

(2003) 08 NCDRC CK 0053

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NEW INDIA
ASSURANCE
COMPANY LIMITED

APPELLANT

Vs

CHANDER SHEKHAR
JULKA

RESPONDENT

Date of Decision: Aug. 25, 2003

Citation: 2004 2 CLT 606 : 2004 2 CPJ 246

Hon'ble Judges: H.S.Brar , C.P.Budhiraja , Jasbir Kapoor J.

Final Decision: Appeal dismissed

Judgement

1. ITIS an appeal against the order dated 13.1.2000 of the District Consumer Disputes Redressal Forum, Jalandhar (hereinafter called the District Forum).

2. RESPONDENT-complainant Shri Chander Shekhar Julka (hereinafter called the complainant) filed the complaint before the District Forum claiming a compensation of Rs. 3,00,000/- for mental tension, inconvenience and harassment caused to him on the allegations that he had taken a family mediclaim policy covering the risk and lives of the complainant, his wife Anita Julka, his son Master Saggar Julka and his daughter Miss Charry Julka for the period from 31.3.1998 to 30.3.1999. The complainant had paid the premium. Prior to that, the complainant had been taking the medi-claim policies covering the risk of the family members since 1994. His son Master Saggar Julka fell ill and then he consulted Dr. Balraj Gupta of Rattan Hospital, Jalandhar, who advised the complainant to take his son to Chennai for proper treatment and for operation of some diseases. Thereafter, the complainant

immediately took his son to Chennai and admitted him in the Institute of Cardio Vascular Diseases 4-A, Dr. J. Jayalalitha Nagar, Magoppair, Chennai and incurred more than Rs. 2,00,000/- on his treatment. Unfortunately, his son died on 13.6.1998 in the said Institute. He was diagnosed Pulmonary Atresia V.S.D. Multiple Aorto-Pulmonary Collaterals (MAPCAS) absent native Pulmonary Arteries and open-heart surgery was done on him on 11.6.1998. After the operation he developed Refractory Cardiac Failure and died on 13.6.1998 at 1.40 p.m. The complainant lodged his claim with the appellant-opposite party (hereinafter called the opposite party) but his claim was repudiated vide letter dated 12.3.1999. According to the complainant, the repudiation of the claim was illegal, mala fide, arbitrary and against the facts and terms and conditions of the family mediclaim insurance policy and it tantamounted to deficiency in service on the part of the opposite party. It was, thus, prayed in the complaint that a direction be given to the opposite party to pay him Rs. 3,00,000/- as damages under the policy of insurance as well as the costs of the complaint.

In the reply filed by the opposite party preliminary objection was taken that there was no deficiency in service on the part of the opposite party and the claim of the complainant was repudiated as per terms and conditions of the policy. It was admitted that the complainant had taken the family mediclaim policy including the risk of his son Master Saggur Julka. But it was denied if the son of the complainant had suddenly fell ill. According to the opposite party, the complainant had the knowledge of the disease of his son Saggur Julka ever since he was one month of age as per brief history provided by the complainant to the Hospital where he was treated and ultimately died. It was admitted that after the filing of the claim by the complainant the matter was got investigated by their investigator and the report of their investigator revealed that the complainant had the knowledge of the disease of his son Master Saggur Julka at the age of one month and since the complainant had the knowledge of the disease and the disease was pre-existing one, so the same was not covered under the policy and the claim was, thus, rightly repudiated. It was then prayed in the reply that the complaint be dismissed with costs.

After hearing the Counsels for the parties and after having gone through the record of the case, District Forum allowed the complaint.

3. HENCE this appeal.

We have heard the learned Counsel for the parties and have gone through the record of the case with their help.

4. IT was held by the District Forum that the complainant had got no knowledge of the disease of his son and the opposite party has failed to prove the same. We do not find any infirmity in this finding of the District Forum.

Admittedly during the relevant period from 31.3.1998 to 30.3.1999 the complainant had taken the family mediclaim policy covering the risk of his son Master Sagggar Julka to the extent of Rs. 1,37,500/- and as per Ex. C-2 and Ex. C-3, which are the copies of those policies, the age of Master Sagggar Julka was about 7 years at the time of taking the policy of insurance. Even this factual position is not disputed that the complainant had been taking the mediclaim policy since 1994. Ex. C-1 to Ex. C-5 are the cover-notes of the earlier policies. It is also not disputed that unfortunately Master Sagggar Julka developed some heart problem as a result of which he was taken to Institute of Cardio Vascular Diseases, Chennai, where he was got admitted on 8.6.1998 and he was operated upon on 11.6.1998. But unfortunately he died on 13.6.1998 at 1.40 p.m. The claim was submitted by the complainant being his father regarding the treatment undertaken by him for the treatment of the disease of his son. But his claim was repudiated on the ground that the son of the complainant was suffering of this disease at the age of one month i.e., since 1991 and so it was a pre-existing disease at the time of taking the policy of insurance, which was not covered under the policy as envisaged under Clause 4 of the policy and the son of the complainant remained hospitalised in 1993 and 1994. The letter of repudiation was mainly based on Ex. R-3, which is a report of M/s. Vasu Associates, Chennai who had based the report on some records with the hospital, where the surgery was effected. The records or the history of the patient recorded in the Institute of Cardiac Vascular Diseases, Chennai were not produced nor were attached with the investigation report. Though in Ex. R-3, it is stated that Master Sagggar Julka remained hospitalised twice in 1993 and 1997 but it is not stated as to where he remained hospitalised. Nor any record or the medical treatment of those alleged hospitals have been produced by the opposite party to show that in fact Master Sagggar Julka was suffering from this disease since he was one month old and the complainant had the knowledge of the disease. On the basis of report Ex. R-3, it cannot be concluded that the complainant had the knowledge of the disease of his son. It is not explained anywhere as to who got recorded the history in the Hospital and who gave this information and as to whether the history was given by the complainant or by the patient or by his attendants or his relations. Report Ex. R-3 is silent about matter. It is pertinent to note here that there is an affidavit of the complainant Ex. C-12 on oath in which it has been clearly deposed that he never knew of the disease of his son earlier or at the time of taking the policy. It was only in May, 1998 that he came to know that his son had some heart problem and prior to May, 1998, he never got his son treated of his ailment from anywhere. Ex. C-6 is

the certificate issued by Dr. Balraj Gupta of Rattan Hospital, who had referred him to the Institute of Cardiac Vascular Diseases, Chennai for proper treatment. In his certificate, it was stated that he had not administered any treatment to the patient. In view of the affidavit of the complainant, referred to above, it is clearly established that the complainant never knew about the disease of his son earlier when he took the policy. In these circumstances onus was heavy on the opposite party to prove that the complainant had the knowledge of the pre-existing disease of his son, which had been made the basis of the repudiation of the claim of the complainant. There is no evidence worth the name on the record to show if prior to May, 1998 when the son of the complainant was taken to heart specialist Dr. Balraj Gupta, he was got treated from any other institution. The repudiation of the claim, thus, on the basis a pre-existing disease was not bona fide. It was, rather, arbitrary and without any basis. In view of our discussion made above, we do not find any merit in this appeal, which is hereby dismissed. Appeal dismissed.