

(1999) 08 GAU CK 0026

Gauhati High Court

Case No: Consumer Appeal No. 10 of 1998

National Insurance Company
Ltd.

APPELLANT

Vs

Manik Kar

RESPONDENT

Date of Decision: Aug. 21, 1999

Citation: (1999) 3 GLJ 541

Hon'ble Judges: J.N.Sarma, J and D.Dutta, J

Bench: Division Bench

Advocate: S.S.Sharma , P.C.Barpujari, Advocates appearing for Parties

Judgement

J. N. Sarma, President

1. This is an appeal against the judgment and order dated 17.10.97 passed by the District Consumers Dispute Redressal Forum, Nagaon in CP Case No. 16 of 1997 ordering payment of Rs. 21,545 with 18% interest with effect from 17.3.96.

2. The brief facts are that the complainant before the District Forum on 10.1.95 along with his wife and daughter took mediclaim policies from the present appellant by paying premium and other charges amounting to Rs.709 for the period from 10.1.95 to 9.1.96. After some days he felt ailment and consulted Dr. SR More, a Medical Specialist at Haiborgaon, Nagaon. Dr. More advised him to go to Apollo Hospital, Madras for better investigation and treatment. Accordingly the complainant went to Apollo Hospital and got him treated there and certain investigations were done and operated for cholecystectomy (gall bladder operation). The Report of Discharge from Apollo Hospital inter alia states as follows :

◆(i) A 39 year old Male Dr. Manik Kar admitted .with complaints of upper abdominal pain on and off since 1 year.

(ii) History of pain confined to right hypochondrium with radiation to the back.

(iii) Detected to be a diabetic on this visit and being treated by Dr. V. Sessaiah.

(iv) History of having suffered from left pleural effusion and was on ATT for 7 months.◆

3. After doing this operation the complainant made a claim before the insurance company for repayment of the amount and the claim was for Rs. 21,5457. The insurance company on 17.2.96 vide Ext 15 repudiated the claim. That Ext 15 is quoted below: The ground of repudiation will be evident from this letter.

"To, RegdA/D Date 17.02.96

Prof Manik Kar, Ph D, Geography Deptt.

Nowgong College, Nagaon782001

Dear Sir,

Ref: Yourclaim under Mediclaim Policy No. 200202/48/9495/85/00018

We regret to inform you that your claim as stated above has been repudiated on the following ground.

(1) The disease/illness for which you have claimed reimbursement was preexisting at the time of taking out the policy. Hence as per exclusion No. 2,1,14 of the policy the claim cannot be considered for payment. The history of pain in the upper abdomen since 1 year prior to the date of operation, as revealed from hospital records as well as the description of your illness as symptomatic cholelithiasis confirms this observation made by our panel doctor.

(2) Further there have been concealment of material facts in the proposal. We hope you will understand our inability to entertain this claim. We are therefore closing our file as No Claim.

Thanking you and assuring you of our best services at all times.

Thanking you. Yours faithfully

Sd

ADivisional Manager.◆

So on the basis of two things the insurance company repudiated the claim (i) that the history of pain in the upper abdomen since 1 year prior to the date of operation, (ii) That their panel doctor opined that the illness as symptomatic cholelithiasis. There was confirmation by panel doctor by the undertaking. There is no document anywhere to show what was the opinion given by the panel doctor and even panel doctor was not examined by the insurance company. The next ground is that there have been concealment of material facts in the proposal. District Forum did not accept this contention and accordingly the claim was allowed as indicated above. Hence, this appeal.

4. We have heard Mr. SS Sharma, Advocate for the appellant and Mr. PC Borpujari, Advocate for the respondent. Mr. Sharma relied on (1996) HI CPJ 8 (United India Insurance Co Ltd vs. MKJ Corporation) wherein the Supreme Court in paragraph 5 has pointed out as follows :

◆It is a fundamental principle of insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non disclosure) what he privately knows, to draw the other in to a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured.◆

That judgment is squarely binding to us. But the question is whether on the facts and circumstances of the case, law laid down by the Apex Court shall be applicable. We shall consider that at the later point of time. Mr. Sharma also places reliance in 1999 (1) GLT (CP) 1 a decision of this Commission to urge that this matter requires adjudication by a civil Court and the Forum by a summary enquiry cannot give the relief. The second point urged by Mr. Sharma is to be rejected on the ground that this is not the correct proposition of law. In the above case the facts are absolutely different.

That was a case where dues were claimed and there was a repudiation on the ground being not genuine and the insurance company and the policy submitted by the insurer and the report submitted by the Inquiry Officer holding that there was no proof regarding the matter, the insurance company got the matter into enquired by Experts whose report raised doubt in the genuineness of the claim. The District Forum held that the matter needs to be adjudicated by the civil Court by adducing evidence but granting compensation or demand of settlement of claim. That contention was accepted and this Commission not disturbed the finding of the District Forum. That relates to another aspect. But the payment of compensation etc was not interfered with. Let us take up the first contention urged by Sri Sharma. In order to appreciate this contention, let us have a look on the proposal form with regard to the Mediclaim. This proposal form is available at page 67 of the original record. That is Ext Gha before the Tribunal. Clauses 12,13,14,15 and 16 are quoted below :

◆12. Medical History to be completed by the proposed/insured person please answer the following questions "In yes" or "No" (A dash is not sufficient) and give full details if answer is "yes".

12.1 Are you of good health and free from physical and Answer given mental disease or infirmity or medical complaints? Yes

13. Have you ever suffered from (a) any nervous, mental or psychiatric disease, slipped disc or other spinal disorder fainting episode, blackout, fit or paralysis, of

any kind ? No

(b) High blood pressure, heart disease including alchaemic heart disease, is tula, piles, varicose veins other circulatory disorders of themumatic fever? No

(c) Swelling hernia, any rheumatic or joint disease urinary diseases or diabetes of disease of uterus, ovaries or breast ? Yes

(d) any respiratory of allergic disease or any disorder of the stomach, bowel or gall bladder or cancer? No (e) any other complaint requiring specialist's consultation or surgical or hospital treatment or investigation? No

(f) any complaint or tendency that may necessitate such consultation or treatment in the future ? No

(g) Any dimness of vision or any difficulty of hearing? No

(h) any other illness or disease or accident or operation sustained by you ?

14. Give particulars in table below of any other illness or disease or accident or operation sustained by you as indicated in answers to the questions:

Nature of illness/disease injury and treatment	Date of first treated	Name of attending Practitioner, surgeon with his	Medical Whether duly cured.
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2.

3. Does not arise

15. Are there any additional facts affecting the proposed insurance which should be disclosed to insurers ?No

16. Please give details of any knowledge of any positive existence or presence of any ailment, sickness or injury which may require medical attention :

1. 2.

3.;4◆

Answers were given to all these things. A bare perusal of the clauses quoted above will show that in this particular case, the person ie Dr. Manik Kar did not conceal any material fact in the proposal. It is the burden of the insurance company to prove that there was concealment of material fact. Mr. Sharma, learned Advocate for the appellant places reliance on Ext Ka Discharge Summary of Apollo Hospital where it has been mentioned that the complainant suffered upper abdominal pain on and off since 1 year and that was not disclosed. In the proposal form nothing is there to give such answer and even if that pain was there off and on since 1 year, that will show that there was no concealment of facts as urged the burden was on the insurance company. That burden cannot be thrown on the complainant and in support of it Mr. PC Borpujari, learned Advocate for the respondent places reliance

on the following decisions :

(i) (1997) in CPJ 147 (Divisional Manager, LIC of India & others vs. T. Venkateshwarlu) That was a case from Andhra Pradesh State Consumer Disputes Redressal Commission with regard to the repudiation of claim by the insurance company. But that of course was with regard to the LIC policy on the life and section 45 of the Insurance Act where it was pointed out that if there is no nexus with the cause for the claim, non disclosure of the same shall not be a suppression of material fact.

(ii) (1997) IH CPJ 519 (Oriental Insurance Co Ltd vs. Kamalesh Kumar Chandrakar) wherein the Madhya Pradesh State Commission was considering a repudiation of insurance claim. That was also with regard to the mediclaim. There in paragraph 3 it was pointed out that exclusion clause stipulated by the insurance company must be proved on facts conclusively by the insurance company. The burden cannot be thrown on the claimant.

(iii) (1996) ffl CPJ 8 (SC) United India Insurance Co Ltd vs. MKJ Corporation). That was a claim with regard to the Mediclaim Policy and there the Supreme Court in paragraph 5 pointed out as follows :

◆ It is fundamental principle of Insurance law that utmost good faith must be observed by the contracting parties/Good faith forbids either party from concealing (nondisclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose. Similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured.◆

(iv) (1993) IE CPJ 533. That was a claim with regard to Mediclaim Policy and there the UP State Consumer Disputes Redressal Commission has pointed out that when an insurance company claims exclusion and wants to repudiate a claim it is their duty to show that they are doing so in discharge of their duty. Mere repudiation without doing anything will not sufficient. In this particular case as pointed out earlier, the opinion of panel doctor was not made available. The insurance company did not produce any original paper though there was categorical evidence by the claimant stating that he had not suppressed any material fact. This aspect of the matter regarding concealment of material fact came up for consideration before the Apex Court in AIR 1962 SC 814 (Mithoolal Nayak vs. Life Insurance Corporation of India). No doubt that was with regard to section 45 of the Insurance Act, 1938. The Supreme Court pointed out that there must be three conditions from which an inference can be drawn regarding suppression of material matter or must suppress facts which was material fact: (i) the statement must be on a material to disclose, (ii) the suppression must be fraudulently made by the policy holder, and (iii) policy holder must have known at the time of making the statement that it was false or that it suppressed the facts which it was material to disclose. We have already

quoted above the clauses of proposal form. A bare perusal of the proposal form will show that there was no suppression of material fact which is now sought to be made by the insurance company to repudiate the claim.

5. In that view of the matter, we do not find any merit in this appeal and the shall stand dismissed. We leave the parties to bear their own costs.