

First Appeal No.
93 of 2020

Universal Sampo General Insurance Company Limited 21.11.2024
Versus
Sh. Sachin Gupta and another

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 14.10.2020
Date of Final Hearing: 18.11.2024
Date of Pronouncement: 21.11.2024

FIRST APPEAL NO. 93 / 2020

Universal Sampo General Insurance Company Limited
Registered Office – Express IT Park
EL-94, T.T.C. Industrial Area, Navi Mumbai – 400 710

(Through: Sh. Suresh Gautam, Advocate)
..... Appellant

Versus

1. Sh. Sachin Gupta S/o Sh. Ram Avtar Gupta
R/o 6-A, Rajlok Vihar, Behind Geet Govind
Jwalapur Road, Haridwar, Tehsil & District Haridwar

(Through: None)

2. Karnataka Bank Limited
In front of Vanprasth Ashram, Jwalapur
Haridwar, District Haridwar

(Through: None)

..... Respondents

Coram:

Ms. Kumkum Rani,
Mr. B.S. Manral,

President
Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal has been directed against the impugned judgment and order dated 21.05.2020 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as “The District Commission”) in consumer complaint No. 141 of 2016, styled as Sh. Sachin Gupta Vs. Proprietor, Universal Sampo General

Insurance Company Limited and another, wherein and whereby the consumer complaint was allowed.

2. The facts giving rise to the present appeal, in brief, are, as such that the above-mentioned consumer complaint was filed by respondent No. 1 / complainant before the District Commission, with the allegation that he had obtained policy No. 2828/55013969/00/000 from the appellant / opposite party No. 1 on dated 17.04.2015, which was valid upto 16.04.2016, wherein he along with his wife – Smt. Gauri Gupta; son – Master Kunj Gupta and daughter – Ms. Ishika Gupta, were covered. The complainant had paid an amount of Rs. 4,592/- to opposite party No. 2 / respondent No. 2 in this regard and there was insurance cover to the extent of Rs. 2,00,000/-. The complainant's wife (insured) faced some medical problem on dated 12.06.2015 and after check-up, she was operated upon and an amount of Rs. 1,07,650/- was spent towards medical expenses besides transportation expenses to the tune of Rs. 30,000/-. The complainant had submitted the entire medical papers as well as requisite documents in the office of the insurance company, whereupon certain other documents were sought from the complainant. The complainant, after completing all the formalities, had sent all the required documents to the bank, but inspite of that, the claim was denied. The complainant contacted the bank on dated 16.03.2016, where he was apprised that his claim has been repudiated and he is not entitled to any claim. On account of repudiation of the claim, the complainant has suffered gross mental agony and financial loss, for which the insurance company and the bank are liable. Therefore, the consumer complaint was submitted.

3. The appellant / opposite party No. 1 has submitted its written statement before the District Commission, pleading that the complainant was informed by letter dated 07.01.2016 regarding the rejection of his claim due to the following exclusion in the policy: Hospitalization expense incurred in the first year of operation of the insurance cover on treatment of the following diseases: Myomectomy, Hysterectomy. It was further pleaded that in the proposal form, there was no disclosure of any disease or physical infirmity by the insured, which amounts to misrepresentation of facts. The insured was suffering from Fibroid Uterus managed with total Laparoscopic Hysterectomy done under GA. As the insurance policy was in first year and patient was admitted for Hysterectomy, hence the claim was rejected, as Hysterectomy has one year waiting period. Therefore, the claim was rightly repudiated due to policy exclusion of first year for the diseases: Myomectomy, Hysterectomy. The complainant has filed the consumer complaint with malafide intention and he is not entitled to any relief.

4. The respondent No. / opposite party No. 2 also submitted written statement before the District Commission and pleaded that the consumer complaint is not legally maintainable and there was neither any deficiency in service on their part, nor the complainant has suffered any mental agony and financial loss. The complainant is not entitled to any relief and the consumer complaint is liable to be dismissed against the bank.

5. Learned District Commission, after hearing the parties and taking into consideration the material available on record, passed the impugned judgment and order on dated 21.05.2020, thereby allowing the consumer complaint and directed the appellant / opposite party

No. 1 to pay an amount of Rs. 1,06,931/- to respondent No. 1 / complainant along with interest @6% p.a. from the date of filing of the consumer complaint, i.e., 22.03.2016 till actual realization and litigation charges of Rs. 5,000/-. The consumer complaint was, however, dismissed against opposite party No. 2 / respondent No. 2.

6. On having been aggrieved by the impugned judgment and order, the insurance company has filed the appeal in hand. In the memo of appeal, the appellant has stated that the impugned judgment and order is against facts, law and merits of the case and has been passed without appreciating the evidence on record. Learned District Commission has failed to appreciate that the appellant has repudiated the claim of the complainant on genuine ground as per the terms and conditions of the insurance policy. The insured was admitted for treatment and diagnosed as Fibroid Uterus managed with total Laparoscopic Hysterectomy done under GA and as the policy was in first year and the patient was admitted for Hysterectomy, hence the claim was repudiated as Hysterectomy has one year waiting period, as per exclusion clause of the policy. Thus, there was no deficiency in service on the part of the insurance company.

7. We have heard learned counsel for the appellant and perused the record. None appeared on behalf of respondents. Vide order dated 23.02.2024, it was directed that the appeal shall proceed ex-parte against respondent No. 1 and vide order dated 21.05.2024, it was directed that the appeal shall proceed ex-parte against respondent No. 2.

8. We have perused the repudiation letter dated 07.01.2016 (Paper No. 8), wherein it is mentioned that as the policy was in first year and

patient was admitted for Hysterectomy, hence the claim stands repudiated, as Hysterectomy has one year waiting period. We have also perused the terms and conditions of the insurance policy, which are available on record, wherein under the heading “Pre-existing diseases”, under clause No. 2, it is provided that hospitalization expenses incurred in the first year of the insurance cover on treatment of Myomectomy, Hysterectomy, shall not be payable. It is further provided that however, a waiting period of one year will not apply if you were insured continuously and without interruption for at least 1 year under our or any other Indian insurer’s individual health insurance policy for the reimbursement of medical costs for inpatient treatment in a hospital. The complainant has not filed any cogent and reliable evidence on record that the waiting period of one year for the aforesaid disease had expired. The complainant has not averred in the consumer complaint that he along with his wife were also insured in the previous year from the same or any other insurance company or that he has obtained any previous health insurance policy from the appellant or any other Indian insurer. Thus, we are of the definite view that in the absence of such evidence, the claim of the complainant was not maintainable and the same was rightly repudiated by the insurance company. It would not be out of place to mention here that as per the terms and conditions of the insurance policy, the hospitalization expenses incurred in the first year of operation of the insurance cover on certain diseases including Hysterectomy, were clearly excluded.

9. For the reasons aforesaid, we are of the view that the impugned judgment and order has been passed by the District Commission without application of mind. We are also of the considered opinion that the complainant has failed to prove any deficiency in service on the part

of the insurance company. Hence, the impugned judgment and order passed by the District Commission is totally unjustified and the District Commission has exercised the jurisdiction not vested in it by law and has acted with material illegality and infirmity, while passing the impugned judgment and order. Thus, we are inclined to interfere with the finding recorded by the District Commission. Therefore, the appeal is liable to be allowed.

10. Appeal is allowed. Impugned judgment and order dated 21.05.2020 passed by the District Commission is set aside and consumer complaint No. 141 of 2016 is hereby dismissed. No order as to costs of the appeal. The amount deposited by the appellant with this Commission, be released in its favour.

11. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.

12. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 21.11.2024