

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION KANGRA AT DHARAMSHALA, H.P.**

Date of Institution: 05.04.2023
Date of final hearing: 31.05.2024
Date of Pronouncement: 06.06.2024

Consumer Complaint No.-94/2023

IN THE MATTER OF

1. Amit Mahajan S/o Tarsem Kumar R/o V.P.O. Jogipur Tehsil & District Kangra H.P.

2. Pooja Mahajan w/o Amit Mahajan S/o Tarsem Kumar R/o VPO Jogipur Tehsil & District Kangra H.P.

(Through: Mr. Sudhir Kumar, Advocate)

.....Complainants

Versus

1. Star Health and Allied Insurance Co. Ltd through its Branch Manager, Branch Office Mandi 1st floor, SMS Complex Seri Bazar, Mandi Land Mark IDBI Bank Building Tehsil & Distt Mandi.

2. Star Health and Allied Insurance Co Ltd. Through its General Manager No.15, SRI BALA COMPLEX, 1st FLOOR, WHITES LANE, ROYAPETTAH, CHENNAI 600014.

3. Star Health and Allied Insurance Co. Ltd. Through its Assistant Manager(Claim coordinator) SCO 5A, 2nd floor, sector 7 C Chandigarh PIN 160019.

(Through: Ms. Disha Gupta, Advocate)

.....Opposite Party(s)

CORAM:

President: Mr. Hemanshu Mishra

Members: Ms. Arti Sood & Sh. Narayan Thakur

Present:- Mr. Aman Guleria, Ld. counsel for complainant.
Ms. Disha Gupta, Ld. counsel for opposite parties.

PER: Mr. Hemanshu Mishra, President:-

ORDER

The complainant has filed instant complaint seeking direction to the opposite party(s) to make the payment of Rs.6,71,882/- with interest @ 17% per annum along with damages to the tune of Rs.3,00,000/- and Rs3,00,000/- for not making the

payment of claim to the complainant along with litigation fees and expenses to tune of Rs.50,000/-.

2. Facts giving rise to filing of this complaint are that in the year 2018, the complainant bought a Family Health Optima Insurance policy vide policy number P/211129/01/2019/000243 from Opposite party no.1 and having the coverage of Rs.5,00,000/- including Co-insured i.e. his wife namely Pooja Mahajan and son namely Moulik Mahajan. The premium of the policy is Rs.11506/ including GST and same was paid by complainant to Opposite Party No.1 from time to time. On dated 5/11/2016 Co-insured Pooja Mahajan visited the Chauhan dental care & cure clinic Kangra, due to pain along left side of lower Jaw and Chauhan Dental care Clinic Kangra has conduct the RCT of one of the tooth of the Co insured. In the year October 2020 co insured got swear pain on the same place and it continue for a week but the Medicine mentioned above is not giving relief as it has given earlier. In the month of October 2021 co insured again suffered the pain on the same place then family decided to Visit the PGI Chandigarh and on 25/10/21 they visited PGI Chandigarh and Doctors at PGI Chandigarh gave the medication to relieve the pain MRI Scan was done and suggested Neurovascular Conflict of loop of AICA with root entry Zone of Trigeminal Nerve and Micro vascular decompression (MVD) surgery was suggested on the basis of the result of MRI Scan. On 29/06/22 complainant and co insurer consulted the P.D. HINDUJA NATIONAL & MEDICAL RESEARCH CENTER at Mumbai through Video Consultation with Dr. B.K. Mishra who recommended MVD surgery thereafter on dated 27/09/2022 the co insured was admitted in above mentioned hospital and booked the surgery at P.D. Hinduja Hospital and the surgery was conducted on 29/09/2022. Co-insured (Complainant no.2) was discharged from the hospital on 03-10-2022 and had incurred Total amount Rs.6,71,882/- expenses towards her treatment in the above-mentioned hospital. The complainant has intimated to the opposite parties regarding the hospitalization and had also submitted a claim form to respondent along with the discharge summary, bills, etc.

after the discharged from the hospital, but the opposite party has denied to reimburse the above mention amount without any Rhyme and reason. Alleging deficiency in the service on the part of opposite party(s), the complainant has filed the present complaint.

3. Upon notice, opposite party(s) appeared through counsel and contested the complaint by taking preliminary objections of cause of action estoppel and suppression of material facts. It is submitted that the complainant was also made to understand that Policy is contractual in nature and the claims arising therein are subject to the terms and conditions forming part of the policy. The terms and conditions of the Policy as were explained to the complainant at the time of proposing policy was served to the complainant along with the Policy Schedule. The insured has requested for cashless and submitted the documents for hospitalization on 27.09.2022 in P.D. HINDUJA NATIONAL HOSPITAL and MEDICAL RESEARCH CENTRE towards the treatment of TRIGEMINAL NEURALGIA. Prior to renewal of every policy a good health declaration letter is submitted by the insured in which there is a column asking about details of accident/ injury or disease / ailment contracted during the break period for which the insured has mentioned NIL. It was observed that the insured has been suffering from this disease/condition which is prior to inception of the first policy. The insured has failed to disclose this in his/her proposal form at the time of inception of the first policy and also in the good health declaration letters. It is clear that the insured is suffering from the present ailment prior to the inception of policy i.e. 2018. The present admission and treatment of the insured patient is for the pre existing disease. As per Exclusion Pre-existing disease - Code Excl-01 of the policy, the Company is liable to make payment for any pre-existing disease only after the expiry of 48 months from 27.09.2022. Hence, the claim was rightly rejected and the same was informed to the insured vide letter dated 02.11.2022.

4. The complainant has filed rejoinder denying the contents of the reply filed by opposite party(s) and reiterating those of complaint.

5. The parties were called upon to produce their evidence in support of their contentions and accordingly the parties have adduced their respective evidence.

6. We have heard learned counsel for the parties and also gone through the case file carefully.

7. The complainant procured the insurance policy vide annexure C-1, wherein along with complainant his wife Pooja Mahajan and his son Moulik Mahajan was also insured. Proposal date is 15.06.2018 and date of inception of policy was also 15.06.2018. In the details of insured persons, no pre existing disease was declared qua the complainant and son Moulik Mahajan, but as far as Pooja Mahajan was concerned, the column was left blank.

8. The policy was renewed vide annexure C-2 and limit of coverage was raised to Rs.6,25,000/-. Vide annexure C-3 the policy was renewed for the second year on 10.08.2020 and limit of coverage was raised to Rs.6,75,000/-. Thereafter in 2021 on 19.08.2021 premium of Rs.11,065/- was again received and limit of coverage was raised to Rs.7,25,000/-. Vide annexure C-5 on 23.08.2022 premium of Rs.11,950/- was received by the opposite party and limit of coverage was raised to Rs.7,75,000/-. The complainant alongwith his family members was insured upto 22.08.2023.

9. The complainant has annexed affidavit of Ms. Babita Kumari Sandu Ext.CW-3, wherein she had stated that the complainant has procured the policy from her on 15.06.2018. This policy is continuous and there is no gap in the policy. When at first instance policy was purchased, the complainant has revealed that his wife Ms. Pooja Mahajan was suffering from tooth ailment. Ms.

Babita Kumari Sandu in her affidavit Ext.CW-3 had further deposed that she revealed this tooth ailment to the insurance company and as tooth ailment is not covered in insurance, so policy was issued and the complainant and his wife Ms. Pooja Mahajan was not in the knowledge of any other disease at that time. This fact is being corroborated by the policy schedule wherein the column related to pre existing disease qua Pooja Mahajan was kept blank. Meaning thereby the tooth ailment was disclosed at the time of procurement of policy.

10. The prescription slips of Chauhan dental care & cure clinic Kangra and Soni Dental Care Dehra are Annexure C-7 and C-8. In annexure C-8 Dr. R.K Soni has though has shown apprehension of some neurological disorder, but it been not confirmed 100% as in annexure C-8 doctor has put question mark in front of T-N. Meaning thereby, disease T-N was only suspected.

11. After procuring the policy in year, 2020, on 13.11.2020 wife of complainant was advised to undergo CBCT. Dr. Rajat Dang vide annexure C-11 has given certificate on the basis of report of CBCT of Ms. Pooja Mahajan and the clinical symptoms reported by patient dated 23.11.2020. Tooth No.35 was suggested as fracture extending labio palatally and mesio distally, along with middle third of root of 35 was done on 24.11.2020.

12. Thereafter on 06.03.2021 insured Ms. Pooja Mahajan visited Joint Spine and pain clinic Galaxy hospital and as per annexure C-12 doctor diagnosed disease and it was declared that Ms. Pooja Mahajan was suffering from neuralgia disorder called as Trigeminal Neuralgia and medication was prescribed to relief the pain.

13. The insured Ms. Pooja Mahajan got radiofrequency ablation (RFA) done at Delhi Pain Management Centre on 24.03.2021 vide annexure C-13. The insured Ms. Pooja Mahajan with this treatment was back to her normal life and got satisfied with the treatment. But

in the month of October, 2021 insured Ms. Pooja Mahajan again suffered the pain. Now for treatment Ms. Pooja Mahajan visited PGI Chandigarh, wherein MRI scan was done and it was suggested that neurovascular conflict of loop of AICA with root entry zone of trigeminal nerve seen, surgery was suggested on the basis of result of MRI.

14. The patient/ insured Ms. Pooja Mahajan then got admitted in P.D.Hinduja National Hospital & Medical Research Centre, Mumbai and was discharged after procedure of left retro sigmoid craniotomy and microvascular decompression of trigeminal nerve Vide annexure C-18 discharge summary/card. This procedure was done by Dr. B.K Mishra on 29.09.2022.

15. In the column "chief complaints and history" it was mentioned that the patient, right handed, came with history of electric current like lancinating in the left V3 region since 3-4 years lasting for 1-2 secs. Pain initially started in the left lower jaw. The patient went to the dentist for tooth extraction which was done 2 years ago. Since 2 years, pain has increased in intensity. History of pain getting aggravated on brushing, chewing. Since the last one month, the pain is not relieved on medication. History of radiofrequency ablation done in March 2021 done in Delhi but pain got relieved only for 3 months. No history of headache, nausea, vomiting. No history of LOC. No history of blurring of vision. No history of facial deviation.

16. The complainant lodged the claim and the claim was rejected vide annexure C-29, on the ground that present ailment is preexisting and not disclosed on policy inception. We have perused the record. The policy was procured on 15.06.2018 and proposal date is 15.06.2018. Common proposal form is annexure R-1. In the health history, there is no question regarding toothache or tooth ailment. As per affidavit Ext.CW-3 of Babita Kumari Sandu, tooth ailment was rightly disclosed, but as there was no column in the proposal form, it was not mentioned in the same.

17. The complainant as well as insured Pooja Mahajan got to know about the actual ailment firstly on 06.03.2021 and it was confirmed on 27.10.2021. Thereafter, operation was conducted on 29.09.2022 at P.D. HINDUJA NATIONAL & MEDICAL RESEARCH CENTER at Mumbai. Accordingly, disease came in the knowledge of the complainant as well as insured only after 15.06.2018. Till 15.06.2018 the complainant was apprehending the tooth disease and as the tooth is not covered under the insurance policy, knowledge of tooth ailment cannot be termed as pre existing disease.

18. Hence, in our considered opinion, the opposite party without application of mind has rejected the claim. The opposite party has not appended any affidavit of Dr. B.K Mishra or the doctor of Post Graduate Institute of Medical Education & Research. Though the prescription slips of PGIMER and AIMS New Delhi are annexure R-7, R-8, R-9 are, but no affidavit of the doctor has been appended who has scribed/written these prescription slips. It was not mentioned that who has narrated the history of the ailment of insured Ms. Pooja Mahajan to the doctor.

19. The insurance company has taken the premium since 2018 till 2022. From the discharge summary of P.D. HINDUJA NATIONAL & MEDICAL RESEARCH CENTER annexure R-12, it is transpired that MRI brain was done on 27.01.2021 which has showed neurovascular conflict loop of anterior inferior cerebella artery at the root entry of trigeminal nerve. So, this date of 27.01.2021 is important. The complainant got to know about the disease only on 27.01.2021. Hence repudiation of claim is wrong and is deficiency in service.

20. As far as compensation is concerned, insurance coverage at the time of operation was up to Rs.7,75,000/-. The complainant has annexed medical bills annexure C-21 amounting to Rs.6,71,882/-. This is dated 03.10.2022 issued by P.D Hinduja Hospital & Medical Research centre. The opposite party once had received the premium for five consecutive years, is bound to

indemnify the insured Ms. Pooja Mahajan for the expenses incurred on her treatment. Hence, complaint deserves to be allowed.

21. Accordingly, the complaint is partly allowed and opposite parties are jointly and severally directed to pay an amount of Rs.6,71,882/- to the complainant alongwith interest @ 9% per annum from the date of complaint i.e. 05.04.2023 till its realization. Apart from this, opposite parties are jointly & severally also directed to pay compensation to the complainant to the tune of Rs.25,000/-, besides litigation cost quantified as Rs.10,000/-.

13. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

14. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986/2019. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

15. File be consigned to record room along with a copy of this Judgment.

(Hemanshu Mishra)
President

(Narayan Thakur)
Member

(Arti Sood)
Member