

(2002) 07 NCDRC CK 0018

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

BRANCH MANAGER, NEW INDIA
ASSURANCE COMPANY LTD.

APPELLANT

Vs

Raj Kumar Singh

RESPONDENT

Date of Decision: July 5, 2002

Citation: 2002 3 CLT 572 : 2002 3 CPR 212 : 2003 3 CPJ 244

Hon'ble Judges: D.D.Bahuguna , Rachna J.

Final Decision: Appeal partly allowed

Judgement

1. THIS appeal has been filed against the judgment and order dated 20.9.2001 passed by District Consumer Forum, Kanpur Nagar, in Complaint Case No. 496/1998. Briefly stated the facts of the case are as follows. The complainant No. 1 is Raj Kumar Singh and complainant No. 2 is his wife Smt. Baby Singh. The complainants obtained a Mediclaim insurance policy for themselves as well as for their two children from opposite party against a premium of Rs. 4,026/-. The policy was valid from 25.9.1996 to 24.9.1997 and the policy number was 4842030103046. All of a sudden the wife of the complainant No. 1 suffered chest pain and she was admitted to Regency Hospital, Kanpur. The Valve implantation surgery was carried out in the hospital on 30.5.1997 by Dr. Prateek Bhatnagar. The total expenditure incurred on the treatment including the replacement of valve amounted to Rs. 2 lacs. As per the terms of the policy the complainant informed the opposite party on 6.6.1997. After completing the formalities a Claim No. 48/97/254 was submitted to the Insurance Company. In spite of repeated approaches to the opposite party the claim was not settled and ultimately it was repudiated on 3.3.1998. The opposite party did not abide by the terms and conditions of the policy and it is liable to pay the amount claimed. Accordingly registered notice was sent to Insurance Company which remained un replied. The complainants then filed a claim before the District Consumer Forum for recovery of Rs. 2,80,000/- being, expenses against the treatment of Rs. 2 lacs, compensation for mental and physical torture Rs. 50,000/-, food and journey expenses Rs. 25,000/- and fee for Advocate and notice etc. Rs.

5,000/-. Interest @ 15% p.a. was also claimed from the date of filing of the claim till the date of payment. 3. The opposite party in its written statement admitted the mediclaim insurance policy of the complainants but the rest of the allegations were denied. It was contended that wife of complainant No. 1 was suffering from heart disease at the time of obtaining the medi-claim policy and this fact was not disclosed at the time of obtaining the policy due to which claim of complainant No. 2, wife of the complainant No. 1 was repudiated. The claim is denied when there is violation of the terms and condition of the policy and is paid only when there is no such violation. The claim was repudiated after considering the entire facts and circumstances of the case. Thus the complainant No. 1 and his wife were at fault by not disclosing the fact in regard to the heart disease of complainant No. 2 at the time of obtaining the policy. On receiving the information from the complainants on 6.6.1997 an investigator was appointed to obtain the previous medical history of Smt. Baby Singh complainant No. 2. The investigator reported that she was suffering from cronic heart disease at the time of obtaining mediclaim policy. Dr. Piyush Misra had confirmed in writing that Baby Singh was suffering from severe A.R. and thereafter she was referred to L.P.S. Institute of Cardiology at Kanpur. Again the opposite party appointed Dr. R.K. Kakkar for collecting various medical documents from Regency Hospital in order to arrive at a correct decision in regard to processing of the claim lodged by the husband of the complainant No. 2. Dr. Kakkar obtained the opinion of Dr. Piyush Misra who reported that Baby Singh has a heart disease for quite a long time. Dr. Piyush Misra diagnosed the case of the complainant No. 2 as Rheumatic Heart Disease with Aortic Reguragitation with Aortic Stenosis and such type of illness are chronic in nature and take up several years to develop. Therefore, Dr. R.K. Kakkar in his opinion dated 2.3.1998 concluded that it is difficult to believe that the insured not aware of her heart ailment as different symptoms start appearing from time to time. The opposite party, therefore, repudiated the claim which is not an arbitrary action. Therefore, there was no deficiency in service and the complaint is not maintainable. 4. Parties led evidence in support of their respective contentions before the District Consumer Forum and the District Forum decreed the complaint directing the opposite party to pay to the complainant an amount of Rs. 1 lac as expenditure against treatment and Rs. 50,000/- as compensation against physical and mental torture. Both the payments were to be made within a period of two months. 5. Aggrieved of this order the opposite party Insurance Company has come in this appeal. 6. We have heard the learned Counsel for the two parties. Learned Counsel for the appellant has argued that as per the report of Doctors the complainant No. 2 Smt. Baby Singh was suffering from such disease which takes 2 to 4 years" time to develop. Dr. R.K. Kakkar, Dr. Prateek Bhatnagar and Dr. Misra have also corroborated the facts in their report submitted before the District Forum and these facts have not been rebutted by the complainants. The repudiation of the claim of the complainants was not arbitrary and the claim was repudiated after full application of mind and is well reasoned. The District Forum should have taken into consideration the facts that in

view of the reports of the Doctors the concealment of the facts of the disease as stated in the proposal form was deliberate on the part of the complainants. Insurance under Mediclaim is done in good faith. The Mediclaim policy does not provide for reimbursement of any compensation against mental and physical torture rather it is a policy for reimbursement of the expenses incurred in treatment. It was further argued that the District Forum decreed the complaint merely by relying on the affidavit of the complainant and no details of expenditure incurred on treatment etc. have been given by the complainant. Even the complainant No. 2 Smt. Baby Singh has not filed any affidavit before the District Forum. The District Forum has awarded Rs. 50,000/- as compensation unnecessarily.

7. On the other hand the learned Counsel for the respondent has argued that the Medi-claim policy in question was meant for the complainant, his wife and two children. Learned Counsel also argued that in regard to valve replacement surgery there is a standard package according to which Rs. 1 lac has to be paid to the complainant. In addition to this the cost of valve comes to Rs. 35,000/-. At the time of filling up the proposal form the complainant No. 2 Smt. Baby Singh had no knowledge of her disease. The complainants have not made any concealment of any material fact. The Doctors who have given the report in regard to the ailment of Smt. Baby Singh have not supported the facts of their report in terms of their affidavits and in fact affidavits should have been filed by the Doctors. The investigator appointed by the opposite party has filed an affidavit in support of his report but the same cannot be relied upon as he is not a Doctor and, therefore, the judgment and order passed by the District Consumer Forum are in order.

8. A perusal of the evidence on record goes to show that only controversy in the case is whether Smt. Baby Singh wife of complainant No. 1 Raj Kumar Singh suppressed the facts in regard to the ailment of rheumatic heart disease at the time of submitting the proposal form for mediclaim policy. The report of Regency Hospital Paper No. 23 of the memo of appeal confirms the fact that Aortic Valve replacement of Smt. Baby Singh took place on 30.5.1997 and the concerned Surgeon was Dr. Prateek Bhatnagar. The operative findings were enlarged heart, tense pulmonary artery, tricuspid aortic valve with grossly retracted thick and fibrous cusps without calcification. The report confirms replacement of the valve but at the same time it would be evident from page 22 of the medical report of the hospital that in brief history column it has been stated that Dyspnoea Grade III was for six months. Even if this is taken to be correct then it is clear from the policy that the same was taken eight months before this medical report. The symptoms of heart disease even if existing from before taking the policy may not lead to the conclusion that the complainants had the knowledge that he or she was suffering from the specific disease later on diagnosed as rheumatic heart disease. Therefore, a common person does not know that he is suffering from the specific disease even if some common symptoms are felt by the patient.

9. Similarly at page 33 there is a certificate issued by Dr. Prateek Bhatnagar, Chief Cardiac Surgeon, in which it has been stated that the disease process could have been going on for 2-3 years. It is

further stated that however the patient was symptomatic for the last six months. The certificate is dated 28.2.1998 and the insurance was taken on 25.6.1996. It clearly goes to show that the patient had no idea of her ailment on the date of taking insurance and, therefore, there is no question of concealment of facts. There is detailed report of Dr. R.K. Kakkar in which it has been stated that the illness was chronic in nature but at the same time page 35 of the memo of appeal is clear on the point that this Doctor has also come to the conclusion that disease became symptomatic for six months only and the Mediclaim policy had already been taken before that. Page 36 of the memo of appeal is clear on the point that the symptom of the heart disease may not be severe or distressing enough to compel the patient to seek active medical treatment. Therefore, appearance of mild symptoms will not take the insured to the conclusion that he is suffering from the specific disease. Page 27 of the memo of appeal is the report of Investigator Sri K.N. Singh Chauhan. As per information given to the Investigator by Dr. Prateek Bhatnagar he was informed that even at the time of taking the insurance policy the complainant was suffering from rheumatic heart disease. The investigator has also pointed out that the age of the insured was 23 years at the time of taking the insurance policy and she had two children, one of five years and another of one year. It is difficult to believe that Smt. Baby Singh had such a serious disease which the opposite party's Doctors claim that it takes 2 to 4 years to develop. If that had been so there could have been complications at the time of birth of children or during the period of pregnancy or at the time of post delivery. A perusal of the report of Dr. Piyush Mishra, page 31 of the memo of appeal, goes to show that the illness takes some years to develop but at the same time it does not go to show that she was knowing the fact of her illness of the specific disease at the time of taking insurance policy.

10. In view of the facts already discussed above the reports of the Doctors do not reveal that the complainant had the knowledge of disease at the time of taking insurance policy. Serious symptoms started appearing after more than two months of the taking of the policy. The policy was taken on 25.9.1996 and the operation was conducted on 30.5.1997 after eight months of taking of the policy. So even if the insured was suffering from the rheumatic heart diseases from before, it was for the first time that in January or February next year that she came to know of the disease and not at the time of taking of the insurance policy. It was the duty of the opposite party to have filed the affidavits of the Doctors in this regard. The report of Dr. Kakkar cannot be of much reliance because he is Medical Adviser of the Insurance Company. Similarly the report of the Investigator cannot be believed because he is not a Doctor and he is retired police officer.

11. In view of the above discussions we find that the insured did not deliberately conceal the fact of her ailment at the time of submitting the proposal form for mediclaim. The District Forum was, therefore, justified in decreeing the complaint.

12. In regard to quantum of the amount decreed there is a controversy among the parties. Learned Counsel for the appellant has argued that bills and vouchers in regard to the treatment were not submitted by the complainant and, therefore, the District Forum arbitrarily awarded an amount of

Rs. 1 lac as the amount of treatment and Rs. 50,000/- as compensation but at the same time the learned Counsel for the respondent argued that there is a package deal between the patient and the hospital as far as valve replacement surgery is concerned. Even if there was a package deal the documents in regard to payment should have been filed by the complainant before District Forum and this was not done. Similarly in regard to cost of the valve no document was produced before District Forum. The District Forum, therefore, cursorily came to the conclusion and awarded Rs. 1 lac as cost of treatment and another Rs. 50,000/- as compensation. In our opinion since the factum of valve replacement has been proved by the documents of the hospital, therefore, the action of District Forum in awarding Rs. 1 lac was justified and since no voucher or bill in respect of cost of valve was produced before District Forum it is understood that alleged package deal of Rs. 1 lac with the hospital as argued by the learned Counsel for the respondent will also include the cost of valve. Therefore, in our opinion the complainant is entitled to Rs. 1 lac in terms of reimbursement of the expenses including the cost of valve and since the claim of the complainant was wrongly repudiated, the interest @ 12% p.a. from after the three months of the date of filing of claim till the date of payment should have been awarded to the complainant which could also cover the compensation. The judgment and order of District Forum is, therefore, liable to be modified to the extent that the complainant shall be entitled to Rs. 1 lac as cost of treatment, along with interest @ 12% p.a. from after the three months of the date of filing of the claim before the opposite party till the date of payment. The appeal is liable to be allowed in part and the judgment and order of the District Forum are liable to be modified to the extent indicated above. ORDER The appeal is partly allowed. The judgment and order of District Consumer Forum are modified to the extent that the complainant shall be entitled to receive from the opposite party an amount of Rs. 1. lac as reimbursement against the mediclaim policy, along with interest @ 12% p.a. from after three months of the date of filing the claim before Insurance Company till the date of payment. The order of the District Forum for payment of Rs. 50,000/- as compensation against physical and mental torture is struck down. The appellant shall pay a sum of Rs. 2,000/- to the respondent towards cost. Let compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal partly allowed.