guarantee before he was discharged from the hospital.

Accordingly, when the complainant preferred a claim on returning to India, opposite party-1 returned the entire claim documents with instructions that the complainant should approach opposite party-2 to settle the claim. It is alleged that such a direction is an effort to frustrate the claim of the complainant since opposite party-2 had already informed that it was not within their domain to settle it. Hence complainant was constrained to issue a registered notice against which opposite party-1 took a stand that they have no liability to settle the claim in India. It is alleged that such a stand is in negation of the specific stipulation in the policy that all claims, controversies, dispute of any kind arising out of the contract of insurance or breach thereof is to be settled under the provisions of the Indian Laws. The stand taken by opposite party-1 is, therefore, blantantly illegal, particularly when the complainant has no privity of contract with opposite party-2. The intention of opposite party-1 is obviously to avoid payment of 40,000 US dollars or its equivalent in Indian rupee which the complainant has incurred in connection with his treatment at USA. This being a case of calculated deficiency in service, it is averred, the complainant is constrained to approach this Commission for the redressal of his grievance. This is the sum and substance of the complainant''s grievance as set out in the complaint filed by him on 30.12.1997.

3. OPPOSITE party-1 strongly contested the complaint, inter alia, on the following grounds : (1) The policy was issued with a specific exclusion clause which stated that the complainant has no claim "on account of or in relation to hypertension, heart and circulatory disorders and any treatment in connection with the fracture of the right tibia". When such a term of exclusion is within the knowledge of the complainant, he is estopped from preferring any claim relating to heart disorders, since he had undergone treatment for thrombolytic therapy for acute interior wall miocardial infraction. (2) Instead of informing about the ailment and the treatment to opposite party-2 which is the Claim Settling Agent of opposite party-1, the complainant has chosen to come back to India and prefer the claim with opposite party-1 which has no liability to entertain it when it has specifically appointed an Overseas Agent to settle it. This also involved a breach in the policy terms. The arrangement proposed under the scheme involved verification and cross-check of the claim by the Settling Agent with the concerned doctors and hospitals which cannot be done by opposite party-1 sitting in India. Such a process is possible only when an insured approaches Mercury International with a claim and not when he has come to India with claim records. It is always the Settling Agent which has to be approached, but the complainant has evidently flouted such specific terms of the contract, thereby making himself solely responsible for his misguided act. (3) On receipt of the claim papers, the complainant was advised to take up the matter with opposite party-2, but instead of doing so, the complainant has chosen to issue a legal notice, followed by a complaint before this Commission. The conditions in the policy to which the complainant has laid his hands is sacrosant and is infallibly binding on the complainant. Nevertheless, the complainant has not chosen to

abide by them and hence he has no legal right to maintain a complaint.

For these and other reasons set out in the statement of objections, opposite party-1 prayed that the complaint be dismissed as devoid of merits.

4. THE complainant and opposite party-1 have filed their affidavit evidence before this Commission. On due service of notice, opposite party-2 have intimated their version in their letter dated 29.1.1998, but no affidavit has been filed by them. Nor was there any representation on their behalf during the course of the proceedings. Exs. C1 to C7 were marked for the complainant with consent, while Exs. R1 and R2 were marked for opposite party-1. No oral evidence as such has been adduced by either party. We have heard the learned Counsels on either side. Mr. Nandagopal, learned Counsel for the complainant, while taking us briefly through the relevant facts of the case urged emphatically that Ex-C2 which is the overseas mediclaim policy schedule does not specify that the claim should be preferred with Mercury International (O.P. 2). Moreover, when the complainant has no privity of contract with opposite party-2, it is opposite party-1 who has a legal liability to settle the claim and not opposite party-2. The learned Counsel drew our attention to the proposal form which, according to him, gives no indication that the claim should be preferred with opposite party-2 or that no claim is preferable with O.P. 1. In fact, the learned Counsel contended, O.P. 1 advised the complainant to prefer the claim, if any, with O.P. 2 as a parting instruction, just before the departure of the complainant which is not legally binding on him. It is the condition stipulated in the proposal form which has the binding force and when the proposal form is silent about O.P. 2, it is O.P. 1 who shoulders the responsibility to settle the claim. It was also pointed out that opposite party-1 was in fact trying to take advantage of the policy terms to the detriment of the complainant which amounts to deficiency in service within the meaning of that expression under the Consumer Protection Act. He, therefore, prayed that the complaint be allowed in the interest of justice. Mr. S.P. Shankar, learned Counsel for O.P. 1 on the other hand contended strongly that the claim of the complainant is liable to be rejected outright in view of Clause 10(d) of policy conditions which specifically stipulated that any medical service or services with a cost exceeding 100 US dollars shall not be covered by the policy unless the insured consults with Mercury International Assistance and Claims in the manner set out in the slip issued to the insured in that behalf. It was pointed out that the complainant has totally ignored this specific condition; but instead, has chosen to prefer a direct claim to OP-1 on his return to India, which OP-1 is not obliged to entertain when it has a specific Overseas Agent to entertain the claim. The learned Counsel in this context invited our particular attention to page 15 of the policy conditions which clearly and unambiguously states that claims in excess of 500 US dollars should be submitted to Mercury International''s UK address which is printed on the front of the claim form. Our attention was also invited to Clause-2 at page 19 of the policy conditions which stipulated that in the event of the insured suffering any serious illness or injury or undergoes hospitalisation, he or his representative must contact Mercury International immediately for

emergency assistance or advice, giving detailed information regarding the illness or injury, including the name of the doctor and the hospital, the policy number etc. Instead of complying with such specific instructions, and keeping a fat claim in his hand, the complainant has chosen callously to approach O.P. 1 for settlement of the claim on reaching India. The learned Counsel pointed out that either the complainant has not cared to read and understand the policy conditions, or having read them, he has cared tuppence to follow them in letter.

5. THE learned Counsel further emphasised the fact that the policy excluded hypertension and also cardiac and circulatory disorders. THE claim evidently related to an acute heart ailment as evidenced by the documents produced by the complainant himself, and hence, even otherwise, his claim cannot subsist under the policy. THE complainant himself had stated in the proposal form that he was hypertensive and hence O.P. 1 had excluded hypertension in the policy and hence on that account also the complainant has to face a wall in relation to his claim. It was, therefore, prayed that the complaint be dismissed in the circumstances.

6. IN the context of the sustained rival contentions, the only point that needs to be addressed is whether the opposite parties have been guilty of deficiency in service and if so, what would be the relief the complainant is entitled to. Certain facts like payment of premium, issuance of a policy by O.P. 1, complainant''s journey to USA and his ailment and hospitalisation in US hospitals are points devoid of dispute from the opposite parties, nor they have taken a stand that the complainant has not incurred any medical expense or that he has come up with inflated expenditure figures. Essentially, as evident from the material on record, the dispute centres around the modus-operandi adopted by the complainant in preferring the claim and the admissibility thereof. The pleadings and the arguments on either side being abundantly on these twin issues, it is relevant that our evaluation of the true complexion of the case is confined to only these two aspects. The primary contention of the complainant and its quintessence as explicitely stated by Mr. Nandagopal before us is that the complainant cannot be compelled to prefer his claim only with Mercury International. Such a contention is based on a supposition that the complainant has a privity of contract only with O.P. 1 or rather he has no such privity with O.P. 2. It is however, not denied that there are certain references to O.P. 2 in the policy conditions, but the contention raised by the learned Counsel before us in specific terms is that the proposal Form which forms the basis for the covenant between the parties does not specifically stipulate that the claim is preferable only with O.P. 2. We are rather slow in accepting such a contention, since, in the first instance, it would amount to sweeping the policy conditions appended to the policy under the carpet. In the scheme of insurance of whatever nature, the terms and conditions issued along with and forming part of the policy is paramount and invariably such conditions may contain terms which have no place in a proposal form. The policy and the terms and conditions appended thereto infact constitute the whole gamut of contract between the parties entered into on the principles of uberrima fides and

hence it cannot be said by any semblance of logic that any one or more of the conditions stipulated therein cannot be enforced simply because a parallel condition is absent in the proposal form. In fact, page-2 of the proposal form gives a clear indication of the existence of a Claim Settling Agent as distinguished from the insurer in the following instructions contained therein : "Neither the insurers nor Claim Settling agents shall be responsible for the availability, quality or results of any medical treatment or the failure of the insured to obtain medical treatment."

This instruction make it clear that the claim is settled by an agency other than the insurer. As to who the claim settling Agent would be in the event of a claim arising is indicated in no uncertain terms in the declaration portion of the proposal form which reads as follows : "...I consent to the insurers seeking medical information from any doctor who has at any time attended concerning anything which affects my physical or mental health, and I authorise the giving of such information to Mercury International and Claim Ltd."

7. THIS declaration prima facie enables the insurer to make enquiries whenever it comes to know of a claim having been preferred with their Claim Settling Agent and furnish any information to the Agent which is relevant in the course of entertaining the claim. More importantly, this part of the declaration beneath which the complainant has affixed his signature also shows in no uncertain terms that the Claim Settling Agent of O.P. 1 is Mercury International and Claims Ltd. When such specific and conclusive information is available in the proposal form, we are not humoured by the argument that the proposal form is silent on any overseas claim location or Overseas Claim Agent and hence the claim is to be settled only by opposite party-1. In the statement of objections filed, opposite party-I clarifies the circumstances leading to appointment of an Overseas Claim Settling Agent, a procedure adopted by Insurance Companies for proper verification of the claim which cannot be easily done at the Indian end. With this purpose in view, there is a policy stipulation (at Page 15) that in case the claim is for an amount exceeding 500 US dollars, then Mercury International will deal with it under their normal settlement procedure and such claims must be submitted to Mercury''s UK address. The existence of such a policy condition is not denied by the complainant, nor its binding nature on the contracting parties is specifically contested in the pleadings. It is also not the case of the complainant that his claim falls short of 500 US dollars. What we see from the material placed on record is that the complainant has blissfully closed his eyes on all specific stipulations contained in the policy and has come out of the slumber only when he reached back India.

8. WE however find that he has made an attempt to give an impression that he had in fact approached O.P. 2 on telephone in the first instance, but they directed him to prefer the claim with O.P. 1 for settlement. Apart from coming out with such a version in the complaint, no evidence is placed on records to prove the bona fides of such an averment, nor any effort has been made to indicate why

the matter was not taken up further with O.P. 2, pinpointing their liability to settle the claim under the policy. WE are, therefore, not in a position to attach any credibility to such a contention. It was not as if O.P. 2 was entertaining such a claim for the first time to get confused about their liability, nor the claim was such as would confused a long standing Settling Agent as to who should settle it. The burden of proof, it need not be gainsaid, is exclusively on the complainant to substantiate such a stand, and having failed to come up with any proof, the complainant fails to impress us that he was compelled to prefer his claim with O.P. 1 at the instance of O.P. 2. Consequently, we are constrained to come to a definite conclusion that it is the complainant who has failed to observe the specific conditions stipulated in the policy and not O.P. 1 or O.P. 2 and as a result no stigma of deficiency in service could be attributed to the opposite parties on this count. Having come to such a conclusion, the only other point that requires a closer look relates to the admissibility of the claim. This point however need not detain us long since this is a case where the claim has not been preferred with the proper Claim Settling Authority. When the claim is not preferred at the right quarters, there is also no settlement or repudiation, and when there is neither of them, particularly when there is no repudiation, it is not for us to examine the claim to see whether it is legitimate or otherwise. From what was submitted at the Bar, what we gather is that the claim papers are still with the complainant. It is relevant in this context to refer to a communication from O.P. 2, received in response to the notice served on them, in which they have taken a stand that the complainant had suppressed material facts while obtaining the policy, since he knew at that time that he was suffering from heart ailments. It is stated that the complainant had a pre-existing heart condition and he was on treatment in the 12 months prior to travel and when he was admitted to U.S. Hospital on 7.4.1997 he was already on atenolol, aspirins, and nitroglycerine. It is however not for us to go into the question of admissibility or otherwise of the claims since we cannot treat such a version of O.P. 2 as actual repudiation of the claim. It is also not the case of the complainant that his claim has been repudiated either by O.P. 1 or O.P. 2. In his complaint, what he has sought for by way of relief is a direction to O.P. 1 to entertain and assess his claim and reimburse a sum of 40,000 US dollars or its equivalent 16 lakhs Indian rupees spent by him in USA towards medical expenses. When we have already come to the conclusion that the complainant has violated the policy conditions and has preferred his claim at the wrong quarters, we are not in a position to order such a relief. It is relevant to observe in this context that when the complainant preferred the claim with O.P. 1 on his return to India, O.P. 1 had duly advised him to send the claim papers to O.P. 2. This is evident from para-4 of the reply notice dated 10.11.1997 (Ex. C6) sent to the complainant''s Counsel by the Counsel for O.P. 1. This document produced by the complainant himself proves conclusively that no stigma of deficiency in service could be attributed to the O.P. 1 in relation to settlement of claims. It was up to the complainant to forward the claim papers to O.P. 2 even at that stage, since there is no stipulation in the policy condition that they should be sent to the Claim Settling Agent only from the place of treatment.

The complainant has however chosen, and chosen wrongly, to come to this Commission with a grievance, instead of approaching O.P. 2 and then coming to this Commission if he is not satisfied with the settlement made by them. Evidently, as rightly pointed by Mr. S.P. Shanker, learned Counsel for O.P. 1, the complainant has not only misdirected himself into seeking settlement of his claim at the wrong end, but has also failed to help himself despite O.P. 1 showing the way. We are, therefore, not in a position to grant relief under the Consumer Protection Act to a person who has observed policy conditions in the breach, particularly when we fail to find any trace of deficiency in service either in O.P. 1 or in O.P. 2. Consequently, we see hardly any merit worth the name in this complaint and hence it is liable to be dismissed. In the result, we make the following : ORDER The complaint is dismissed. No costs to either parties. Complaint dismissed.

