(2007) 08 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

VALSA JOSE — APPELLANT

Vs

Bajaj Allianz General Insurance Co Ltd — RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Citation : 2008 2 CPJ 391

Hon'ble Judges : Chandrashekhar , M.Shama Bhats J.

Advocate : R.B.Deshpande , Y.P.Venkatapathi

Judgement

1. COMPLAINANT has filed this Complaint for a direction to the opposite parties (for short, "o. Ps. ") to pay Rs. 32,17,308 with interest at the rate of 18% per annum from the date of complaint till realization.

2. THE case of the complainant is as follows: the complainant had to go to the USA for her daughter''s delivery and, accordingly, she and her husband approached travel agent by name M/s. Alfa Air Travels, Infantry Road, Bangalore, and booked to and fro tickets for travel to USA for herself and her husband. They also obtained "overseas Travel Insurance Policy" from the O. Ps. for the period from 13. 11. 2003 to 11. 3. 2004. As per the schedule, the complainant and her husband left to Woodbury MN in USA on 14. 11. 2003. On 29. 1. 2004 at about 3. 30 a. m. the complainant developed shortness of breath, chest heaviness and burning sensation and, therefore, she was taken to the Emergency Room at Woodwinds Hospital, USA. Thereafter she was shifted to St. Joseph''s Hospital. The Doctors who examined the complainant in St. Joseph''s Hospital performed the Angiogram and Angioplasty of right Coronary Artery of the complainant. In respect of the above said procedure the Hospital issued a bill for payment of 36,538-47 US Dollars. The complainant sent all the documents pertaining to the treatment through Electronic Mail to the O. Ps. since she had a valid Insurance Policy issued by the O. Ps. However, the O. Ps. on 8. 3. 2004 informed the complainant that their Claims Department was not able to take up a decision on the settlement and requested the complainant to pay the medical expenses and file her claim directly with the Claims Department. Accordingly, the complainant

submitted her claim with all the documents to the O. Ps. Ultimately, the O. Ps. have repudiated the claim by their letter dated 28. 5. 2004 stating that the complainant was suffering from hypertension for a long time and the same was not disclosed by her in the proposal form at the time of obtaining Insurance Policy. This repudiation of the claim has made the complainant to file the complaint before this Commission claiming reimbursement of medical expenditure of Rs. 17,17,300 and for compensation of Rs. 15,00,000.

The case of the complainant is that there is no suppression of any material fact in the proposal form and, therefore, the repudiation of the claim by the O. Ps. is illegal and, consequently, non-reimbursement of medical expenses amount to "deficiency in Service".

3. ON the complaint, this Commission ordered Notice to the O. Ps. The O. Ps. on service of Notice, have filed their version justifying their action. The case of the O. Ps. in the version is that as per the Hospital records, the complainant has/had the cardiac and hypertension problem even prior to 5 years and the same was not disclosed in the proposal form, which resulted in rejecting the claim on the ground that the suppression of pre-existing cardiac and hypertension problem vitiates the very contract and, therefore, there is no liability on the part of the O. Ps. to reimburse the medical expenditure said to have been incurred by the complainant. This repudiation, according to the O. Ps. is based on the investigation conducted by an Investigator appointed by the O. Ps. and also on the basis of expert opinion on the documents. According to the O. Ps. , the repudiation of the claim is justified and, therefore, there is no "deficiency in Service" on the part of the O. Ps. so as to reimburse the medical expenditure in favour of the complainant.

4. BOTH the parties have filed affidavits and also the documents in support of their cases. The documents so produced by the parties were all marked as Exhibits. On the rival contentions of the parties, the points that arise for consideration in this complaint are as follows: (1) Whether the complainant proves that there is no suppression of material fact? (2) Whether the O. Ps. are justified in repudiating the claim of the complainant on the ground that the complainant has suppressed the pre-existing disease in the proposal form? (3) To what relief the complainant is entitled?

Point Nos. 1 and 2 are inter linked and, hence, they are considered together.

5. IT is not in dispute that the complainant had taken treatment in St. Joseph''s Hospital in USA wherein the Doctors performed the Angiogram and Angioplasty of right coronary artery of the complainant. It is also not in dispute that the Hospital issued a Bill for 36,538-47 US Dollars towards hospital and treatment charges. A copy of the bill is produced as Exhibit C-3. It is also not in dispute that the O. Ps. have issued an Overseas Travel Insurance Policy to the complainant. Copy of the Policy is produced and marked as Exhibit C-1. Under this policy the maximum amount payable towards the medical expenditure is

50,000 US Dollars. In the said Policy it is stated as follows: "the coverage provided is subject to the details and declaration in the proposal form and attached policy wordings. "

Exhibit R-5 produced by the O. Ps. is a xerox copy of the Policy. In the said policy it is stated as follows: "we also understand that this Policy does not cover any pre-existing illness or disability or conditions arising therefrom. "

In view of the above said specific condition, we have to examine whether the complainant has suppressed any pre-existing illness or disease in the proposal form.

6. THE complainant has filed her affidavit by way of evidence. From a reading of the said affidavit it is clear that she does not admit that she had suppressed any pre-existing illness or disease in the proposal form. A xerox copy of the proposal form is produced by the O. Ps. In the proposal form there is a column wherein the insured is required to disclose whether he/she is suffering from any illness or disease or ailment up to the date of making the proposal. But the answer, no doubt, given is ''no''. The very proposal form also requires the Insured to mention regarding admission to any Hospital in relation to the illness or disease referred to in Column No. 1. In the instant case, no material has been furnished by the O. Ps. to show that the complainant was hospitalized prior to the filing of the proposal form in respect of any illness or disease. According to the complainant, she was not suffering from any illness or disease prior to the filing of the proposal form. The O. Ps. in support of their defence have relied upon the Certificate issued by one Dr. Shaibya Saldanha dated 28. 3. 2004, which is marked as Exhibit R-1. In this Certificate what is stated is that the complainant was referred to her for "vaginal itching and dryness due to menopause". Incidentally, the Doctor has also observed that the patient was diagnosed as hypertensive earlier for which she was given medication by the Cardiologist, Dr. Sanjay Mehrotra. In proof of the contents of the said Certificate the Affidavit of the Doctor has not been filed before us. The said Doctor is an Obstetrician Gynaecologist. In the very Certificate she also observes that one Dr. Sanjay Mehrotra treated the complainant for hypertension. The O. Ps. have not filed the affidavit of the said Dr. Sanjay Mehrotra also to show that the complainant had taken any treatment from him for hypertension. The O. Ps. referred the matter for investigation. Pursuant to that a Report was given by the Investigator, which is marked as Exhibit R-3. The said Report reads thus: "mrs. Valsa Jose, aged 51 years, is a known case of Menopausal Symptoms, Hypothyroidism and Mild Hypertension since 5 years and she is under medication and medical supervision by Dr. Shaibya Saldanha for her Menopausal Symptoms and Hypothyroidism and to her Hypertension she is under the supervision of Dr. Sanjay Mehrotra (Consultant at Narayana Hrudayalaya). " from this it is seen that the said Dr. Shaibya Saldanha treated the complainant for Menopausal Symptoms and Hypothyroidism. These two diseases are nothing to do with "acute Inferior Wall Myocardial Infraction", for which the complainant has underwent "coronary

Angiogram, Left Ventriculogram and Left Heart Catheterization" and she also underwent "single Vessel FICA". Hypothyroidism is subnormal activity of the pitutary gland. The dictionary meaning of "menopause" is "the time in a woman''s life when the ovaries cease to produce an egg cell every four weeks". From this it is seen that the above said two diseases are nothing to do with the heart problem of the complainant. So far as hypertension is concerned, no doubt it may also result in kidney disease, including narrowing of the renal artery endocrine diseases. No doubt Dr. Shaibya Saldanha has observed that the complainant had taken treatment from Dr. Sanjay Mehrotra for hypertension. As stated earlier, Dr. Sanjay Mehrotra has not filed any Affidavit so as to say that he has treated the complainant for hypertension. Hypertension or Blood Pressure may go up when there is tension and it may come down to the normal level the moment tension is released. Therefore, a stray incident of hypertension cannot be treated as a disorder. In order to establish that a person is suffering from hypertension, necessarily the said person has to be under regular medication to control the blood pressure. The O. Ps. have also produced the expert opinion of one Dr. Kamath in the case file of the complainant along with other documents and also the affidavit of Dr. Kamath. The relevant portion of the expert opinion reads thus : "in the Discharge Summary of the Hospital, it is mentioned that the Insured had hypertension diagnosed 4 years ago. Investigation by the Company has revealed that the patient has had hypertension since 5 years and was seeing a Cardiologist and taking medicine for the same. There is no other relevant history in the Discharge Summary and other papers submitted for scrutiny. "

From this it cannot be concluded that the complainant was hypertensive for the last four years and she was under medication, in the absence of production of all papers for the purposes of obtaining necessary opinion. The opinion of Dr. Kamath is also on the basis of the Discharge Summary. The Discharge Summary refers to the Certificate issued by Dr. Shaibya Saldanha. Dr. Shaibya Saldanha as observed earlier herself has not treated the complainant for hypertension. According to her, one Dr. Sanjay Mehrotra has treated the complainant. Dr. Sanjay Mehrotra has not filed any Affidavit to the effect that he has treated the complainant for hypertension and also prescribed any medicine. In the absence of such material evidence it cannot be said that the complainant was under treatment for hypertension for the last four years prior to the filing of the proposal form so as to say that she has suppressed that fact.

The repudiation of the claim by the O. Ps. is purely based on the report of the Investigator. In proof of the contents of the report of the Investigator, the O. Ps. ought to have filed the affidavit of the person who conducted the investigation. In the instant case, no affidavit of the person who investigated the matter has been filed. In the absence of such evidence no reliance could be placed on the said Report, since the very contents of the Report have not been proved or established by examining the Investigator.

7. FOR the reasons stated above, we are of the view that the complainant in her

proposal form has not suppressed any material fact and, therefore, the repudiation of the claim by the O. Ps. is not correct. Therefore, non-reimbursement of medical expenses by the O. Ps. amounts to "deficiency in service". No doubt both the parties have relied upon certain decisions of the National Commission and the State Commission. The said cases are decided on the basis of the facts involved in those cases. If the O. Ps. were to establish that there is suppression of fact, necessarily the repudiation of the claim is valid. In the instant case, since the O. Ps. have failed to establish the suppression of fact, in our view, the said decisions relied upon by the O. Ps. are of no assistance to them.

8. THE complainant has produced the Bills issued by the Hospital for 36,538. 47 US Dollars, which is equivalent to Rs. 17,17,308 in terms of Indian Rupees. Since the said Bills have been issued by the Hospital Authorities and they have been paid by the complainant, in our view, the complainant is entitled for reimbursement of the said amount. So far as the compensation of Rs. 15,00,000 towards mental agony and hardship is concerned, in our view, since we are awarding interest on the said amount of Rs. 17,17,308 there is no reason to award any compensation. In the result, we pass the following Order: (1) The complaint is allowed in part. (2) The O. Ps. are directed to pay jointly and severally Rs. 17,17,308 to the complainant with interest at 9% per annum from the date of the complaint till realization. (3) The O. Ps. are also directed to pay Rs. 5,000 to the complainant towards the cost of these proceedings.

Complaint partly allowed.

