

**(2010) 12 NCDRC CK 0019**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Mahesh Chand Ghiya

APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD

RESPONDENT

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**Date of Decision:** Dec. 2, 2010

**Citation:** 2011 0 CTJ 22 : 2011 1 CPJ 25 : 2011 1 CPR 122

**Hon'ble Judges:** B.N.P.Singh , Suresh Chandra J.

**Advocate:** S.K.Sharma , Ajay Majithia

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**Judgement**

1. MR. Justice B.N.P. Singh, Presiding Member-Factual matrix are that Medi-claim policy obtained by petitioner from respondent Insurance Company for validity period from 22.1.1997 to 21.1.1998 was renewed by respondent on termination of period of validity and last premium made by petitioner was for the period from 22.1.2001 to 21.1.2002. Policy in general was for assured value of Rs. 5,00,000. While so, petitioner for heart ailment, took treatment in Escorts Heart Institute, New Delhi during the period of 28.6.2001 to 9.7.2001 and expenses made by him over treatment was for a sum of Rs. 2,01,021.06. However, when petitioner sought reimbursement of claim of medical expenses incurred over treatment, the claim was restricted to Rs. 85,000 only, in cases of heart ailment. As claim could not be settled despite persuasion, door of Consumer Fora was knocked. Defence taken by respondent-Insurance Company for restricting the claim up to Rs. 85,000 was that it was because of the Exclusion Clause. District Forum, however, having overruled contentions raised on behalf of respondent, held claim of petitioner to be valid. This finding was, however, reversed by State Commission in appeal holding that since petitioner was conscious and aware about the restrictions imposed in the policy when it was renewed for the period from 22.1.2001 to 21.1.2002, he should be estopped from challenging the exclusion clause incorporated in the document. Action of respondent Corporation in restricting the claim to Rs. 85,000 that being a case of heart ailment, was found to be valid. Finding of District Forum decreeing the claim was accordingly set aside by State Commission. Now this revision by aggrieved petitioner.

2. MR. S.K. Sharma, learned Counsel for petitioner would strenuously urge that imposition of restriction in the exclusion clause in the policy when it was renewed for the period from 22.1.2001 to 21.1.2002 was a unilateral action which was incorporated in the policy document without consent of the petitioner. During arguments, we pointedly asked learned Counsel for respondent as to whether renewal of Medi-claim policy for the period from 22.1.2001 to 21.1.2002 imposing restriction in the exclusion clause bears endorsement of petitioner signifying his acceptance to the terms and conditions imposed, but learned Counsel had a volte face to answer our question. No document was placed before us and we think even before For a below, to justify unilateral action of Corporation, to make petitioner liable by the new terms incorporated in the contract. There is no gainsaying the fact that insurance too is in the nature of contract between the parties and no unilateral action on part of any party to the contract could be binding on the other. It would have been fair for the respondent Corporation to appraise the petitioner about the new terms of contract to make him answerable, but this question remains unanswered. The bald defence made by Corporation that inclusion of exclusion clause in the policy when it was renewed for the period from 22.1.2001 to 21.1.2002 was made within the knowledge of petitioner would not impress us in absence of any clinching evidence put on the record by Corporation. Finding recorded by District Forum, in our view, was well reasoned, which was reversed by State Commission on wrong premises. We are of the view that petitioner had a valid cause for reimbursement of expenses incurred over treatment in Escorts Hospital during the period in question which was within the validity period of policy. Revision petition, accordingly, succeeds and finding of State Commission is set aside and that of the District Forum restored. However, no order as to cost.