

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA.**

First Appeal No. : 115/2022
Date of Presentation : 07.09.2022
Order Reserved on : 16.09.2024
Date of Order : 25.09.2024

Sh.Naresh Kumar Chabba S/o Late Sh. Roshan Lal Chabba,
R/o Village Santokhgarh, Tehsil and District Una, HP.

----Appellant/Complainant

Versus

1. The United India Insurance Company Limited, Divisional
Office, Catholic Centre, 64, Armenian Street, Chennai-
600001 through its Divisional Manager.

2. Vidal Health TPA Limited ANMOLPALANI No.88GN,
Chetti Road, L2, T, Begar Chennai through its Authorised
Officer.

----Respondents/Opposite parties.

Coram

Hon'ble Justice Inder Singh Mehta, President

Whether approved for reporting?¹ Yes

For the Appellant : Mr.Divya Raj Singh, Advocate

For Respondent No.1 : Mr.P.S.Chandel, Advocate.

For Respondent No.2 : None.

¹Whether reporters of the local papers may be allowed to see the order?

Justice Inder Singh Mehta, President

ORDER

Instant appeal is arising out of the order dated 15.07.2022 passed by Learned District Consumer Commission, Una, in Consumer Complaint No.76/2016 titled Naresh Kumar Chabba Versus The United India Insurance Company Ltd. & Anr.

Brief facts of Case:

2. Brief facts of the case are that complainant is having saving account in Indian Bank branch Amb. The complainant purchased a Medi Claim Policy cum Certificate Arogya Raksha Plan-B from opposite party No.1 on 03.06.2015 and paid premium of Rs. 8096/-. Complainant and his wife were covered under the said policy for risk of Rs.5.00 Lacs. Validity period of policy was 03-06-2015 to 31.05.2016. In the month of July wife of complainant got some movement problem and was taken to Max Super speciality Hospital for check up. Some tests were conducted

and she was admitted in the hospital on 11.09.2015 and complainant paid Rs.2.00 Lacs by cheque. Hospital authorities operated the complainant and transplanted both knees on 12-09-2015 and she was discharged from the hospital on 18-09-2015. The complainant spent total amount of Rs.3,81,436/- in hospital and claim was lodged with opposite party No.1/Insurance company. However, claim of complainant was repudiated by opposite parties/insurance company, which is deficiency in service on behalf of opposite parties. Hence, the present complaint.

3. The opposite party No.1/Insurance company resisted and contested the complaint by filing reply and stated that complainant has taken Arogya Raksha policy through Indian Bank and it was valid from 03-06-2015 to 31.05.2016 subject to terms and conditions of the policy. The claim of complainant was processed and investigated by opposite party No.2/Administrator of insurance company and after due investigation, it was found that claim for

“BILATERAL KNEE O.A. VARUS DEFORMITY “ disease, illness and surgery is not payable in the first year of the policy under clause 4.3 and 4.1. Therefore, claim was repudiated and as such there is no deficiency in service on behalf of opposite party/insurance company. A prayer for dismissal of complaint was made.

4. The opposite party No.2 did not appear before learned District Commission below despite service and was proceeded ex-parte vide order dated 21-07-2016.

5. The complainant filed rejoinder in which he denied the averments made in the reply and reaffirmed and reasserted the averments as made in the complaint.

6. Thereafter, the parties led evidence in support of their respective pleadings.

7. After hearing the parties, learned District Commission below dismissed the complaint of the complainant.

8. Feeling aggrieved by the order of learned District Commission below, the appellant/complainant preferred the instant appeal before this Commission.

9. Arguments heard on behalf of the parties and also perused the record carefully.

10. Learned counsel of the appellant/complainant has submitted that complainant has taken Medi Claim Policy from the respondent No.1/insurance company. He further submitted that wife of the complainant had undergone knee replacement from Max Hospital. He further submitted that appellant/complainant has submitted bills regarding treatment to the respondent/insurance company but the claim of the complainant was repudiated on the ground that claim was not covered in the first year of the policy, as per clause 4.3 of the insurance policy. He further submitted that the impugned order is bad in law and prays that appeal of the appellant be allowed.

11. Learned counsel of the respondent/ insurance company has submitted that the appellant and his wife had taken mediclaim from the respondent/insurance company. He further submitted that the policy in question was in existence w.e.f. 03.06.2015 to 31.05.2016. He further submitted that wife of the complainant was got operated on 11.09.2015 within four months from obtaining the said policy. He further submitted that as per clause 4.1 of the policy, in case of pre-existing disease, the claim is not payable before the period of 48 months. He further submitted that impugned order does not require any interference and prays that appeal of the appellant be dismissed.

12. In rebuttal, learned counsel of the appellant has submitted that the aforesaid clause is not applicable for Arogya Raksha policy. He further submitted that impugned order is bad in law and prays that appeal of the appellant be allowed.

FINDINGS

13. The admitted fact which emerges on record is that the complainant has taken Medi Claim policy namely Arogya Raksha Plan-B from opposite party No.1/insurance company through Indian Bank and complainant and his wife were covered under the said policy for risk of Rs.5.00 Lacs. Validity period of policy was 03.06.2015 to 31.05.2016.

14. It is also not in dispute that wife of complainant remained admitted in the hospital w.e.f. 12-09-2015 to 18.09.2015 and her both knees were transplanted. The complainant has lodged the claim of Rs.3,81,436/- with opposite party No.1/insurance company.

15. The opposite party No.1/Insurance company repudiated the claim of complainant vide repudiation letter dated 08.03.2016, Annexure R-18 on the ground that "The expenses relating to treatment of joint replacement due to degenerative condition and age related Osteoarthritis &

Osteoporosis will be covered only after 48 months of continuous coverage.”

16. Perusal of exclusion clause 4.3 of the Health Insurance Policy-Group, Annexure C-3 indicates that during the first four years of the operation of the policy, expenses related to joint replacement are not payable.

17. Further perusal of terms and conditions of the policy, Annexure C-3 indicates that some special conditions are mentioned therein which are only applicable to Group Health Insurance policy AROGYA RAKSHA. Exclusion clauses of Group Health Insurance policy AROGYA RAKSHA are reproduced herein under:

EXCLUSIONS: 4.2 In this clause, waiting period of two years shall be read as one year in case of Arogya Raksha.

4.3 This clause is not applicable for Arogya Raksha.

4.13. This clause does not apply for Arogya Raksha.

18. Thus, it is crystal clear from the aforementioned special conditions of Annexure C-3 for Group Health Insurance policy AROGYA RAKSHA that clause 4.3 of policy (Health Insurance Policy-Group) is not applicable for the Arogya Raksha.

19. Perusal of the copy of the insurance policy Annexure R-3 indicates that complainant has purchased the policy, named as Policy-cum-Certificate for Arogya Raksha, to which clause 4.3 of Health Insurance Policy-Group is not applicable.

20. As far as the plea of the insurance company regarding pre-existing disease is concerned, the insurance company has not placed on record anything to prove that the insured was suffering from any pre-existing disease and as such, the said plea of the insurance company does not seem to be correct and loses its significance.

21. In view of the above stated facts, repudiation of claim of the complainant on the basis of clause 4.3 of the policy, which does not relate to the claim of the complainant, amounts to deficiency in service on the part of the insurance company.

22. The complainant has claimed a sum of Rs.3,81,436/- as expenses incurred on the treatment of his wife Saroj Chabba and he has placed on record bills/details Annexure C-10 and Annexure C-11, settlement receipt of Rs.65,936/- Annexure C-12 and statements of account, Annexure CW.2/A and CW.2/B.

23. Perusal of bill, Annexure C-10 indicates that the complainant has also received discount of Rs.10,000/-. Further, the letter Annexure C-9 written by the complainant to the opposite party No.2/Administrator of the insurance company seeking claim also shows that the complainant has claimed a sum of Rs.3,71,436/-. Thus, the complainant is

entitled to a sum of Rs.3,71,436/- on account of treatment expenses of his wife Saroj Chabba.

24. In view of the above discussion, appeal of the appellant/complainant is allowed and the impugned order is set aside.

25. Consequently, opposite party No.1/insurance company is directed to pay a sum of Rs.3,71,436/- (Three lacs seventy one thousand four hundred thirty six) to the complainant alongwith interest @ 9% per annum from the date of filing of the complaint till the realization of the aforesaid amount.

26. The opposite party No.1/insurance company is further directed to pay a sum of Rs.40,000/- (Forty thousand) to the complainant as compensation for harassment and mental agony etc., beside the litigation expenses of Rs.30,000/- (Thirty thousand).

27. The opposite party No.1/insurance company is directed to comply the aforesaid order within 45 days from the date of receipt of copy of the order.

28. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of learned District Commission alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

Justice Inder Singh Mehta
President

Manoj